



west virginia department of environmental protection

# SIGN-IN SHEET

Public Hearing on proposed 2017 Division of Air Quality Rules 45CSR1, 45CSR8, 45CSR13, 45CSR14, 45CSR16, 45CSR18, 45CSR25, and 45CSR34.

August 1, 2016, 6:00 p.m.

The Department of Environmental Protection asks for the information below so that agency staff may provide responses and information about decisions to you. The information you voluntarily provide on this sheet becomes part of the public record related to this topic and may be released if requested under the Freedom of Information Act.

Visitor  
Tag #

	Name (please print)	Address	Organization	Phone	E-mail	Comment Y/N
47	Missy L. Young		Court Reporter			
48	Julia Archer	1500 Dixie Street Charleston, WV 25311	WV Citizen Actn INVSURO	346-5891	julie@wvscvo.org	N
49	Don Smith	3401 Pennsylvania Ave, Charleston	WVPA	304-550-0451	don.smith@wvpress.com	Y
50	Ku Ward JR	Gazette-Mail 1001 Virginia St E Charleston WV 25301	Gazette-Mail	304- <del>343</del> 348-702	Kward@wvgazette.com	N
	Laura Crowder		DEP/PA		Laura.M.Crowder@wv.gov	N

Name (please print)	Address	Organization	Phone	E-mail	Comment Y/N
Wendy Radcliff		WV DEP	1328		N
ROBERT KEATLEY		WV DAQ	1695		N
Jake Glance		WV DEP			N
Laura Jennings		WV DAQ			

Promoting a healthy environment.

ORIGINAL 1

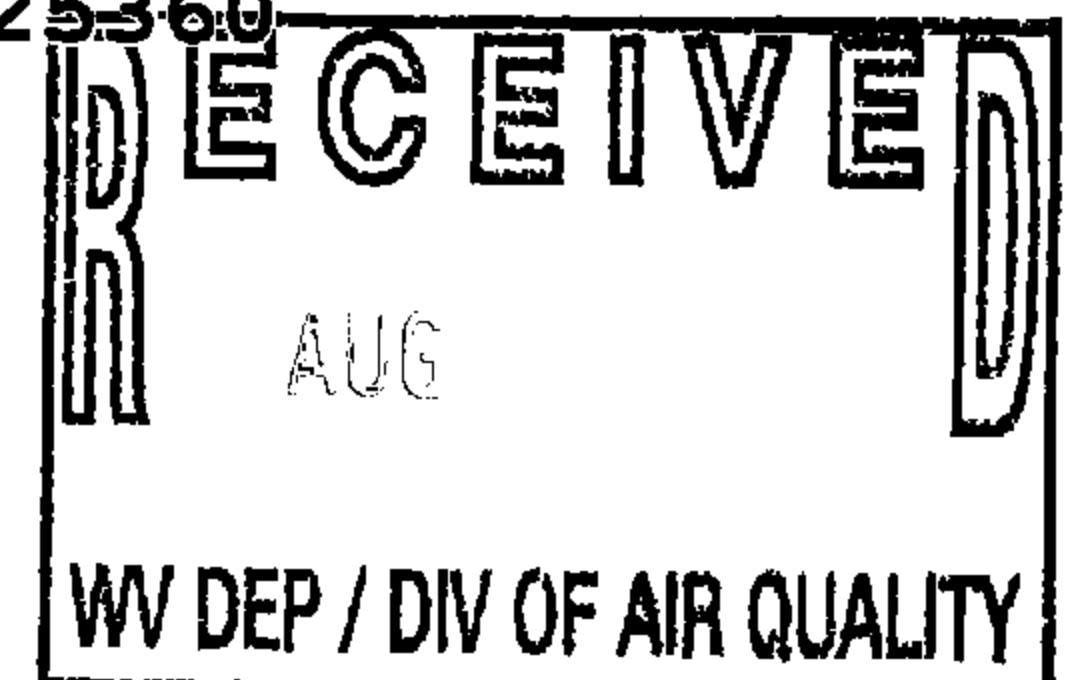
BEFORE THE WEST VIRGINIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION  
DIVISION OF AIR QUALITY

In re:                   45CSR14 -*Permits for Construction and Major  
Modification of Major Stationary Sources for  
the Prevention of Significant Deterioration  
of Air Quality*

Transcript of proceedings had at a public hearing in the above-styled matter taken at the West Virginia Department of Environmental Protection, Division of Air Quality, Conference Room, 601 57th Street, S. E., Charleston, West Virginia, commencing at 6:01 p.m., on the 1st day of August, 2016, pursuant to notice.

