TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY

SERIES 30
REQUIREMENTS FOR OPERATING PERMITS

§45-30-1. General.

1.1. Scope. -- This rule provides for the establishment of a comprehensive air quality permitting system consistent with the requirements of Title V of the Clean Air Act. All fees collected pursuant to this rule shall be expended solely to cover all reasonable direct and indirect costs required to administer the Title V operating permit program and accounted for in accordance with this rule.

1.2. Authority. -- W.Va. Code §22-5-4.

1.3. Filing Date. -- ~~May 1, 2012~~.

1.4. Effective Date. -- ~~May 1, 2012~~.

1.5. Former Rules. -- This legislative rule amends 45CSR30 "Requirements for Operating Permits" which was filed ~~April 21, 2003~~ May 1, 2012, and which became effective ~~June 1, 2003~~ May 1, 2012.

§45-30-2. Definitions.

2.1. "Actual emissions" means, for the purpose of sections 7 and 8, the actual total mass of regulated air pollutants emitted to the atmosphere during a particular calendar year and includes all routine as well as non-routine (e.g. abnormal or emergency operations) emissions.

2.2. "Affected source" means a source that includes one or more affected units under 45CSR33 and Title IV of the Clean Air Act (Acid Deposition Control).

2.3. "Affected states" are all states:

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

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

2.4. "Affected unit" means a fossil fuel-fired combustion device that is subject to emission reduction requirements or limitations under 45CSR33 and Title IV of the Clean Air Act.

2.5. "Air pollutant" has the meaning ascribed to it in §302 of the Clean Air Act.

2.6. "Alternative operating scenario" or "AOS" means a scenario authorized in a permit pursuant to section 3 that involves a change at the source for a particular emissions unit, and that either results in the unit

being subject to one or more applicable requirements which differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.

2.7. "Applicable requirements" means all of the following as they apply to emissions units in a Title V source.

2.7.a. Any standard or other requirement provided for in the State Implementation Plan approved by U.S. EPA or promulgated by U. S. EPA through rulemaking under Title I of the Clean Air Act that implements the relevant requirements of the Act, including any revisions to that State Implementation Plan;

2.7.b. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Clean Air Act, including any permits issued under 45CSR13, 45CSR14, 45CSR15, and 45CSR19;

2.7.c. Any standard or other requirement under §111, including §111(d), of the Clean Air Act;

2.7.d. Any standard or other requirements under §112 of the Clean Air Act, including any requirement concerning accident prevention under §112(r)(7) of the Clean Air Act, but not including the contents of any risk management plan required under §112(r) of the Clean Air Act;

2.7.e. Any standard or other requirement of the acid deposition control program under Title IV of the Clean Air Act or the regulations promulgated thereunder;

2.7.f. Any requirements established pursuant to §504(b) or §114(a)(3) of the Clean Air Act;

2.7.g. Any standard or other requirement under §§126(a)(1) and (c) of the Clean Air Act;

2.7.h. Any standard or other requirement governing solid waste incineration under §129 of the Clean Air Act;

2.7.i. Any standard or other requirement for consumer and commercial products under §183(e) of the Clean Air Act;

2.7.j. Any standard or other requirement for tank vessels under §183(f) of the Clean Air Act;

2.7.k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Clean Air Act, unless the Secretary determines that such requirements need not be contained in a Title V permit pursuant to an exemption by U.S. EPA;

2.7.l. Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Clean Air Act, but only as it would apply to temporary sources permitted pursuant to §504(e) of the Clean Air Act;

2.7.m. Any emissions cap and related requirements established for the source by agreement with the Secretary and U.S. EPA or otherwise applicable under the rules of the West Virginia Department of Environmental Protection; and

2.7.n. Any requirement imposed pursuant to the provisions of 45CSR4 and 45CSR27 and any other

state-only requirement for state enforceable purposes only.

2.8. "Approved replicable methodology" or "ARM" means terms in a permit pursuant to section 3 that:

2.8.a. Specify a protocol which is consistent with and implements an applicable requirement, or requirement of this rule, such that the protocol is based on sound scientific and/or mathematical principles and provides reproducible results using the same inputs; and

2.8.b. Require the results of that protocol to be recorded and used for assuring compliance with such applicable requirement, any other applicable requirement implicated by implementation of the ARM, or requirement of this rule, including where an ARM is used for determining applicability of a specific requirement to a particular change.

2.9. "Area source" means any non-major source subject to a standard or other requirement under §112 of the Clean Air Act.

2.10. "Clean Air Act" means the Clean Air Act, 42 U.S.C. §7401, et seq., as amended.

2.11. "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emission unit) which would result in a change in actual emissions.

2.12. "Department of Environmental Protection" or "DEP" means the Department of Environmental Protection as created by the provisions of W.Va. Code §22-1-1 et seq.

2.13. "Designated representative" shall have the meaning given to it in §402(26) of the Clean Air Act and the regulations promulgated thereunder.

2.14. "Draft permit" means the version of a permit for which the Secretary offers public participation under subsection 6.8 or affected state review under subsection 7.2.

2.15. "Effective date of the operating permit program" means the date that U.S. EPA formally provides interim, partial, or full approval of the operating permit programs established under this rule.

2.16. "Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or an enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

2.17. "Emission point" means a stack, vent, process unit, or a definable area (such as an open materials storage yard) from which the emission of any air pollutant occurs.

2.18. "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under §112(b) of the Clean Air Act. This term is not meant to alter or affect the definition of the term "affected unit" for purposes of Title IV of the Clean Air Act (Acid Deposition Control).

2.19. "Enforceable" means enforceable by the Secretary and U.S. EPA, unless specifically designated to mean otherwise.

2.20. "EPA" or "U.S. EPA" means the United States Environmental Protection Agency.

2.21. "Final permit" means the Title V operating permit issued pursuant to this rule that has completed all review procedures required under sections 6 and 7.

2.22. "Fugitive emissions" are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

2.23. "General permit" means a Title V operating permit that meets the requirements of subsection 5.4.

2.24. "Hazardous air pollutant" means any substance listed on Table 45-30A.

2.25. "Case-by-case maximum achievable control technology" or "MACT" means an emissions limitation requiring the application of the maximum degree of reduction and control which the Secretary determines is achievable for each source or category of source which requires a case-by-case MACT determination pursuant to the provisions of subsections 12.1, 12.2, and 12.3.

2.25.a. In the case of sources constructed or modified after the effective date of this rule, MACT shall not be less stringent than the most stringent emissions level that is achieved in practice by similar sources or processes.

2.25.b. For existing sources, MACT may be less stringent than MACT requirements for new or modified sources in the same category, but shall not be less stringent than the following:

2.25.b.1. For categories or subcategories with thirty (30) or more sources, the average emission limitation achieved by the best performing twelve (12) percent of the existing sources in the United States (for which the Secretary has or can reasonably obtain emission information). In making this determination the Secretary shall exclude sources that have achieved a level of emission rate or emission reduction equivalent to the lowest achievable emission rate (as defined in §171 of the Clean Air Act) applicable to the source category and prevailing at the time; or

2.25.b.2. The average emission limitation achieved by the best performing five (5) sources in the United States (for which the Secretary has or could reasonably obtain emissions information) within a category or subcategory with fewer than thirty (30) sources in the United States.

2.25.c. For all facilities, MACT shall represent the maximum degree of emission reduction that the Secretary determines is achievable taking into consideration the cost of achieving such emission reduction, and public health and environmental impacts.

2.25.d. MACT measures shall include but not be limited to measures which:

2.25.d.1. Reduce or eliminate the emission rate of hazardous air pollutants through process changes or substitution of materials;

2.25.d.2. Enclose or seal equipment or systems to eliminate hazardous air pollutant emissions;

2.25.d.3. Collect, capture, destroy and/or otherwise treat hazardous air pollutants released from a process, stack storage, or fugitive emissions point;

2.25.d.4. Are work practice or operational methods; or

2.25.d.5. Are a combination of the above.

2.26. "Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that is described in subdivisions 2.26.a, 2.26.b, or 2.26.c. For the purpose of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987, except that a research and development facility may be treated as a separate source from other stationary sources that are part of the same industrial grouping, are located on contiguous or adjacent property, and are under common control.

2.26.a. A major source under §112 of the Clean Air Act, which is defined as:

2.26.a.1. For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten (10) tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to §112(b) of the Clean Air Act, or twenty-five (25) tpy or more of any combination of such hazardous air pollutants. Refer to Table 45-30A for a listing of hazardous air pollutants regulated pursuant to this rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

2.26.a.2. Radionuclides. -- In the event the Secretary obtains regulatory authority to implement federal requirements regarding radionuclides, the Secretary shall define "major source" consistent with the federal requirements.

2.26.b. A major stationary source of air pollutants, as defined in §302 of the Clean Air Act, that directly emits or has the potential to emit, one hundred (100) tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule of the Secretary). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of §302(j) of the Clean Air Act, unless the source belongs to one of the following categories of stationary sources:

2.26.b.1. Coal cleaning plants (with thermal dryers);

2.26.b.2. Kraft pulp mills;

2.26.b.3. Portland cement plants;

2.26.b.4. Primary zinc smelters;

2.26.b.5. Iron and steel mills;

2.26.b.6. Primary aluminum ore reduction plants;

2.26.b.7. Primary copper smelters;

2.26.b.8. Municipal incinerators (or combination thereof) capable of charging more than fifty (50) tons of refuse per day;

2.26.b.9. Hydrofluoric, sulfuric, or nitric acid plants;

2.26.b.10. Petroleum refineries;

2.26.b.11. Lime plants;

2.26.b.12. Phosphate rock processing plants;

2.26.b.13. Coke oven batteries;

2.26.b.14. Sulfur recovery plants;

2.26.b.15. Carbon black plants (furnace process);

2.26.b.16. Primary lead smelters;

2.26.b.17. Fuel conversion plants;

2.26.b.18. Sintering plants;

2.26.b.19. Secondary metal production plants;

2.26.b.20. Chemical process plants - the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

2.26.b.21. Fossil-fuel boilers (or combination thereof) totaling more than 150 million British thermal units per hour heat input;

2.26.b.22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

2.26.b.23. Taconite ore processing plants;

2.26.b.24. Glass fiber processing plants;

2.26.b.25. Charcoal production plants;

2.26.b.26. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

2.26.b.27. Ammonium sulfate manufacturing plants;

2.26.b.28. Asphalt concrete plants;

2.26.b.29. Asphalt processing/roofing manufacturing plants;

2.26.b.30. Bulk gasoline terminals;

2.26.b.31. Dry cleaning plants;

2.26.b.32. Glass manufacturing plants;

2.26.b.33. Grain elevators;

2.26.b.34. Graphic arts (rotogravure) plants;

2.26.b.35. Hazardous waste incineration facilities;

2.26.b.36. Lead-acid battery manufacturing plants;

2.26.b.37. Mineral processing plants;

2.26.b.38. Natural gas processing facilities;

2.26.b.39. Phosphate fertilizer production and storage facilities;

2.26.b.40. Rubber tire manufacturing plants;

2.26.b.41. Sewage treatment plants;

2.26.b.42. Synthetic fiber production plants;

2.26.b.43. Surface coating and printing operations; and

2.26.b.44. Any other stationary source category, which as of August 7, 1980 is being regulated under §§111 or 112 of the Clean Air Act.

