

July 7, 2013

Department of Environmental Protection
Attn: Public Information Office
601 57th Street, SE
Charleston, WV 25304

RE: Comments on Air Quality draft rules

Please accept the following comments on behalf of the West Virginia Chapter of Sierra Club and the West Virginia Environmental Council.

45-CSR-8. We support incorporating the more stringent PM2.5 standard and related federal updates.

45-CSR-14.

- 1) Section 2.66.a. We support the addition of condensable Particulate Matter to PSD permit emissions limits, as required by US-EPA. We are concerned that the proviso exempting sources permitted before January 1, 2011 will make it more difficult to achieve attainment as standards become progressively tighter, thus **we recommend that DEP consider a mechanism to sunset this exemption within a reasonable timeframe**, so that all relevant sources include condensable PMs in their permit limits.
- 2) Section 16.10 exempts sources with applications determined to be complete before Dec. 14, 2012 or with a preliminary determination before March 18, 2013 from Section 9.1.

“16.10. The requirements of subsection 9.1 shall not apply to a stationary source or modification with respect to the national ambient air quality standards for PM2.5 in effect on March 18, 2013 if:

16.10.a. The Secretary has determined a permit application subject to this section to be complete on or before December 14, 2012. Instead, the requirements in subsection 9.1 shall apply with respect to the national ambient air quality standards for PM2.5 in effect at the time the Secretary determined the permit application to be complete; or

16.10.b. The Secretary has first published before March 18, 2013 a public notice of a preliminary determination for the permit application subject to this section. Instead, the requirements in subsection 9.1 shall apply with respect to the national ambient air quality standards for PM2.5 in effect at the time of first publication of a public notice on the preliminary determination.”

We recommend that section 16.10 be deleted in its entirety. This appears to create a new loophole to obstruct efforts to force better pollution controls on new sources. I am unaware of any similar provision to delay implementation and application of new rules for other types of pollutants. The Clean Air Act intends air standards to be technology-forcing, to push polluting industries to reduce their emissions as much as possible. The best time to do that is before construction of new facilities has started. Since EPA required condensable PMs to be regulated after January 1, 2011, there can be no justification for allowing facilities this extra loophole to avoid compliance. This

provision sets a terrible precedent and allows a facility to avoid compliance with a final rule simply by filing an application early.

- 3) Section 25. We continue to object to the use of Plant-wide Applicability Limits (PALs) and recommend that the rule be re-written to delete these provisions, e.g., section 2.50-2.55, and section 25 and any other related language.)

45-CSR-16. Incorporates federal updates. No comments.

45-CSR-18.

- 4) It is not clear why the deadline for compliance provided in section 9.3.a. as been extended to Dec.1, 2005. This creates the appearance of retroactively authorizing noncompliance with a rule. **We recommend that the changes to this section be removed unless they can be clearly justified. The extension proposed in section 9.3.b. as well as those in Table 18-1C, 18-2C, 18-6C, etc. should also be removed.**
- 5) The emissions limits in Tables 18-7C to 18-9C appear to have been increased considerably in some cases. That is especially worrisome for constituents such as dioxin, mercury, cadmium and lead. If these changes are not required by federal rules, **we recommend that the increases be omitted.**

45-CSR-19.

- 6) We support the changes in section 17.9 as they will strengthen and simplify the rule.
- 7) We again recommend that any language allowing PALs be deleted as it needlessly complicates enforcement without providing an obvious air quality benefit.

45-CSR-25. No comments. Incorporates federal updates.

45-CSR-34. No comments. Incorporates federal updates.

60-CSR-3. Brownfields Rule. We support the needed funding for the program, as well as updating the Risk-Based Clean-Up Standards (Table 60-3B) to match federal counterpart standards.

Thank you for the opportunity to comment.

Sincerely,

James Kotcon
Conservation Chair
West Virginia Chapter of Sierra Club.
WVEC Board of Directors

45CSR18

CONTROL OF AIR POLLUTION FROM COMBUSTION OF SOLID WASTE

RESPONSE TO COMMENTS

On June 7, 2013, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on July 8, 2013 to accept oral comments on proposed revisions to legislative rule 45CSR18. Written comments were also accepted through 6:00 PM on Monday, July 8, 2013. One commenter submitted written comments regarding proposed revisions to rule 45CSR18, and no commenter provided substantive verbal comment.

I. COMMENTER: James Kotcon

COMMENT A. The commenter states, *“45-CSR-18. It is not clear why the deadline for compliance provided in section 9.3.a. as been extended to Dec.1, 2005. This creates the appearance of retroactively authorizing noncompliance with a rule. We recommend that the changes to this section be removed unless they can be clearly justified. The extension proposed in section 9.3.b. as well as those in Table 18-1C, 18-2C, 18-6C, etc. should also be removed.”*

RESPONSE A. DAQ notes that these compliance dates comport with the federal counterpart as amended at 78FR9207, February 7, 2013. DAQ also notes that the revisions to Tables 18-1C, 18-2C, 18-6C, etc. comport to the federal counterpart regulation.

COMMENT B. The commenter states, *“The emissions limits in Tables 18-7C to 18-9C appear to have been increased considerably in some cases. That is especially worrisome for constituents such as dioxin, mercury, cadmium and lead. If these changes are not required by federal rules, we recommend that the increases be omitted.”*

RESPONSE B. DAQ notes that the revisions to Tables 18-7C through 18-9C comport to the federal counterpart regulation.