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MISSY L. YOUNG, C.C.R.  
POST OFFICE BOX 13622  
SISSONVILLE, WEST VIRGINIA 25360  
304-539-6192



P R O C E E D I N G S

1  
2 MS. JENNINGS: This public hearing will now come  
3 to order on this 1st day of August, 2016, at the West  
4 Virginia Department of Environmental Protection  
5 Headquarters. Comments and testimony will be accepted  
6 until the close of this hearing and will be made part of  
7 the rulemaking record. Any relevant question regarding  
8 revisions to the rules will be included with your comments,  
9 and any such question will be addressed as part of the  
10 response to comments in the rulemaking record.

11 The purpose of this public hearing is to accept  
12 comments on proposed revisions to rule 45CSR14 - Permits  
13 for Construction and Major Modification of Major Stationary  
14 Sources for the Prevention of Significant Deterioration of  
15 Air Quality.

16 This rule establishes a state construction permit  
17 program consistent with the Federal Clean Air Act's Title 1  
18 program requirements for the Prevention of Significant  
19 Deterioration of Air Quality. Revisions to the rule  
20 removed the Greenhouse Gas Tailoring Rule Step 2 that was  
21 vacated by the D.C. Circuit Court of Appeals, added the  
22 grandfather provisions that were added in conjunction with  
23 the 2015 ozone NAAQS and removed non-essential language.

1 Upon authorization and promulgation of 45CSR14, the rule  
2 will be submitted to the EPA as a revision to the State  
3 Implementation Plan pursuant to the Federal Clean Air Act.

4 The floor is now open for comments.

5 There being nothing further, this public hearing  
6 for proposed rule 45CSR14 is concluded.

7 (WHEREUPON, the hearing was  
8 concluded at 6:36 p.m.)

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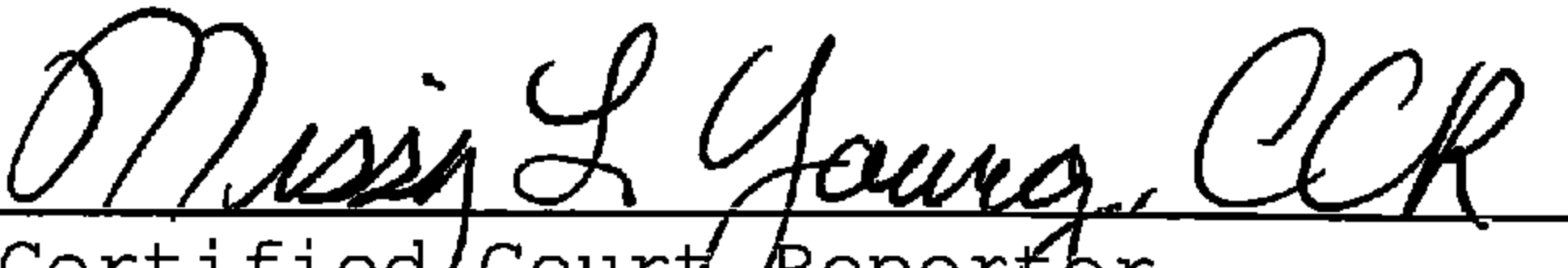
Proceedings