2.26.c. A major stationary source as defined in Part D of Title I of the Clean Air Act, including:

2.26.c.1. For ozone nonattainment areas, sources with the potential to emit one hundred (100) tons or more per year of volatile organic compounds (VOCs) or oxides of nitrogen (NO_X) in areas classified as "marginal" or "moderate," fifty (50) tons or more per year in areas classified as "serious," twenty-five (25) tons or more per year in areas classified as "severe," and ten (10) tons or more per year in areas classified as "extreme"; except that the references in this clause to one hundred (100), fifty (50), twenty-five (25), and ten (10) tons per year of nitrogen oxides shall not apply with respect to any source for which U.S. EPA has made a finding, under §181(f)(1) or (2) of the Clean Air Act, that requirements under §181(f) of the Clean Air Act do not apply;

2.26.c.2. For ozone transport regions established pursuant to §184 of the Clean Air Act, sources with the potential to emit fifty (50) tons or more per year of volatile organic compounds (VOCs);

2.26.c.3. For carbon monoxide ("CO") nonattainment areas that are classified as "serious," and in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to

emit fifty (50) tons or more per year of carbon monoxide; and

2.26.c.4. For particulate matter (PM10) nonattainment areas classified as "serious," sources with the potential to emit seventy (70) tons or more per year of PM10.

2.27. "Permit" means any permit or group of permits covering a source or sources of emissions that are issued, renewed, amended, or revised pursuant to this rule.

2.28. "Permit modification" means a revision to a Title V operating permit issued under this rule that meets the requirements of subsection 6.5.

2.29. "Permit revision" means any permit modification or administrative permit amendment.

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

2.31. "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable. This term does not alter or affect the use of this term for any other purposes under the Clean Air Act, or the term "capacity factor" as used in Title IV of the Clean Air Act (Acid Deposition Control) or the regulations promulgated thereunder.

2.32. "Proposed permit" means the version of a permit that the Secretary proposes to issue and forwards to U.S. EPA for review in compliance with section 7.

2.33. "Regulated air pollutant" means the following:

2.33.a. Nitrogen oxides (NO_X) or any volatile organic compound;

2.33.b. Any pollutant for which a national ambient air quality standard has been promulgated;

2.33.c. Any pollutant that is subject to any standard promulgated under §111 of the Clean Air Act;

2.33.d. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act (§602). Refer to Table 45-30B for a listing of Class I and II substances regulated pursuant to this rule;

2.33.e. Any pollutant subject to a standard or other requirement under §112 of the Clean Air Act, including §§112(g), (j), and (r), including the following:

2.33.e.1. Any pollutant subject to requirements under §112(j) of the Clean Air Act. If the U.S. EPA fails to promulgate a standard by the date established pursuant to §112(e) of the Clean Air Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to §112(e) of the Clean Air Act.

2.33.e.2. Any pollutant for which the requirements of §112(g)(2) of the Clean Air Act have been met, but only with respect to the individual source subject to that §112(g)(2) requirement.

2.33.f. Any other pollutant regulated by the West Virginia Department of Environmental Protection under an emission standard or ambient air quality standard.

2.34. "Regulated pollutant (for fee calculation)," which is used only for purposes of section 8, excludes greenhouse gases as defined in 40 CFR §86.1818-12(a) and means any "regulated air pollutant" except the following:

2.34.a. Carbon monoxide provided that emissions of carbon monoxide do not fall under the provisions of paragraph 2.26.c.3;

2.34.b. Any Class I or II substance which is a regulated air pollutant solely because it is listed pursuant to §602 of the Clean Air Act. Refer to Table 45-30B for a listing of Class I and Class II substances;

2.34.c. Any pollutant that is a regulated air pollutant only because it is subject to a standard or regulation under §112(r) of the Clean Air Act; or

2.34.d. Any pollutant that is a regulated air pollutant solely because it is listed in 45CSR27.

2.35. "Relocation" means the physical movement of a source outside its existing plant boundaries.

2.36. "Renewal" means the process by which a permit is reissued at the end of its term.

2.37. "Research and development facility" means sources whose activities are conducted for nonprofit scientific or educational purposes; sources whose activities are conducted to test more efficient production processes or methods for preventing or reducing adverse environmental impacts, provided that the activities do not include the production of an intermediate or final product for sale or exchange for commercial profit; a research or laboratory facility the primary purpose of which is to conduct research and development into new processes and products, that is operated under the close supervision of technically trained personnel, and that is not engaged in the manufacture of products for sale or exchange for commercial profit; or the experimental firing of any fuel or combination of fuels in a boiler, heater, furnace, or dryer for the purpose of conducting research and development of more efficient combustion or more effective prevention or control of air pollutant emissions, provided that the heat generated is not used for production purposes or for producing a product for sale or exchange for commercial profit.

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

2.38.a. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

2.38.a.1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), or

2.38.a.2. The delegation of authority to such representative is approved in advance by the

Secretary;

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

2.38.c. For a municipality, State, Federal, or other public agency: 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

2.38.d. For affected sources:

2.38.d.1. The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act (Acid Deposition Control) or the regulations promulgated thereunder are concerned; and

2.38.d.2. The designated representative for any other purposes under this rule.

2.39. "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.

2.40. "Section 502(b)(10)" changes or "§502(b)(10)" changes are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

2.41. "Source" or " stationary source" means, for the purpose of this rule, any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under §112(b) of the Clean Air Act.

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

2.43. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

2.43.a. Greenhouse gases, the air pollutant defined in 40 CFR §86.1818-12(a) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the greenhouse gas emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO_2 equivalent emissions; and

2.43.b. The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant greenhouse gases, by the gas's associated global warming potential published at Table A-1 to Subpart A of 40 CFR Part 98 - Global Warming Potentials, and summing the resultant value for each to compute a tpy CO_2e. <u>For purposes of this subdivision, prior to July 21, 2014, the mass of the greenhouse</u>

gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

2.44. "Title V operating permit" means a permit issued under the provisions of this rule.

2.45. "Title V source" means a source required to obtain a Title V operating permit.

2.46. "Volatile organic compound" (VOC) means the term as defined in 40 CFR §51.100(s).

2.47. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W.Va. Code §22-5-1 et seq. and 40 CFR §70.2.

§45-30-3. Applicability.

3.1. Permit requirement.

3.1.a. On and after the effective date of the operating permit program, no person shall violate any requirement of a permit issued under this rule nor shall any person operate any of the following sources, except in compliance with a permit issued under section 6:

3.1.a.1. Any major source;

3.1.a.2. Any source, including an area source, subject to a standard or other requirements promulgated under §111 of the Clean Air Act;

3.1.a.3. Any source, including an area source, subject to a standard or other requirements under §112 of the Clean Air Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under §112(r) of the Clean Air Act;

3.1.a.4. Any affected source; and

3.1.b. If, on the effective date of the operating permit program, a source is not subject to enforceable emissions limitations or such other enforceable measures that require the continued operation and maintenance of air pollution control equipment and/or other operational limitations that make the source non-major, the source shall be treated as a major source subject to the requirements of this rule.

3.2. Exemptions and deferrals.

3.2.a. Except as provided in section 4, all sources listed in subsection 3.1 that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to §129(e) of the Clean Air Act may be deferred by the Secretary on a specific source category basis from the obligation to obtain a Title V operating permit under this rule. Any such deferral by the Secretary shall be consistent with the timetable established by U.S. EPA for non-major sources to which this rule applies except as provided under subdivision 4.1.a.

3.2.b. [Reserved].

3.2.c. Unless otherwise required by this rule to have a Title V operating permit, the following source categories are exempted from the obligation to obtain a Title V operating permit:

3.2.c.1. All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA (1988) - Standards of Performance for New Residential Wood Heaters; and

3.2.c.2. All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M (1984) - National Emission Standard for Hazardous Air Pollutants for Asbestos, 40 CFR §61.145, Standard for Demolition and Renovation.

3.2.d. As provided in this subdivision, the following units or activities within a stationary source subject to this rule may be deemed to be insignificant:

3.2.d.1. Flares used solely to indicate danger to the public.

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

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

3.2.d.4. Indoor or outdoor kerosene heaters.

3.2.d.5. Space heaters operating by direct heat transfer.

3.2.d.6. Repairs or maintenance where no structural repairs are made and where no new air pollutant emitting facilities are installed or modified.

3.2.d.7. Air contaminant detectors or recorders, combustion controllers or shutoffs.

3.2.d.8. Brazing, soldering or welding equipment used as an auxiliary to the principal equipment at the source.

3.2.d.9. Any consumer product used in the same manner as in normal consumer use, provided the use results in a duration and frequency of exposure which are not greater than those experienced by consumers, and which may include, but not be limited to, personal use items janitorial cleaning supplies, office supplies and supplies to maintain copying equipment.

3.2.d.10. Equipment on the premises of industrial and manufacturing operations used solely for the purpose of preparing food for human consumption.

3.2.d.11. Portable generators.

3.2.d.12. Firefighting equipment and the equipment used to train firefighters.

3.2.d.13. Such other sources or activities as the Secretary may determine with EPA approval.

3.2.e. Potential emissions from the units or activities listed under subdivision 3.2.d. shall not be excluded in the determination as to whether a stationary source is a major source for the purpose of determining applicability of this rule; nor shall units subject to applicable requirements be deemed to be insignificant emission units. Units or activities deemed insignificant shall be identified in the permit application, and the owner or operator shall upon request provide sufficient information for the Secretary to verify that such units or activities are insignificant, provided that for all units or activities deemed insignificant because of their size, production rate or amount of pollutant emitted, or for which applicable requirements may apply, the owner or operator shall provide information sufficient for the Secretary to verify that the unit or activity is insignificant at the time the permit application is submitted.