4

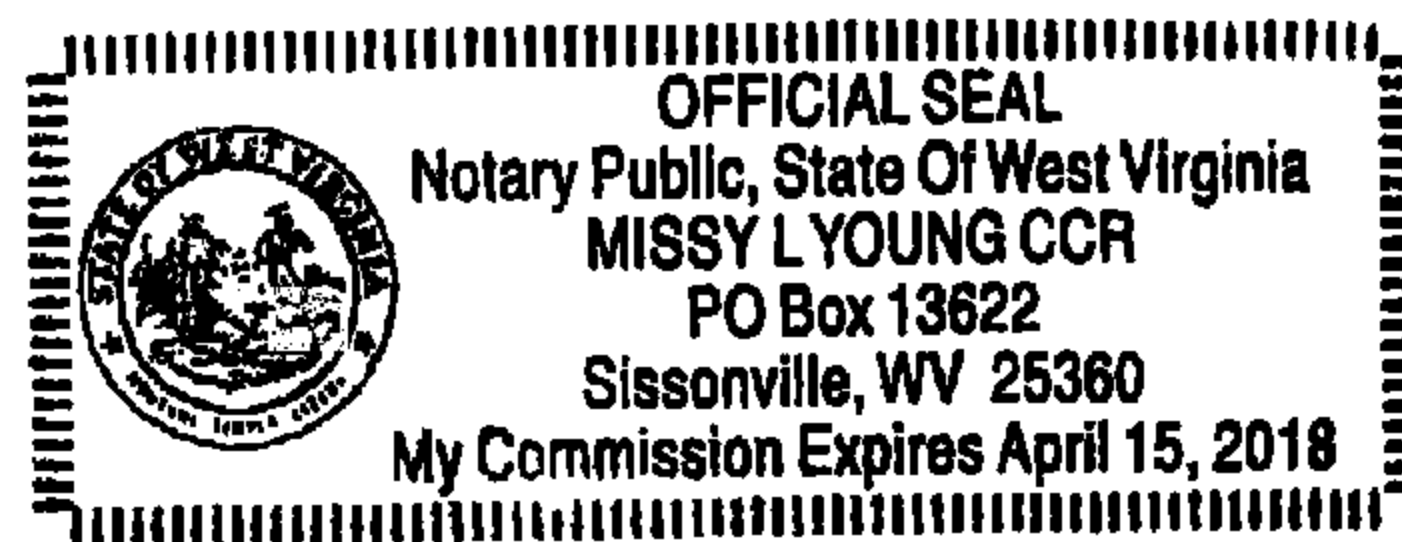
STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to-wit:

I, the undersigned, Missy L. Young, a Certified Court Reporter and Notary Public within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing, was taken to the best of my skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned matter.

Given under my hand and official seal this  
2nd day of August, 2016.

  
\_\_\_\_\_  
Certified Court Reporter  
Notary Public for the State of West Virginia

My commission expires April 15, 2018.



MISSY L. YOUNG, C.C,R. 304-539-6192

## Jennings, Laura M

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**From:** Johansen, Amy <Johansen.Amy@epa.gov>  
**Sent:** Monday, August 01, 2016 8:00 AM  
**To:** Jennings, Laura M  
**Cc:** Campbell, Dave; Shandruk, Irene; wentworth, paul  
**Subject:** EPA Comment Letter - West Virginia Proposed Air Quality Regulations  
**Attachments:** WV Comment Request for Seven Air Quality Rules.pdf

Hi Laura – I wanted to ensure you received an electronic copy of EPA’s comments on West Virginia’s proposed air quality regulations.

Thank you,  
Amy

Amy Johansen  
U.S EPA – Region III  
1650 Arch Street (3AP10)  
Philadelphia, PA 19103  
(p) 215-814-2156  
(e) [johansen.amy@epa.gov](mailto:johansen.amy@epa.gov)

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**From:** Jennings, Laura M [<mailto:Laura.M.Jennings@wv.gov>]  
**Sent:** Wednesday, June 29, 2016 12:09 PM  
**To:** Campbell, Dave <[campbell.dave@epa.gov](mailto:campbell.dave@epa.gov)>; wentworth, paul <[wentworth.paul@epa.gov](mailto:wentworth.paul@epa.gov)>; Fernandez, Cristina <[Fernandez.Cristina@epa.gov](mailto:Fernandez.Cristina@epa.gov)>; Singelis, Nikos <[Singelis.Nikos@epa.gov](mailto:Singelis.Nikos@epa.gov)>  
**Cc:** Mastro, Donna <[Mastro.Donna@epa.gov](mailto:Mastro.Donna@epa.gov)>; Crowder, Laura M <[Laura.M.Crowder@wv.gov](mailto:Laura.M.Crowder@wv.gov)>; powers, marilyn <[powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov)>; Durham, William F <[William.F.Durham@wv.gov](mailto:William.F.Durham@wv.gov)>  
**Subject:** West Virginia Public Notice for Proposed Rules for the 2017 Legislative Session

Enclosed is a copy of a letter that is being mailed to EPA today providing notification of the public comment period and public hearings, and a copy of seven (7) proposed air quality rules: 45 C.S.R. 1, 45 C.S.R. 8, 45 C.S.R. 13, 45 C.S.R. 14, 45 C.S.R. 16, 45 C.S.R. 25, and 45 C.S.R. 34 for the West Virginia Department of Environmental Protection, Division of Air Quality (DAQ). Once the legislative rule making administrative processes have been completed, the DAQ is proposing to adopt these rules in the Spring of 2017.

Please note the DAQ will accept written comments on the proposed rules up to and including August 1, 2016. In addition, the agency will receive oral comments at a public hearing to be held on August 1, 2016, beginning at 6:00p.m.

The attached public notice describes which rules the agency is proposing and what action the DAQ intends to request of the U.S. Environmental Protection Agency upon the authorization and promulgation of the rules in the Spring of 2017.

This is a duplicate of the information that is being mailed today. The public notice will be published on July 1.

Regards,

*Laura M. Jennings*  
Technical Analyst  
WV Dept. of Environmental Protection  
Division of Air Quality

(304)926-0499 x 1217

[Laura.M.Jennings@wv.gov](mailto:Laura.M.Jennings@wv.gov)





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

JUL 28 2016

Mr. William F. Durham, Director  
West Virginia Department of Environmental Protection  
Division of Air Quality  
601 57<sup>th</sup> Street SE  
Charleston, West Virginia 25304

Dear Mr. Durham:

Thank you for your June 29, 2016 letter requesting comment on the following seven West Virginia Department of Environmental Protection proposed air quality rules: 45 C.S.R. 1, 45 C.S.R. 8, 45 C.S.R. 13, 45 C.S.R. 14, 45 C.S.R. 16, 45 C.S.R. 25, and 45 C.S.R. 34.

The U.S. Environmental Protection Agency's comments are enclosed.

If you have any questions, please do not hesitate to contact me or have your staff contact Ms. Irene Shandruk, for 45 C.S.R. 1, at 215-814-2166, or [shandruk.irene@epa.gov](mailto:shandruk.irene@epa.gov) or Ms. Amy Johansen, for the remaining rules, at 215-814-2156, or [johansen.amy@epa.gov](mailto:johansen.amy@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "D. Arnold".

David L. Arnold,  
Acting Division Director

Enclosure





## **Enclosure**

### **EPA's Comments on West Virginia's Proposed Air Quality Rules for 2017 Legislative Session**

#### **45 C.S.R. 1 - Alternative Emission Limitations during Startup, Shutdown, and Maintenance Operations**

1. Please explain provision 45-1-3.3. The wording is vague and it is unclear why only RACT is mentioned. Perhaps it should say that the alternative emission limitation (AEL) shall otherwise meet applicable West Virginia and Clean Air Act requirements.
2. Please clarify the meaning and intent of provision 45-1-7. It is unclear how the AEL could be more stringent than an otherwise applicable limitation. If the AEL is less stringent, based on this provision, the AEL would not apply to sources during startup/shutdown/malfunction when the sources cannot meet the otherwise applicable emission limitations.
3. To the extent that West Virginia intends to establish AELs for periods of startup/shutdown/malfunction, such limitations must be submitted to EPA for approval into West Virginia's state implementation plan (SIP) for SIP compliance purposes. That is, if the AEL is done via permit or enforcement order, the permit or order must be approved by EPA into West Virginia's SIP to ensure that the limitations are enforceable by EPA.
4. Please define "zero process weight rate" to make the definition of "maintenance operation" clearer.