3.3. Emission units and sources.

3.3.a. For major sources, the Secretary shall include in the permit all applicable requirements for all emission units in the major source.

3.3.b. For any non-major source, the Secretary shall include in the permit all applicable requirements for emission units that cause the source to be subject to this rule.

3.4. Fugitive emissions. -- Fugitive emissions from a source subject to this rule shall be included in the permit application and all operating permits issued under this rule in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

§45-30-4. Application for Permits.

4.1. Duty to apply. -- For each source, the owner or operator shall submit a timely and complete permit application in accordance with this section.

4.1.a. Timely application.

4.1.a.1. Except as otherwise provided, applications for permits for sources which are in existence on the effective date of the operating permit program shall be submitted in accordance with the following schedule:

4.1.a.1.A. Applications for coal preparation plants as defined in 40 CFR §§60.250 and 251, whether major or minor sources, which are subject to performance standards under 40 CFR Part 60, Subpart Y, and all other coal preparation plants which are major sources shall be submitted to the Secretary within ninety (90) days of the effective date of the operating permit program.

4.1.a.1.B. Applications for natural gas processing plants or natural gas pipeline compressor engines subject to this rule shall be submitted to the Secretary within ninety (90) days of the effective date of the operating permit program.

4.1.a.1.C. Applications for all hot mix asphalt plants subject to the requirements of 40 CFR Part 60 Subpart I including area sources and all hot mix asphalt plants which are major sources shall be submitted to the Secretary within ninety (90) days of the effective date of the operating permit program.

4.1.a.1.D. Applications for glass manufacturing plants subject to this rule including area sources subject to 40 CFR Part 60 Subpart CC shall be submitted to the Secretary within one hundred eighty

(180) days of the effective date of the operating permit program.

4.1.a.1.E. Applications for chemical manufacturing plants or any other stationary sources subject to the requirement of this rule which contain fewer than 100 emission points shall be submitted within one hundred eighty (180) days of the effective date of the operating permit program.

4.1.a.1.F. Application for all other stationary sources subject to this rule shall be submitted to the Secretary within twelve (12) months of the effective date of the operating permit program.

4.1.a.2. Sources required to meet requirements under §112(g) of the Clean Air Act, or to have a permit under the preconstruction review program approved into the State Implementation Plan under Parts C or D of Title I of the Clean Air Act, including 45CSR14 and 45CSR19, or any other source which becomes subject to this rule after the effective date of the operating permit program shall file a complete application to obtain the Title V operating permit or permit revision within twelve (12) months after commencing operation. Where an existing Title V operating permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation or the source may apply for a single permit in accordance with all applicable provisions and procedures of this rule and all applicable preconstruction permitting rules.

4.1.a.3. A permit renewal application is timely if it is submitted at least six (6) months prior to the date of permit expiration.

4.1.a.4. Applications for initial Phase II (as defined in Title IV of the Clean Air Act) acid deposition control permits shall be submitted to the Secretary by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for NO_X.

4.1.a.5. Within eighteen (18) months following the date established by U.S. EPA's failure to timely promulgate a standard in accordance with the requirements of §112(e) of the Clean Air Act, the owner or operator of a major source subject to this paragraph shall file an application for a permit. If the owner or operator of a source has submitted a timely and complete application for a permit required by section 4, any failure to have a permit shall not be a violation of the requirements of this rule, unless the delay in final action is due to the failure of the applicant to timely submit information required or requested by the Secretary to process the application on forms to be made available by the Secretary.

4.1.b. Complete application. -- To be deemed complete, an application must provide all information required pursuant to subsection 4.3, except that applications for permit revision need supply such information only if it is related to the proposed change. Information required under subsection 4.3 must be sufficient for the Secretary to evaluate the subject source and its application and to determine all applicable requirements. A responsible official shall certify the submitted information consistent with subsection 4.4. Unless the Secretary determines that an application is not complete within sixty (60) days of receipt of the application, such application shall be deemed to be complete, except in the case of minor permit modifications made pursuant to subsection 6.5. Any application which is timely submitted and subsequently determined to be complete within the initial sixty (60) day completeness review period by the Secretary shall be deemed to be complete on the date that it was filed. If, during processing an application that has been determined or deemed to be complete, the Secretary determines that additional information is necessary to evaluate or take final action on that application, the Secretary may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in subsection 6.2, shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by

the Secretary.

4.1.c. Confidential information. -- In the case where a source has submitted information to the State under a claim of confidentiality pursuant to W.Va. Code §22-5-10 and 45CSR31, the Secretary may also require the source to submit a copy of such information directly to the U.S. EPA.

4.2. Duty to supplement or correct application. -- Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

4.3. Standard application form and required information. -- The Secretary shall provide for a standard application form or forms. Information, as described below, for each emissions unit at a source which is not insignificant as defined in subdivision 3.2.d, shall be included in the application, except that a list of insignificant activities or emission units must be included in the application. An application shall contain all information necessary to determine the applicability of, or to impose, any applicable requirement, and to evaluate the fee amount required under section 8. The application forms shall include, but not be limited to, the elements specified below:

4.3.a. Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

4.3.b. A description of the source's processes and products (by Standard Industrial Classification Code) including those associated with any proposed alternative operating scenario identified by the source.

4.3.c. The following emission-related information:

4.3.c.1. All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units qualify as insignificant emission units as defined in subdivision 3.2.d or are exempted under subsection 3.1. In the case of insignificant emission units or activities defined under subdivision 3.2.d, an applicant shall provide information regarding emissions to the extent required under subdivision 3.2.e. The Secretary shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to section 8.

4.3.c.2. Identification and description of all points of emissions described in paragraph 4.3.c.1 in sufficient detail to establish the basis for fees and applicability of requirements of this rule, W.Va. Code §22-5-1 et seq., and the Clean Air Act.

4.3.c.3. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. For emissions units subject to an annual emissions cap, tons per year can be reported as part of the aggregate emissions associated with the cap, except where more specific information is needed, including where necessary to determine and/or assure compliance with an applicable requirement.

4.3.c.4. The following information to the extent it is needed to determine or regulate emissions:

fuels, fuel use, raw materials, production rates, and operating schedules.

4.3.c.5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

4.3.c.6. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the source.

4.3.c.7. Other information required by any applicable requirements (including information related to stack height limitations developed pursuant to §123 of the Clean Air Act and 45CSR20, "Good Engineering Practices as Applicable to Stack Heights"), such as the location of emissions units, flow rates, building dimensions, and stack parameters (including height, diameter, and plume temperature) for all regulated air pollutants.

4.3.c.8. Calculations or test data on which the information in paragraphs 4.3.c.1 through 4.3.c.7. above is based.

4.3.d. The following air pollution control requirements:

4.3.d.1. Citation and description of all applicable requirements;

4.3.d.2. Description of or reference to any applicable test method for determining compliance with each applicable requirement; and

4.3.d.3. A list of all effective air quality-related permits and orders and a list of all such permit applications which are pending action by the Secretary or U.S. EPA.

4.3.e. Other specific information that may be necessary to implement and enforce other requirements of the W.Va. Code §§22-5-1, et seq. and 22-18-1, et seq. or the Clean Air Act or to determine the applicability of such requirements.

4.3.f. An explanation of any proposed exemptions from otherwise applicable requirements.

4.3.g. Additional information as determined to be necessary by the Secretary to define proposed alternative operating scenarios identified by the source pursuant to subdivision 5.1.i or to define permit terms and conditions implementing any alternative operating scenario under subdivision 5.1.i or implementing subsection 5.8 or subdivision 5.1.j, or define alternative equivalent emission limits pursuant to paragraph 5.1.a.3. The permit application shall include documentation demonstrating that the source has obtained all authorization(s) required under the applicable requirements relevant to any proposed alternative operating scenario, or a certification that the source has submitted all relevant materials to the Secretary for obtaining such authorization(s).

4.3.h. A compliance plan for all sources that contains all the following:

4.3.h.1. A description of the compliance status of the source and a schedule for compliance by the source with respect to all applicable requirements, as follows:

4.3.h.1.A. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

4.3.h.1.B. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

4.3.h.1.C. A schedule of compliance, including a narrative description of how the source will achieve compliance, for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

4.3.h.1.D. For applicable requirements associated with a proposed alternative operating scenario, a statement that the source will meet such requirements upon implementation of the alternative operating scenario. If a proposed alternative operating scenario would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term will satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

4.3.h.2. A schedule for submission of certified progress reports where applicable no less frequently than every six (6) months. For sources required to have a schedule of compliance to remedy a violation, a more frequent period no greater than once a month as specified by the Secretary.

4.3.h.3. The compliance plan content requirements specified in subdivision 4.3.h shall apply and be included in the acid deposition control portion of a compliance plan for an affected source except as specifically superseded by 45CSR33.

4.3.i. Requirements for compliance certification, including the following:

4.3.i.1. A certification of compliance with all applicable requirements by a responsible official consistent with subsection 4.4 and §114(a)(3) of the Clean Air Act;

4.3.i.2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

4.3.i.3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Secretary; and

4.3.i.4. A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Clean Air Act and the rules of the West Virginia Department of Environmental Protection.

4.3.j. The use, where applicable, of nationally standardized forms for Title IV of the Clean Air Act portions of permit applications and compliance plans.

4.4. Any application form, report, or compliance certification submitted pursuant to this rule shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this rule shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

§45-30-5. Permit Content.

5.1. Standard permit requirements. -- Each Title V operating permit issued under section 6 shall include all applicable requirements that apply to the source at the time of permit issuance and the following elements:

5.1.a. Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. Such requirements and limitations may include approved replicable methodologies identified by the source in its permit application as approved by Secretary, provided that no approved replicable methodology shall contravene any terms needed to comply with any otherwise applicable requirement or requirement of this rule or circumvent any applicable requirement that would apply as a result of implementing the approved replicable methodology.

5.1.a.1. The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

5.1.a.2. The permit shall state that, where applicable requirements of the Clean Air Act are more stringent than any applicable requirement of 45CSR33, both provisions shall be incorporated into the permit and shall be enforceable by the Secretary and U.S. EPA.