#### **45 C.S.R. 13 – Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, Permission to Commence Construction, and Procedures for Evaluation**

1. Please explain why 45-13-5.8 is being removed. By removing this provision there appears to be no limit on the timeframe in which the Secretary shall complete review of any application for an existing stationary source operating permit.
2. It should be noted that on December 29, 2015 (80 FR 81234), EPA proposed "Revisions to the Public Notice Provisions in Clean Air Act Permitting Programs," which will remove mandatory requirements to provide public notice of a draft air permit, as well as certain other program actions, through publication in a newspaper and would instead allow for electronic noticing (e-notice) of these actions. EPA suggests West Virginia

review that proposed rule as well as the final rule, once published, noting that the proposal is subject to change upon going final.

3. West Virginia is making changes to Public Review Procedures in 45-13-8 and is to be commended for moving to electronic public noticing; however, please explain why West Virginia is removing requirements to public notice applications for operating permits in provision 45-13-8.3.

#### **45 C.S.R. 14 – Permits for Construction and Major Modification of Major Stationary Sources for the Prevention of Significant Deterioration of Air Quality**

1. Please explain the changes made to provision 45-14-2.45. It is unclear why “under the CAA” is being removed.
2. Please explain your changes to the definition of “PAL permit” in provision 45-14-2.54.
3. The edits made to 45-14-11.5 are confusing and unclear. It appears the same thing is being said twice. Please clarify.
4. In the provisions under 45-14-17 for Public Review Procedures, it appears West Virginia will continue to use legal advertisement in a newspaper of general circulation, but are moving to electronic notice under 45-13. Once EPA finalizes “Revisions to the Public Notice Provisions in Clean Air Act Permitting Programs,” EPA would recommend one consistent public noticing method, unless there are specific instances where the public would be better served using a CAA approved alternative (i.e., newspaper).

## Jennings, Laura M

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**From:** DEP Comments  
**Sent:** Monday, August 01, 2016 4:25 PM  
**To:** Jennings, Laura M  
**Subject:** FW: AEP Comments on 2017 Proposed Legislative Rules

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**Jake Glance**

**Please consider the environment before printing this email.**

**From:** Jeffrey P Novotny [mailto:jpnovotny@aep.com]  
**Sent:** Monday, August 01, 2016 3:58 PM  
**To:** DEP Comments <DEP.Comments@wv.gov>  
**Cc:** Gregory J Wooten <gjwooten@aep.com>; Janet J Henry <jjhenry@aep.com>; John C Hendricks <jchendricks@aep.com>  
**Subject:** AEP Comments on 2017 Proposed Legislative Rules

Enclosed please find comments on the recently proposed revisions to West Virginia Regulations that were public noticed on the West Virginia DEP website. The comment period begins July 1, 2016 and ends at the conclusion of the public hearing on August 1, 2016. American Electric Power, Appalachian Power Company and Kentucky Power Company (AEP) appreciate this opportunity to provide comment on these important regulations that directly impact facilities operated by our companies in West Virginia. Please consider these comments on the proposed regulations.

### **45 CSR 1 – Alternative Emission Limitations During Start-up, Shutdown and Maintenance Operations**

AEP supports the agency's effort to develop this rule allowing sources flexibility to develop an alternative emission limitation other than numerical limits, such as using work practices. The US EPA has utilized alternatives to numerical limits by defining the start-up/shutdown period and acceptable work practices in several new regulations, specifically the MATS and ICI Boiler MACT. We agree that the state should provide sources with the opportunity to develop similar alternatives, providing they are specific and able to be monitored, is advantageous to the source. Where the source has existing requirements based upon other federal or state requirements for start-up and shutdown, those existing requirements should not also fall under this regulation nor should this regulation impart additional burden on those

sources. Those requirements defined under the NSPS or HAP/MACT federal regulations should take precedence over and negate the applicability of this rule to those sources.

We support the concept that work practices can be based on, but not limited to equipment manufacturer's recommendations or procedures and industry standards. We request that site-specific practices utilized for older equipment be acceptable taking into consideration the age and condition of the source.

The proposed rule infers that the implementation of this regulation will typically occur during the permitting process. The agency did not provide a timeline for implementing this rule. The agency also requires a summary of strategies considered and reasoning for not using those strategies. This is an excessive burden to document the process of arriving at the proposed alternative control strategy for no apparent use. The criteria requirements do not refer to evaluation of alternatives. The section 4.2.c. is requested to be removed since it is not considered within the criteria for agency approval of the alternative emission limit.

The proposed rule does not provide instructions or clarity on the level of the evaluation of the worst-case emissions that could occur during periods when using the alternative emission limit. The agency should define their expectations regarding this emissions estimate.

#### **45 CSR 13 – Minor New Source Permitting**

The existing rule includes a maximum 180-day permit development time limitation for the agency (Section 5.8 of Regulation 13) after the permit application is considered complete (as defined in Section 5.7 of Regulation 13). This section of the rule has been proposed to be removed. We request that the agency return this or enter a similar timeline into the regulation to allow facilities opportunity to obtain a permit on a timely basis and utilize this development time in any project schedule. As proposed, the agency does not have any requirements to evaluate and return a permit on a timely basis.

#### **45 CSR 14 – Major Source Permitting for PSD**

The revision proposed for Section 11.5 is very confusing! As written, the changes appear to repeat sections already included in the condition. We suggest this condition be rewritten as follows:

*The owner or operator shall gather, over a period of one year, all required ambient air quality monitoring data which shall represent the year preceding receipt of the application. However, if the Secretary determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year, but not less than four months, the owner or operator may use the data that is gathered over that shorter period.*

Jeffrey P. Novotny  
Air Quality Services  
American Electric Power  
Bus. Phone (614) 716-1294  
Bus. FAX (614) 716-2255

## 45CSR14

### PERMITS FOR CONSTRUCTION AND MAJOR MODIFICATION OF MAJOR STATIONARY SOURCES FOR THE PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY RESPONSE TO COMMENTS

On July 1, 2016, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on August 1, 2016 to accept written and oral comments on proposed revisions to legislative rule 45CSR14. Written comments were accepted through the close of hearing on Monday, August 1, 2016. Three commenters submitted written comments regarding revisions to the proposed rule 45CSR14, and no one provided oral comments. DAQ addresses the written comments below.

#### 1. COMMENTER: United States Environmental Protection Agency, Region III

##### COMMENT A.

The commenter states, *“Please explain the changes made to provision 45-14-2.45. It is unclear why “under the CAA” is being removed.”*

##### RESPONSE A

*For the proposed rules for the 2017 Legislative Session, an effort was made to replace federal counterpart references in the state rules, where possible, with the appropriate state reference. Upon further review, DAQ revised the Agency Approved version of 45 C.S.R. 14 §2.45 such that “under the CAA” remains in the definition, consistent with the federal counterpart 40 C.F.R. §51.166(b)(10).*

##### COMMENT B

The commenter states, *“Please explain your changes to the definition of “PAL permit” in provision 45-14-2.54.”*

##### RESPONSE B

*For the proposed rules for the 2017 Legislative Session, an effort was made to replace federal counterpart references in the state rules, where possible, with the appropriate state reference. Upon further review, DAQ revised the Agency Approved version of 45 C.S.R. 14 §2.54 to retain the original definition that includes “under a program that is approved into the State Implementation Plan” and will remove the proposed language “issued by the Secretary” to*

remain consistent with the federal counterpart definition provided in 40 C.F.R. §51.166(w)(2)(ix).

#### **COMMENT C**

The commenter states, “The edits made to 45-14-11.5 are confusing and unclear. It appears the same thing is being said twice. Please clarify.”