5.1.a.3. If the rules promulgated by the Secretary pursuant to provisions of Title I of the Clean Air Act and contained in the State Implementation Plan allow a determination of an alternative equivalent emission limit at a source to be made in the permit issuance, renewal, or significant modification process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

5.1.b. Permit duration. -- The Secretary shall issue permits for a fixed term of five (5) years for all sources regulated pursuant to this rule.

5.1.c. Monitoring and related recordkeeping and reporting requirements.

5.1.c.1. Each permit shall contain the following requirements with respect to monitoring:

5.1.c.1.A. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to §§504(b) or 114(a)(3) of the Clean Air Act;

5.1.c.1.B. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time periods that are representative of the source's compliance with the permit, as reported pursuant to paragraph 5.1.c.3. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the

requirements of this paragraph 5.1.c.1; and

5.1.c.1.C. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

5.1.c.2. With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require the following:

5.1.c.2.A. Records of monitoring information that include the following:

5.1.c.2.A.1. The date, place as defined in the permit, and time of sampling or measurements.

5.1.c.2.A.2. The date(s) analyses were performed.

5.1.c.2.A.3. The company or entity that performed the analyses.

5.1.c.2.A.4. The analytical techniques or methods used.

5.1.c.2.A.5. The results of such analyses.

5.1.c.2.A.6. The operating conditions existing at the time of sampling or measurement.

5.1.c.2.B. Retention of records of all required monitoring data and support information for a period of at least five (5) years from the date of monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. Where appropriate, the permit may allow records to be maintained in computerized form in lieu of the above records.

5.1.c.3. With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

5.1.c.3.A. Submittal of reports of any required monitoring at least every six (6) months, but no more often than once per month. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with subsection 4.4. To the extent practicable, the schedule for submission of such reports shall be timed to coincide with other periodic reports required by the permit, including the permittees' compliance certifications.

5.1.c.3.B. Reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken in accordance with any rules of the West Virginia Department of Environmental Protection.

5.1.c.3.C. In addition to monitoring reports required by the permit, supplemental reports and notices are deemed to be prompt if submitted in the following fashion:

5.1.c.3.C.1. Any deviation resulting from an emergency or upset condition, as defined in subsection 5.7, shall be reported by telephone or telefax within one (1) working day of the date on which the permittee becomes aware of the deviation, if the permittee desires to assert the affirmative defense authorized

by subsection 5.7. A written report of such deviation, which shall include the probable cause of such deviations, and any corrective actions or preventive measures taken, shall be submitted and certified by a responsible official within ten (10) days of the deviation.

5.1.c.3.C.2. Any deviation that poses an imminent and substantial danger to public health, safety, or the environment shall be reported to the Secretary immediately by telephone or telefax. A written report of such deviation, which shall include the probable cause of such deviation, and any corrective actions or preventive measures taken, shall be submitted by a responsible official within ten (10) days of the deviation.

5.1.c.3.C.3. Any other deviation that is identified in the permit as requiring more frequent reporting than the permittee's reports of required monitoring shall be reported on the schedule specified in the permit.

5.1.c.3.C.4. All reports of deviations shall identify the probable cause of the deviation and any corrective actions or preventative measures taken.

5.1.c.3.D. Every report submitted under this subsection shall be certified by a responsible official.

5.1.c.3.E. A permittee may request confidential treatment for information submitted under this subsection pursuant to the limitations and procedures of W.Va. Code §22-5-10 and 45CSR31.

5.1.d. A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Clean Air Act or 45CSR33.

5.1.d.1. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid deposition control program, provided that such increases do not require a permit revision under any other applicable requirement.

5.1.d.2. No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

5.1.d.3. Any such allowance shall be accounted for according to the procedures established in rules promulgated under Title IV of the Clean Air Act.

5.1.e. A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit.

5.1.f. Provisions stating the following:

5.1.f.1. Duty to comply. -- The permittee must comply with all conditions of the Title V operating permit. Any permit noncompliance constitutes a violation of the Code of West Virginia and Clean Air Act and is grounds for enforcement action by the Secretary or U.S. EPA; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

5.1.f.2. Need to halt or reduce activity not a defense. -- It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit. However, nothing in this paragraph shall be

construed as precluding consideration of a need to halt or reduce activity as a mitigating factor in determining penalties for noncompliance if the health, safety, or environmental impacts of halting or reducing operations would be more serious than the impacts of continued operations.

5.1.f.3. Permit actions. -- The permit may be modified, revoked, reopened and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

5.1.f.4. Property rights. The permit does not convey any property rights of any sort, nor any exclusive privilege.

5.1.f.5. Duty to provide information. -- The permittee shall furnish to the Secretary, within a reasonable time, any information that the Secretary may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall furnish to the Secretary copies of records required to be kept by the permit. For information claimed to be confidential, the permittee shall furnish such records to the Secretary and directly to U.S. EPA along with their claim of confidentiality.

5.1.g. Fees. -- A provision to ensure that a source pays fees to the Division of Air Quality consistent with section 8.

5.1.h. Emissions trading. -- A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in the permit and that are in accordance with all applicable requirements.

5.1.i. Terms and conditions for reasonably anticipated alternative operating scenarios identified by the source in its application and which are approved by the Secretary. Such terms and conditions:

5.1.i.1. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the alternative operating scenario under which it is operating.;

5.1.i.2. Shall extend the permit shield described in subsection 5.6 to all terms and conditions under each such alternative operating scenario; and

5.1.i.3. Shall ensure that the terms and conditions of each such alternative operating scenario meet all applicable requirements and the requirements of this rule. The Secretary shall not approve a proposed alternative operating scenario into the permit until the source has obtained all authorizations required under any applicable requirement relevant to that alternative operating scenario.

5.1.j. Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

5.1.j.1. Shall include all terms required under subsections 5.1 and 5.3 to determine compliance;

5.1.j.2. Shall extend the permit shield described in subsection 5.6 to all terms and conditions that allow such increases and decreases in emissions; and

5.1.j.3. Shall meet all applicable requirements and requirements of this rule.

5.2. Federally-enforceable requirements.

5.2.a. All terms and conditions in a permit issued pursuant to this rule, including any provisions designed to limit a source's potential to emit and excepting those provisions that are specifically designated in the permit as " state-enforceable only", are enforceable by the Secretary, U.S. EPA, and citizens under the Clean Air Act.

5.2.b. Notwithstanding subdivision 5.2.a, the Secretary shall specifically designate as not being federally enforceable under the Clean Air Act any terms and conditions included in the permit that are not required under the Clean Air Act nor under any of its applicable requirements. Terms and conditions of permits issued under this rule which are state enforceable only are not subject to the requirements of section 7 nor shall they be subject to objection, requests for permit reopening, or enforcement by U.S. EPA. Permit revisions and reopenings for state-only requirements shall be accomplished by using the procedures of section 6, except that such revisions are not subject to U.S. EPA or affected state review.

5.3. Compliance requirements. -- All Title V operating permits shall contain the following elements with respect to compliance:

5.3.a. Consistent with subdivision 5.1.c : compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including reports, required by a Title V operating permit shall contain a certification by a responsible official that meets the requirements of subsection 4.4.

5.3.b. Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Secretary or an authorized designee of the Secretary to perform the following:

5.3.b.1. At all reasonable times (including all times in which the facility is in operation) enter upon the permittee's premises where a source is located or emissions related activity is conducted, or where records must be kept under the conditions of the permit;

5.3.b.2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

5.3.b.3. Inspect at reasonable times (including all times in which the facility is in operation) any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

5.3.b.4. Sample or monitor at reasonable times substances or parameters to determine compliance with the permit or applicable requirements or ascertain the amounts and types of pollutants discharged.

5.3.c. A schedule of compliance consistent with subdivision 4.3.h.

5.3.d. Progress reports consistent with an applicable schedule of compliance and subdivision 4.3.h

to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the Secretary. Such progress reports shall contain the following:

5.3.d.1. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

5.3.d.2. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

5.3.e. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. -- Permits shall include each of the following:

5.3.e.1. The frequency (not less than annually or a more frequent period as specified in the applicable requirement or by the Secretary) of submissions of compliance certifications;

5.3.e.2. In accordance with subdivision 5.1.c, a means for assessing or monitoring the compliance of the source with its emissions limitations, standards, and work practices;

5.3.e.3. A requirement that the compliance certification include the following:

5.3.e.3.A. The identification of each term or condition of the permit that is the basis of the certification;

5.3.e.3.B. The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, as shown by test or monitoring data, records, and other information reasonably available to the permittee. Such methods and other means shall include, at a minimum, the methods and means required under subdivision 5.1.c;

5.3.e.3.C. The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in subparagraph 5.3.e.3.B. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and

5.3.e.3.D. Such other facts as the Secretary may require to determine the compliance status of the source;

5.3.e.4. A requirement that all compliance certifications be submitted to U.S. EPA as well as to the Secretary; and

5.3.f. Such other provisions as the Secretary may require to determine the compliance status of the source.

5.4. General permits.

5.4.a. The Secretary may, after notice and opportunity for public participation as contained in section 6, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other Title V operating permits and shall identify criteria by which sources may

qualify for the general permit. To sources that qualify, the Secretary shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of subsection 5.6, the source shall be subject to enforcement action for operation without a Title V operating permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under Title IV of the Clean Air Act unless otherwise provided in rules promulgated by the Secretary in accordance with that Title IV of the Clean Air Act.

5.4.b. A general permit may be issued for the following purposes:

5.4.b.1. To establish terms and conditions to implement applicable requirements for a source category;

5.4.b.2. To establish terms and conditions to implement applicable requirements for specified categories of changes to permitted sources;

5.4.b.3. To establish terms and conditions for new requirements that apply to sources with existing permits; and

5.4.b.4. To establish enforceable caps on emissions from sources in a specified category.

5.4.c. Sources that would qualify for a general permit must apply to the Secretary for coverage under the terms of the general permit or must apply for a Title V operating permit consistent with section 4. The Secretary may, in the general permit, provide for applications which deviate from the requirements of section 4, provided that such applications meet the requirements of Title V of the Clean Air Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The Secretary may grant a request for a source to operate under a general permit without repeating the public participation procedures as required by subsection 6.8, and such grant shall not be a final permit action for judicial review.

5.4.d. The Secretary shall act within ninety (90) days to approve or deny a request to be covered under a general permit.

5.4.e. A source may apply for coverage under a general permit for some emissions units or activities even if the source must file a source-specific permit application for other emissions units or activities. In the event that both a general permit and a source-specific permit are granted to the same source, the source-specific permit shall incorporate the applicable general permit(s).