#### **RESPONSE C**

*Agreed. DAQ revised the Agency Approved version of 45 C.S.R. § 11.5 to read as follows:*

*The owner or operator shall gather, over a period of one year, all required ambient air quality monitoring data which shall represent the year preceding receipt of the application. However, if the Secretary determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year, but not less than four months, the owner or operator may use the data that is gathered over that shorter period.*

#### **COMMENT D**

The commenter states, “In the provisions under 45-14-17 for Public Review Procedures, it appears West Virginia will continue to use legal advertisement in a newspaper of general circulation, but are moving to electronic notice under 45-13. Once EPA finalizes "Revisions to the Public Notice Provisions in Clean Air Act Permitting Programs," EPA would recommend one consistent public noticing method, unless there are specific instances where the public would be better served using a CAA approved alternative (i.e., newspaper).”

#### **RESPONSE D**

*DAQ acknowledges the comment; however, the public participation requirements under 45 C.S.R. 14 are required to purport with the public participation requirements under 40 C. F. R. §51.166(q) and therefore, no change was proposed. Additionally, it was decided to withdraw the proposal to modify the public notice procedures in Section 8 of 45 C.S.R. 13.*

## **2. COMMENTER: American Electric Power**

**COMMENT** The commenter states, “The revision proposed for Section 11.5 is very confusing! As written, the changes appear to repeat sections already included in the condition. We suggest this condition be rewritten as follows:

*The owner or operator shall gather, over a period of one year, all required ambient air quality monitoring data which shall represent the year preceding receipt of the application. However, if the Secretary determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year, but not less than four months, the owner or operator may use the data that is gathered over that shorter period.*



## RESPONSE

*DAQ agrees with the suggested language. Section 11.5 has been revised accordingly in the Agency Approved version of 45 C.S.R. 14.*

### **3. COMMENTER: Dr. Larry Harris, DEP Advisory Council**

#### **COMMENT:**

1.1.a: Although the EPA apparently uses this language it seems out of place for the DEP to be concerned with economic growth. Moreover any growth will certainly come with additional pollution of the air.

#### **RESPONSE:**

*This comment is in regard to the scope of 45CSR14 provided below for reference:*

*1.1. Scope. -- This rule establishes and adopts a preconstruction permit program in accordance with the policy of §101(b)(1) of the Clean Air Act (CAA), the purposes of §160 of the CAA, and the prevention of significant deterioration of air quality requirements of 40 CFR § 51.166. Preconstruction permits issued pursuant to this rule shall contain emission limitations and such other measures as may be necessary for the prevention significant deterioration of air quality. This rule provides:*

*1.1.a. A mechanism to ensure that economic growth will occur in harmony with the preservation of existing clean air resources; to prevent the development of any new non-attainment problems; to protect the public health and welfare from any adverse effects which might occur even at air quality levels better than the National Ambient Air Quality Standards; and to preserve, protect, and enhance the air quality in areas of special natural, recreational, scenic, or historic value. It is the intent of the Secretary to register and evaluate sources of air pollutants and to preclude the construction or relocation of any major stationary source or major modification in any area classified as attaining National Ambient Air Quality Standards or unclassifiable in which the establishment of such source or modification may interfere with the goals of the prevention of significant deterioration of air quality levels; and*

*1.1.b. A method to quantitatively define significant deterioration of air quality with respect to the desired degree of preservation of air quality for various areas and to set forth procedures for registration and reporting, and the criteria for obtaining a permit to construct or relocate a major stationary source or make a major modification to a stationary source within a designated attainment or unclassified area of the State of West Virginia. Such construction, modification, or relocation without such a permit is a violation of this rule.*

*This comment is not germane as it does not pertain to any proposed modifications by the Agency. Additionally, the statute that establishes DEP (West Virginia Code, Chapter 22) requires the consideration of economic development at §22-5-1 which is provided below for reference.*

*§22-5-1. Declaration of policy and purpose.*

*It is hereby declared to be the public policy of this state and the purpose of this article to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.*