5.4.e.1. In the event that a source is issued a general permit for one or more emissions units at a source, any subsequent application for a source-specific permit shall include the source subject to the general permit. The incorporation of the general permit into the source-specific application shall subject the general permit source to all procedures and processes, including public comment, to which the entire application and permit process are subject. The terms and duration of any general permit incorporated under a source-specific permit shall be void upon the issuance of such source-specific permit and the terms and duration of such source-specific permit shall then control.

5.4.e.2. In the event that a source obtains a general permit subsequent to the issuance of a source-specific permit, such general permit shall be applicable only for the remainder of the term of the source-specific permit. The general permit source shall be included in the renewal application for the source specific permit and subject to all procedures and processes, including public comment, to which the renewal is subject.

5.5. Temporary sources. -- The Secretary may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. Temporary sources must comply with preconstruction review requirements under 45CSR13, 45CSR14, 45CSR15, and 45CSR19. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include provisions that will assure compliance with all applicable requirements at all authorized locations. The owner or operator shall notify the Secretary at least ten (10) days in advance of each change in location.

5.6. Permit shield.

5.6.a. Except as otherwise provided in this rule, the Secretary shall include in a Title V operating permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

5.6.a.1. Such applicable requirements are included and are specifically identified in the permit; or

5.6.a.2. The Secretary, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes such a determination or a concise summary thereof.

5.6.b. A Title V operating permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

5.6.c. Nothing in subsection 5.6 or in any Title V operating permit shall alter or affect the following:

5.6.c.1. The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance; or

5.6.c.2. The applicable requirements of the Code of West Virginia and Title IV of the Clean Air Act, consistent with §408(a) of the Clean Air Act.

5.6.c.3. The authority of the Administrator of U.S. EPA to require information under §114 of the Clean Air Act or to issue emergency orders under §303 of the Clean Air Act.

5.7. Emergency provision.

5.7.a. Definition. -- An “emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

5.7.b. Effect of any emergency. -- An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of subdivision 5.7.c are met.

5.7.c. The affirmative defense of emergency shall be demonstrated through properly signed,

contemporaneous operating logs, or other relevant evidence that:

5.7.c.1. An emergency occurred and that the permittee can identify the cause(s) of the emergency;

5.7.c.2. The permitted facility was at the time being properly operated;

5.7.c.3. During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

5.7.c.4. Subject to the requirements of part 5.1.c.3.C.1, the permittee submitted notice of the emergency to the Secretary within one (1) working day of the time when emission limitations were exceeded due to the emergency and made a request for variance, and as applicable rules provide. This notice, report, and variance request fulfills the requirement of subparagraph 5.1.c.3.B. This notice must contain a detailed description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

5.7.d. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

5.7.e. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

5.8. Operational flexibility. -- Each permit issued under this rule shall provide that a permittee may make changes within the facility, as provided by §502(b)(10) of the Clean Air Act. Such operational flexibility shall be provided in the permit in conformance with the permit application and applicable requirements. No such changes shall be a modification under any provision of Title I of the Clean Air Act promulgated by the Secretary (including 45CSR14 and 45CSR19), and the change shall not result in a level of emissions exceeding the emissions allowable under the permit.

5.8.a. Before making a change under this provision, the permittee shall provide advance written notice to the Secretary and to U.S. EPA, describing the change to be made, the date on which the change will occur, any changes in emissions, and any permit terms and conditions that are affected. The permittee shall thereafter maintain a copy of the notice with the permit, and the Secretary shall place a copy with the permit in the public file. The written notice shall be provided to the Secretary and U.S. EPA at least seven (7) days prior to the date that the change is to be made, except that this period may be shortened or eliminated as necessary for a change that must be implemented more quickly to address unanticipated conditions posing a significant health, safety, or environmental hazard. If less than seven (7) days notice is provided because of a need to respond more quickly to such unanticipated conditions, the permittee shall provide notice to the Secretary and U.S. EPA as soon as possible after learning of the need to make the change.

5.8.b. A permitted source may trade increases and decreases in emissions within the facility, where rules promulgated by the Secretary pursuant to provisions of Title I of the Clean Air Act and which are contained in the State Implementation Plan for West Virginia provide for such emissions trades without a permit modification. In such a case, the advance written notice provided by the permittee shall identify the applicable requirements allowing trading and shall state when the change will occur, the types and quantities of emissions to be traded, the permit terms or other applicable requirements with which the source will comply through emissions trading, and such other information as may be required by the Secretary.

5.8.c. The permit shield provided under subsection 5.6 shall not apply to changes made under subsection 5.8 except those provided for in subdivision 5.8.d. However, the protection of the permit shield

will continue to apply to operations and emissions that are not affected by the change, provided that the permittee complies with the terms and conditions of the permit applicable to such operations and emissions. The permit shield may be reinstated for emissions and operations affected by the change:

5.8.c.1. If subsequent changes cause the facility's operations and emissions to revert to those authorized in the permit and the permittee resumes compliance with the terms and conditions of the permit, or

5.8.c.2. If the permittee obtains final approval of a significant modification to the permit to incorporate the change in the permit.

5.8.d. Upon the request of a permit applicant, the Secretary may issue a permit that contains terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that assure that the emissions trades are quantifiable, accountable, enforceable, and replicable, and comply with all applicable requirements and subdivision 5.1.j. The permit shield under subsection 5.6 shall apply to permit terms and conditions authorizing such increases and decreases in emissions. The written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

5.9. Off-permit changes. -- Except as provided in subdivision 5.9.e, a facility may make any change in its operations or emissions that is not addressed nor prohibited in its permit and which is not considered to be construction nor modification under any rule promulgated by the Secretary without obtaining an amendment or modification of its permit. Such changes shall be subject to the following requirements and restrictions:

5.9.a. The change must meet all applicable requirements and may not violate any existing permit term or condition.

5.9.b. The permittee must provide a written notice of the change to the Secretary and to U.S. EPA within two (2) business days following the date of the change. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

5.9.c. The change shall not qualify for the permit shield.

5.9.d. The permittee shall keep records describing all changes made at the source that result in emissions of regulated air pollutants, but not otherwise regulated under the permit, and the emissions resulting from those changes.

5.9.e. No permittee may make any change subject to any requirement under 45CSR33 or Title IV of the Clean Air Act pursuant to the provisions of subsection 5.9.

5.9.f. No permittee may make any changes which would require preconstruction review under any provision of Title I of the Clean Air Act (including 45CSR14 and 45CSR19) pursuant to the provisions of subsection 5.9.

§45-30-6. Permit Issuance, Renewal, Reopenings and Revisions.

6.1. Action on application.

6.1.a. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

6.1.a.1. The Secretary has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under subsection 5.4;

6.1.a.2. Except for modifications qualifying for minor permit modification procedures under subdivision 6.5.a, the Secretary has complied with the public participation procedures for permit issuance specified under subsection 6.8;

6.1.a.3. The Secretary has complied with the requirements for notifying and responding to affected States as required by subsection 7.2;

6.1.a.4. The conditions of the permit provide for compliance with all applicable requirements and the requirements of this rule; and

6.1.a.5. The Secretary has provided a copy of the permit and any notices required under subsections 7.1 and 7.2 to U.S. EPA, and U.S. EPA has not objected to issuance of the permit under subsection 7.3 within the time period specified therein.

6.1.b. Except as provided under the initial transition plan provided for under section 9 and as may be required by 45CSR33, the Secretary shall take final action on each permit application within twelve (12) months after the application is deemed complete.

6.1.c. Priority shall be given to taking action on applications for construction or modification under 45CSR13, 45CSR14, 45CSR15 or 45CSR19.

6.1.d. The Secretary shall promptly provide notice of the completeness to the applicant. Unless the Secretary requests additional information or otherwise notifies the applicant of incompleteness within sixty (60) days of receipt of an application, the application shall be deemed complete. No completeness determination need be made for minor permit modification applications pursuant to subdivision 6.5.a.

6.1.e. Following receipt and review of an application, the Secretary shall issue a draft permit, permit modification or renewal for public comment. In accordance with subsection 6.9, the Secretary shall develop a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The Secretary shall send this statement to the U.S. EPA and to any person who requests it.

6.1.f. The submittal of a complete application shall not affect the requirement that any source have all preconstruction permits required under the rules of the West Virginia Department of Environmental Protection except that a source may, with approval of the Secretary, elect to file a single permit application to obtain any required preconstruction permits and a Title V operating permit or permit revision, if the procedures required by the applicable preconstruction rule and all requirements of the preconstruction permitting rules are complied with in the issuance of a Title V operating permit.

6.2. Requirement for a permit. -- Except as provided in paragraph 6.5.a.5, subsection 5.8, and as further provided in this subsection, no source may operate after the time that it is required to submit a timely and complete application under this rule except in compliance with an effective permit under this rule. If a source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a Title V operating permit is not a violation of this rule until the Secretary takes final action on the permit application, except as noted in this subsection. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to subdivision 6.1.d and as required by subdivision 4.1.b, the applicant fails to submit by the deadline specified in writing by the Secretary any additional information identified as being needed to process the application.

6.3. Permit renewal and expiration.

6.3.a. Permits being renewed are subject to the same procedural requirements, including those for public participation, that apply to initial permit issuance.

6.3.b. Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with subsection 6.2 and paragraph 4.1.a.3.

6.3.c. If the Secretary fails to take final action to deny or approve a timely and complete permit application before the end of the term of the previous permit, the permit shall not expire until the renewal permit has been issued or denied, and any permit shield granted for the permit shall continue in effect during that time.

6.4. Administrative permit amendments.

6.4.a. An "administrative permit amendment" is a permit revision that:

6.4.a.1. Corrects typographical errors;

6.4.a.2. Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

6.4.a.3. Requires more frequent monitoring or reporting by the permittee;

6.4.a.4. Allows for a change in ownership or operational control of a source where the Secretary determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Secretary;

6.4.a.5. Incorporate into the Title V operating permit all provisions required under this rule and all preconstruction requirements under Title I of the Clean Air Act (including requirements of 45CSR14 and 45CSR19); or

6.4.a.6. Is approved pursuant to 45CSR33.

6.4.b. An administrative permit amendment may be made by the Secretary consistent with the following:

6.4.b.1. The Secretary shall take no more than sixty (60) days from receipt of a request for an

administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that the Secretary designates any such permit revisions as having been made pursuant to subsection 6.4.

6.4.b.2. The Secretary shall submit a copy of the revised permit to the U.S. EPA.

6.4.b.3. The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

6.4.c. The Secretary may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in subsection 5.6 for administrative permit amendments made pursuant to paragraph 6.4.a.5, which meets the relevant requirements of sections 5, 6, and 7 for significant permit modifications.

6.5. Permit modification. -- A permit modification is any revision or modification to a Title V operating permit that cannot be accomplished under the provisions for administrative permit amendments under subsection 6.4. Permit modifications for the purposes of the acid deposition control portion of the permit shall be governed by 45CSR33.

6.5.a. Minor permit modification procedures.

6.5.a.1. Criteria.

6.5.a.1.A. Minor permit modification procedures may be used only for those permit modifications that:

6.5.a.1.A.1. Do not violate any applicable requirement;

6.5.a.1.A.2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

6.5.a.1.A.3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient air quality impacts, or a visibility or increment analysis;

6.5.a.1.A.4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and which permit or condition has been used to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, a federally enforceable emissions cap used to avoid classification as a modification under any provision of Title I or any alternative emissions limit approved pursuant to regulations promulgated under §112(i)(5) of the Clean Air Act;

6.5.a.1.A.5. Do not involve preconstruction review under Title I of the Clean Air Act or 45CSR14 and 45CSR19; and

6.5.a.1.A.6. Are not required under any rule of the Secretary to be processed as a significant modification.

6.5.a.1.B. Notwithstanding subparagraph 6.5.a.1.A, minor permit modification procedures

may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in rules of the West Virginia Department of Environmental Protection which are approved by U.S. EPA as part of the State Implementation Plan under the Clean Air Act, or which may be otherwise provided for in the Title V operating permit issued under this rule.

6.5.a.1.C. When a permit is modified, only the conditions subject to modification can be reopened, and all other conditions of the permit remain in effect.

6.5.a.2. Application. -- An application requesting the use of minor permit modification procedures shall meet the requirements of subsection 4.3 and shall include the following:

6.5.a.2.A. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

6.5.a.2.B. The source's suggested draft permit;

6.5.a.2.C. Certification by a responsible official, consistent with subsection 4.4, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

6.5.a.2.D. Completed forms for the Secretary to use to notify U.S. EPA and affected states as required under section 7.

6.5.a.3. U.S. EPA and affected states notification. -- Within 5 working days of receipt of a complete permit modification application, the Secretary shall meet the obligation under subdivisions 7.1.a and 7.2.a to notify U.S. EPA and affected states of the requested permit modification. The proposed permit shall be the same as the draft permit for this purpose. The Secretary shall promptly send any notice required under subdivision 7.2.b to U.S. EPA. All such notifications shall be by certified mail, return receipt requested.

6.5.a.4. Timetable for issuance. -- The Secretary shall not issue a final permit modification until after U.S. EPA's forty-five (45) day review period or until U.S. EPA has notified the Secretary that U.S. EPA will not object to the issuance of the permit modification, whichever is first, although the Secretary may approve the permit modification prior to that time. Within ninety (90) days of the Secretary's receipt of an application under minor permit modification procedure or fifteen (15) days after the end of U.S. EPA's forty-five (45) day review period under subsection 7.3, whichever is later, the Secretary shall:

6.5.a.4.A. Issue the permit modification as proposed;

6.5.a.4.B. Deny the permit modification application;

6.5.a.4.C. Determine that the requested modification does not meet the minor permit modification procedure criteria and should be reviewed under the significant modification procedures; or

6.5.a.4.D. Revise the draft permit modification and transmit to U.S. EPA, and, if appropriate, affected states, the new proposed permit modification in accordance with subdivisions 7.1.a and 7.2. In the event that draft permit modifications are made, the Secretary shall utilize the same procedures outlined in paragraph 6.5.a.4.

6.5.a.5. Permittee's ability to make change. -- A permittee may not make a change to a source proposed in a minor permit modification application unless it has submitted the permit application at least seven (7) days prior to making the proposed change. After the source makes the proposed change allowed by the preceding sentence, and until the Secretary takes any of the actions specified in subparagraphs 6.5.a.4.A through 6.5.a.4.C, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it and violation of the proposed terms and conditions is relevant in considering any sanction.

6.5.a.6. Permit shield. -- The permit shield under subsection 5.6 shall not extend to minor permit modifications.

6.5.b. Significant modification procedures.

6.5.b.1. Criteria. -- Significant modification procedures shall be used for applications requesting significant permit modifications that do not qualify as minor permit modifications or as administrative amendments including, but not limited to, the following:

6.5.b.1.A. Modifications under any provision of Title I of the Clean Air Act, except those that qualify for processing as administrative permit amendments under subsection 6.4 or any rule of the Secretary required under Title I of the Clean Air Act;

6.5.b.1.B. A significant change in existing monitoring permit terms or conditions, or constitute a relaxation of reporting or recordkeeping permit terms or conditions;

6.5.b.1.C. A change to a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

6.5.b.1.D. Establishment of or change to a permit or condition for which there is no corresponding underlying applicable requirement, and

6.5.b.1.E. Proposed changes which in the judgement of the Secretary would require decisions to be made on significant or complex issues that generate or are likely to generate significant material adverse comment from the public, affected states, or U.S. EPA with respect to the determination of applicable requirements or air quality impacts.

6.5.b.2. Significant permit modifications shall meet all requirements of section 6, including those for applications, for public participation, review by affected states and review by U.S. EPA as they apply to permit issuance and permit renewal. The Secretary shall complete the review process for significant permit modifications within six (6) months after receipt of a complete application.

6.6. Reopening for cause.

6.6.a. Each issued permit shall include provisions specifying the conditions under which the permit will be opened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

6.6.a.1. Additional applicable requirements under the Clean Air Act or the Secretary's rules become applicable to a major source with a remaining permit term of three (3) or more years. Such a reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to one of the following:

6.6.a.1.A. The permit shall not expire until the renewal permit has been issued or denied and any permit shield that may be granted pursuant to subsection 5.6 may extend beyond the original permit term until renewal; or

6.6.a.1.B. All the terms and conditions of the permit including any permit shield that may be granted pursuant to subsection 5.6 shall remain in effect until the renewal permit has been issued or denied.

6.6.a.2. Additional requirements (including excess emissions requirements) become applicable to an affected source under 45CSR33 and Title IV of the Clean Air Act or other rules of the West Virginia Department of Environmental Protection. Upon approval by U.S. EPA, excess emissions offset plans shall be incorporated into the permit.

6.6.a.3. The Secretary or U.S. EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

6.6.a.4. The Secretary or U.S. EPA determines that the permit must be revised or revoked and reissued to assure compliance with the applicable requirements.

6.6.b. Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

6.6.c. Reopenings under subdivision 6.6.a shall not be initiated before a notice of such intent is provided to the source by the Secretary at least thirty (30) days in advance of the date that the permit is to reopened, except that the Secretary may provide a shorter time period in the case of an emergency. The notice shall include a statement of the reasons for the reopening of the permit. Until such time as a permit is reissued pursuant to the reopening, the source shall be entitled to the continued protection of any permit shield provided in the permit, unless the Secretary specifically suspends the shield upon a finding that such suspension is necessary to implement applicable requirements.

6.7. Reopenings for cause resulting from U.S. EPA notice.

6.7.a. The Secretary shall, within ninety (90) days after receipt of a notification from U.S. EPA that cause exists to terminate, modify, or revoke and reissue a permit, forward to U.S. EPA a proposed determination of termination, modification, or revocation and reissuance, as is appropriate. The Secretary may request an extension of this ninety (90) day period for an additional ninety (90) days if the Secretary finds that a new or revised permit application is necessary or that the Secretary must require the permittee to submit additional information.

6.7.b. The Secretary shall have ninety (90) days from receipt of a U.S. EPA objection to resolve any objection that U.S. EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with

U.S. EPA's objection. In accordance with the Clean Air Act and federal rules promulgated thereunder, U.S. EPA has authority to terminate, modify, or revoke and reissue a Title V operating permit after failure of the State and permit holder to resolve a U.S. EPA objection and upon proper notice to the permit holder.

6.8. Public participation. -- Except for modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit. These procedures shall include the following:

6.8.a. Public notice.

6.8.a.1. Scope:

6.8.a.1.A. Public notice shall be given that the following actions have occurred:

6.8.a.1.A.1. A draft permit has been prepared, and

6.8.a.1.A.2. A hearing has been scheduled pursuant to subparagraph 6.8.a.2.B.

6.8.a.1.B. Public notices may describe more than one (1) permit or permit part.

6.8.a.2. Timing.

6.8.a.2.A. Public notice of the preparation of a draft permit shall allow at least thirty (30) days for public comment. Upon request of the permit applicant the public comment period may be extended for an additional thirty (30) days. Further extension of the comment period may be granted by the Secretary for good cause shown but in no case may the further extension exceed an additional thirty (30) days.

6.8.a.2.B. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two (2) notices may be combined.

6.8.a.3. Methods. -- Public notice shall be given by the following methods:

6.8.a.3.A. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subparagraph may waive his or her rights to receive notice for any classes and categories or permits):

6.8.a.3.A.1. The applicant;

6.8.a.3.A.2. Any other State or Federal agency which the Secretary knows has issued or is required to issue a permit for the same facility or activity under the Federal Resource Conservation and Recovery Act (RCRA) or other relevant statutes;

6.8.a.3.A.3. Federal, State, and interstate agencies with jurisdiction over public health and the environment, the State Historic Preservation Unit of the Department of Culture and History when new site acquisition is involved, and other appropriate government authorities, including the Federal Land Manager when Federal Class I areas, as defined in 45CSR14, are potentially affected;

6.8.a.3.A.4. Persons on a mailing list developed by:

6.8.a.3.A.4.(a). Including those who request in writing to be on the list;

6.8.a.3.A.4.(b). Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

6.8.a.3.A.4.(c). Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and State funded newsletters or environmental bulletins. (The Secretary may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Secretary may delete from the list the names of any person who fails to respond to such a request.)

6.8.a.3.A.5. Any unit of local government having jurisdiction over the area where the facility is proposed to be located.

6.8.a.3.B. By the Secretary publishing the public notice as a Class I legal advertisement in a newspaper in general circulation for the county where the emission will occur.

6.8.a.3.C. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

6.8.a.4. Contents.

6.8.a.4.A. All public notices. -- All public notices issued under this rule shall contain the following minimum information:

6.8.a.4.A.1. Name and address of the Division of Air Quality;

6.8.a.4.A.2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of general permits;

6.8.a.4.A.3. A brief description of the business conducted at the facility or activity described in the permit application or in the draft permit, when there is no application;

6.8.a.4.A.4. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, fact sheet, and the application;

6.8.a.4.A.5. A brief description of the comment procedures required by subdivisions 6.8.b and 6.8.c and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and

6.8.a.4.B. Public notices for hearings. -- In addition to the requirements of subparagraph 6.8.a.4.A, public notice of a hearing shall contain the following information:

6.8.a.4.B.1. Reference to the date of previous public notices relating to the permit;

6.8.a.4.B.2. Date, time, and place of the hearing; and

6.8.a.4.B.3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

6.8.a.4.C. In addition to the general public notice described in subparagraph 6.8.a.4.A, all persons identified in paragraph 6.8.a.3 shall be mailed a copy of the fact sheet, if any, and notification of where to inspect or how to receive a copy of the draft permit and application.

6.8.b. Public comments and requests for public hearings. -- During the public comment period provided under subdivision 6.8.a, any interested person may submit written comments on the draft permit and may request a public hearing, if no public hearing has already been scheduled. The Secretary shall grant such a request for a hearing if he concludes that a public hearing is appropriate after consideration of the criteria in paragraph 6.8.c.1. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be responded to as provided in subdivision 6.8.c.

6.8.c. Public hearings.

6.8.c.1. The Secretary shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest on issues relevant to the draft permit(s). The Secretary may also hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision.

6.8.c.2. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing under paragraph 6.8.a.2 shall automatically be extended to ten (10) days after the close of any public hearings under subdivision 6.8.c.

6.8.c.3. A recording or written transcript of the hearing shall be made available to the public, upon request.

6.8.c.4. Any public hearing required under the provisions of subsection 6.8 shall be held in the general area or the county in which a facility is located.

6.8.d. Reopening of the public comment period.

6.8.d.1. If any data, information or arguments submitted during the public comment period raise substantial new questions concerning a permit, or if as a result of comments submitted by someone other than the permit applicant, the Secretary determines to revise any condition of the permit that has been subject to initial public notice, the Secretary shall take one (1) or more of the following actions:

6.8.d.1.A. Prepare a new draft permit, appropriately modified, under section 5;

6.8.d.1.B. Prepare a revised fact sheet under subsection 6.9; or

6.8.d.1.C. Reopen or extend the comment period under subdivision 6.8.a. to give interested persons an opportunity to comment on the information or arguments submitted.

6.8.d.2. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice shall define the scope of the reopening.

6.8.e. Response to comments.

6.8.e.1. At the time that any final permit is issued, the Secretary shall issue a response to comments. This response shall:

6.8.e.1.A. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

6.8.e.1.B. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

6.8.e.2. The response to comments shall be delivered to any person who commented or any person who requests the same.

6.9. Fact sheet.

6.9.a. A fact sheet shall be prepared for every draft permit (including general permits) and for every facility or activity subject to this rule. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Secretary shall send this fact sheet to the applicant and, on request, to any other person and to the persons required under paragraph 6.8.a.3.

6.9.b. When a term or condition of the final permit differs from the draft permit the Secretary shall prepare a statement of basis that briefly describes each change from the changes in the draft permit and the reasons for the changes. The statement of basis shall be sent to the applicant, and to any other person upon request.

6.9.c. The fact sheet shall include, when applicable:

6.9.c.1. A brief description of the type of facility or activity which is the subject of the draft permit;

6.9.c.2. The type and quantity of emissions which are proposed to be or are being discharged;

6.9.c.3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

6.9.c.4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

6.9.c.5. A description of the procedures for reaching a final decision on the draft permit including;

6.9.c.5.A. The beginning and ending dates of the comment period under subdivision 6.8.a and the address where comments will be received;

6.9.c.5.B. Procedures for requesting a hearing and the nature of that hearing; and

6.9.c.5.C. Any other procedures by which the public may participate in the final decision.

6.9.c.6. Name and telephone number of a person to contact for additional information;

6.9.c.7. Any calculations or other necessary explanation of the derivation of specific emissions limitations and conditions including a citation to the applicable emission regulations, control technology guideline, or performance standard provisions and reasons why they are applicable or an explanation of how any alternative emission limitations were developed; and

6.9.c.8. When appropriate, a sketch or detailed description of the location of the emission source(s) described in the application.

§45-30-7. Permit Review by U.S. EPA and Affected States.

7.1. Transmission of information to U.S. EPA.

7.1.a. The Secretary shall provide to the U.S. EPA a copy of each permit application (including any application for permit modification), each proposed permit, and each final Title V operating permit. The applicant may be required by the Secretary to provide a copy of the permit application (including the compliance plan) directly to the U.S. EPA. Upon agreement with the U.S. EPA, the Secretary may submit to the U.S. EPA a permit application summary form and any relevant portion of the permit application and compliance plan in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with U.S. EPA's national database management system.

7.1.b. The Secretary shall retain for five (5) years such records and submit to U.S. EPA such information as U.S. EPA may reasonably require to ascertain whether the state Title V operating permit program complies with the requirements of the Clean Air Act.

7.2. Review by affected states.

7.2.a. The Secretary shall give notice of each draft permit to any affected state on or before the time that the Secretary provides this notice to the public under subsection 6.8, except to the extent subdivision 6.5.a allows the timing of the notice to be different.

7.2.b. The Secretary, as part of the submittal of the proposed permit to U.S. EPA, (or as soon as possible after the submittal for minor permit modification procedures allowed under subdivision 6.5.a) shall notify U.S. EPA and any affected state in writing of any refusal by the Secretary to accept recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the Secretary's reasons for not accepting any such recommendation. The Secretary is not required to accept recommendations that are not based on applicable requirements or the requirements of this rule.

7.3. U.S. EPA objection.

7.3.a. A permit shall not be issued by the Secretary if U.S. EPA objects in writing to the issuance of the permit within forty-five (45) days of the receipt of the proposed permit and all necessary supporting information pursuant to §505 of the Clean Air Act.

7.3.b. For consideration by the Secretary as a U.S. EPA objection under subdivision 7.3.a, the objection must contain a statement of U.S. EPA's reasons for objection and a description of the terms and conditions that U.S. EPA believes the permit must include to respond to the objections.

7.4. Public petitions to the U.S. EPA. -- If the U.S. EPA does not object in writing under subsection 7.3, any person may petition U.S. EPA within sixty (60) days after the expiration of U.S. EPA's forty-five (45)-day review period to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in subsection 6.8, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the U.S. EPA objects to the permit as a result of a petition filed under this subsection, the Secretary shall not issue the permit until U.S. EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45)-day review period and prior to an U.S. EPA objection. In accordance with the provisions of the Clean Air Act and federal rules promulgated thereunder, U.S. EPA may issue, deny, modify, terminate, or revoke a Title V permit upon failure of the Secretary to resolve a U. S. EPA objection to a proposed permit or if the Secretary issues a permit prior to the receipt of a U.S. EPA objection under subsections 7.3 and 7.4.

7.5. Prohibition on default issuance. -- No Title V operating permit (including a permit renewal or modification) shall be issued by the Secretary until affected states and U.S. EPA have had an opportunity to review the proposed permit as required under this section.

§45-30-8. Fees.

8.1. After the effective date of this rule, all stationary sources which are or will be required to obtain an operating permit under this rule shall pay fees in accordance with the following:

8.1.a. Transition fees. -- Annual fees for all stationary sources shall be due on or before July 1, 1994, in the amount of fifteen (15) dollars per ton for actual emissions of all regulated pollutants (for fee calculation) discharged during the calendar year 1993.

8.1.b. Title V operating permit fees. -- On July 1, 1995, and on July 1 of each year thereafter annual fees for all stationary sources requiring Title V operating permits shall be eighteen (18) dollars per ton subject to an adjustment enumerated in subdivision 8.1.c, for actual emissions of all regulated pollutants (for fee calculation) discharged during the most recent calendar year or portion thereof.

8.1.c. On or before May 1, 1995 and each May 1 thereafter, the Secretary shall determine whether to adjust the fees required under subdivision 8.1.b to adequately reflect the reasonable cost of the Title V operating permit program. The Secretary may make such an adjustment in fees of up to $2 per ton. The fees adjusted pursuant to this subdivision are not cumulative and shall remain adjusted for not more than one year.

8.1.d. No fee shall be required under this rule with respect to emissions from any affected unit under §404 of the Clean Air Act until the period beginning January 1, 2000. Thereafter, fees will be calculated in accordance with subdivision 8.1.b.

8.1.d.1. Facilities which contain only affected units under §404 of the Clean Air Act continue to be subject to fees under 45CSR22 until the period beginning January 1, 2000.

8.1.d.2. Facilities which contain affected units under §404 of the Clean Air Act and other affected

units, under 45CSR33 and Title IV of the Clean Air Act, continue to be subject to fees under 45CSR22 for the entire facility until the period beginning January 1, 2000, and are subject to fees for such other affected units calculated in accordance with subdivisions 8.1.a and 8.1.b.

8.2. Fee cap. -- In determining fees under section 8, emissions of each regulated pollutant (for fee calculation) by a source in excess of four thousand tons per year (4,000 tpy) shall not be included in fee calculations.

8.3. Minimum fees. -- Any non-major source required to have a Title V operating permit under this rule shall pay fees in accordance with subsection 8.1, unless such calculated fees are less than the minimum fee of $200.00 per year. In such cases where the calculated fee is less than the minimum fee, the source shall be subject to the minimum fee.

8.4. Consumer price index riser. -- Fees calculated for each fiscal year under the fee schedule in subdivision 8.1.b shall be increased by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1993. For purposes of this clause:

8.4.a. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the twelve (12) month period ending on August 31 of each calendar year, and

8.4.b. The revision of the Consumer Price Index, if any, which is most consistent with the Consumer Price Index for 1993 shall be used.

8.5. Fee merger. -- Any source subject to annual operating certificate fees under 45CSR22 "Air Quality Management Fee Program" and subject to fees under this rule shall be required to pay only the higher calculated fee.

8.6. Penalties and interest. -- Any person who operates a stationary source in violation of section 8 shall be subject to a penalty equal to five (5) percent of the Title V operating permit fee for each calendar month or portion thereof in which the violation continues in addition to the annual fee required to be paid under section 8. Fees due for the fiscal year beginning July 1 shall not be subject to any penalties if paid on or before July 31 of that fiscal year. This penalty for delinquent payment is separate from and unrelated to any other penalties assessed by a court or collected by the Secretary pursuant to W.Va. Code §22-5-1 et seq., or any rules of the West Virginia Department of Environmental Protection.

8.7. Certified emissions statement.

8.7.a. Fees will be based upon a certified emissions statement from a responsible official. The certified emissions statement shall contain an accurate accounting of the actual emissions of all regulated air pollutants and all regulated pollutants (for fee calculation) from the source as defined in subsections 2.33 and 2.34 for the most recent calendar year.

8.7.b. Each certified emissions statement shall be subject to review by the Secretary. The Secretary shall make or shall require the responsible official to make such adjustments or corrections to the certified emissions as the Secretary determines to be necessary.

8.7.b.1. The source shall be liable for any increased fees resulting from any adjustments to the

certified emissions statements made pursuant to subdivision 8.7.b.

8.7.b.2. The Secretary shall not issue a Title V operating permit until such adjustments have been made and any such liability satisfied.

8.7.b.3. The Secretary shall credit the source with any decreasing adjustments to the certified emissions statement made pursuant to subdivision 8.7.b.

8.7.b.4. The Secretary shall periodically provide or publish information and criteria for the purpose of emission statement and permit application preparation. Such information may be provided by reference to available U.S. EPA or other documents.

8.7.c. Fees and certified emissions statements shall be due on July 1, 1994, and on July 1 of each year thereafter.

8.8. Beginning in 1995, the Secretary shall, on or before October 1 of each fiscal year, prepare an accounting of all Title V fees received in the previous fiscal year and the manner in which they were used to fund the Title V operating permit program.

§45-30-9. Transition plan.

9.1. The Secretary shall assign for review and processing each application for operating permit and shall set a timetable for the issuance of each permit in accordance with the following criteria:

9.1.a. Date of receipt of application;

9.1.b. Relative complexity of the application;

9.1.c. Anticipated schedule for federal and state enactment of new applicable requirements which are anticipated to be incorporated into the permit;

9.1.d. Type and amounts of air pollutants that will be discharged;

9.1.e. Availability and particular training of reviewing staff; and

9.1.f. Attainment status of area in which the stationary source is located or other geographical factors.

9.2. Notwithstanding other provisions of section 9, the Secretary may re-prioritize or reclassify any permit application based on changes in regulatory requirements, area attainment status, or other relevant factors.

9.3. In establishing and periodically revising the timetable required in subsection 9.1, the Secretary shall assure that final action is taken on at least one-third of all Title V permit applications annually over a period not to exceed three (3) years from the effective date of the operating permit program.

§45-30-10. Enforcement.

10.1. General. -- The provisions of this rule may be enforced by all of the applicable provisions of W.Va. Code §22-5-1, et seq.

10.2. Violations. -- Civil penalties shall be recoverable for the violation of any applicable requirement, permit condition, fee or filing requirement, duty to allow or carry out inspections, entry or monitoring activity, requirement for submission of reports, rule of the West Virginia Department of Environmental Protection or order of the Secretary. Such violations shall constitute serious violations for purposes of civil enforcement as contained in W.Va. Code §22-5-6.

10.3. Federal enforcement. -- For purposes of federal enforcement of any Title V operating permit or provision established under this rule, any reference to the Secretary shall also mean the Administrator of the U.S. EPA.

10.4. Tampering prohibited. -- Pursuant to W.Va. Code §22-5-6, criminal penalties shall be recoverable against any person who knowingly renders inaccurate any required emission or process monitoring device or method.

§45-30-11. Permit Suspension, Modification, Revocation and Reissuance.

The Secretary may suspend, modify, or revoke and reissue a Title V operating permit in accordance with the provisions contained in W.Va. Code §22-5-5.

§45-30-12. Authority of the Secretary to Establish Applicable Requirements.

12.1. After the effective date of the Title V operating permit program, the Secretary shall determine and apply case-by-case MACT standards to each category contained in the "Initial List of Categories of Sources Under 112(c)(l) of the Clean Air Act Amendments of 1990," 57 Fed. Reg. 31576 (July 16, 1992) for each source category or subcategory for which U.S. EPA fails to timely promulgate a standard in accordance with the requirements of §112(e) of the Clean Air Act.

12.2. [Reserved.]

12.3. After the effective date of the operating permit program, the Secretary shall determine and apply case-by-case MACT standards to construction or reconstruction of any major source of hazardous air pollutants where no applicable emissions limitations have been adopted by the Secretary. Such MACT standards must be equivalent to any applicable standard (if any) promulgated for such sources by U.S. EPA.

12.4. In determining case-by-case MACT standards, the Secretary shall grant reasonable compliance schedules for existing sources, as provided under §112(e) of the Clean Air Act, and shall not require application for MACT under paragraph 4.1.a.5 where a source has met the early reduction requirement of §112(i)(5) of the Clean Air Act.

12.5. The Secretary may accept delegation of authority from U.S. EPA to administer permits issued by U.S. EPA under the provisions of 45CSR33 and Title IV of the Clean Air Act.

12.6. The Secretary may accept delegation of authority to administer permits issued by U.S. EPA under the early reduction program for hazardous air pollutants of §112(i)(5) of the Clean Air Act. Such authority shall include the ability to collect emission-based fees under section 8.

12.7. The Secretary may incorporate any provision into a permit which has been proposed by or agreed to by a permit applicant and which does not conflict with any applicable requirement. All such provisions shall be enforceable after issuance of a final permit.

§45-30-13. Severability.

13.1. The provisions of this rule are severable and if any provision or part thereof shall be held invalid, unconstitutional, or inapplicable to any person or circumstance, such invalidity, unconstitutionality, or inapplicability shall not affect or impair any other remaining provisions, sections, or parts of this rule or their application to any persons and circumstances.

§45-30-14. Conflict with Other Rules.

14.1. If a source is required to obtain an operating permit pursuant to this rule and is also required to obtain an operating permit under any other rule of the Secretary (not including preconstruction permits), then the provisions of this rule shall supersede the provisions of such other rule of the Secretary which requires an operating permit.

TABLE 45-30A

HAZARDOUS AIR POLLUTANTS

CAS Number	Chemical Name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisdine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl) phthalate (DEHP)
542881	Bis(chloromethyl) ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene

94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline(N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3-Dimethyl benzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropene)
106887	1,2-Expoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichloroethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Heptachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclo-pentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethyl-phosphoramide
110543	Hexane

302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform(1,1,1-Trichloroethane)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis (2-chloroaniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4'-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloro-nitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Aroclors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline

106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-etrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds[1]
0	Glycol ethers[2]
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers[3]
0	Nickel Compounds
0	Polycylic Organic Matter[4]
0	Radionuclides (including radon)[5]
0	Selenium Compounds

NOTE: For all listings above which contain the word “compounds” and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemicals (i.e., antimony, arsenic, etc.) as part of that chemical’s infrastructure.

[1]X'CN where X = H' or any other group where a formal dissociation may occur. For example KCN or $Ca(CN)_2$

[2]Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-$(OCH_2CH_2)_n$-OR'.

Where:

n = 1, 2, or 3

R = alkyl C7 or less; or

R = phenyl or alkyl substituted phenyl;

R' = H or alkyl C7 or less; or

OR' constituting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

The substance ethylene glycol monobutyl ether (EGBE, 2-Butoxyethanol) (CAS Number 111-76-2) is deleted from the list of hazardous air pollutants established by 42 U.S.C. 7412(b)(1).

[3]Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

[4]Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

[5]A type of atom which spontaneously undergoes radioactive decay.

TABLE 45-30B

CLASS I AND CLASS II SUBSTANCES

Class I Substances

Group I
chlorofluorocarbon-11 (CFC-11)
chlorofluorocarbon-12 (CFC-12)
chlorofluorocarbon-113 (CFC-113)
chlorofluorocarbon-114 (CFC-114)
chlorofluorocarbon-115 (CFC-115)

Group II
halon-1211
halon-1301
halon-2402

Group III
chlorofluorocarbon-13 (CFC-13)
chlorofluorocarbon-111 (CFC-111)
chlorofluorocarbon-112 (CFC-112)
chlorofluorocarbon-211 (CFC-211)
chlorofluorocarbon-212 (CFC-212)
chlorofluorocarbon-213 (CFC-213)
chlorofluorocarbon-214 (CFC-214)
chlorofluorocarbon-215 (CFC-215)
chlorofluorocarbon-216 (CFC-216)
chlorofluorocarbon-217 (CFC-217)

Group IV
carbon tetrachloride

Group V
methyl chloroform

This list also includes the isomers of the substances listed above, other than 1,1,2-trichloroethane (an isomer of methyl chloroform).

Class II Substances

hydrochlorofluorocarbon-21 (HCFC-21)
hydrochlorofluorocarbon-22 (HCFC-22)
hydrochlorofluorocarbon-31 (HCFC-31)
hydrochlorofluorocarbon-121 (HCFC-121)
hydrochlorofluorocarbon-122 (HCFC-122)
hydrochlorofluorocarbon-123 (HCFC-123)
hydrochlorofluorocarbon-124 (HCFC-124)
hydrochlorofluorocarbon-131 (HCFC-131)
hydrochlorofluorocarbon-132 (HCFC-132)
hydrochlorofluorocarbon-133 (HCFC-133)
hydrochlorofluorocarbon-141 (HCFC-141)
hydrochlorofluorocarbon-142 (HCFC-142)
hydrochlorofluorocarbon-221 (HCFC-221)
hydrochlorofluorocarbon-222 (HCFC-222)
hydrochlorofluorocarbon-223 (HCFC-223)
hydrochlorofluorocarbon-224 (HCFC-224)
hydrochlorofluorocarbon-225 (HCFC-225)
hydrochlorofluorocarbon-226 (HCFC-226)
hydrochlorofluorocarbon-231 (HCFC-231)
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hydrochlorofluorocarbon-243 (HCFC-243)
hydrochlorofluorocarbon-244 (HCFC-244)
hydrochlorofluorocarbon-251 (HCFC-251)
hydrochlorofluorocarbon-252 (HCFC-252)
hydrochlorofluorocarbon-253 (HCFC-253)
hydrochlorofluorocarbon-261 (HCFC-261)
hydrochlorofluorocarbon-262 (HCFC-262)
hydrochlorofluorocarbon-271 (HCFC-271)

This list also includes the isomers of the substances listed above.