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) an 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

45CSR14

PERMITS FOR CONSTRUCTION AND MAJOR MODIFICATION OF MAJOR STATIONARY SOURCES FOR THE PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

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 rules 45CSR14. Written comments were also accepted through 6:00 PM on Monday, July 8, 2013. One commenter submitted written comments regarding proposed revisions to rule 45CSR14, and no commenter provided substantive verbal comment.

I. COMMENTER: James Kotcon

COMMENT A. The commenter states, *"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."*

RESPONSE A. DAQ has accounted for condensable particulate matter in all PSD permits and applicability determinations since January 2011 as required by the federal counterpart regulation. A sunset mechanism as suggested would be contrary to the federal counterpart. Future revisions to any PSD permit issued before January 1, 2011 will account for condensable particulate matter in establishing relevant emission limitations. The revised language is consistent with an approvable PSD program into West Virginia's State Implementation Plan.

COMMENT B. The commenter states, *"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."

RESPONSE B. DAQ notes that under the federal PSD program, the new PSD $PM_{2.5}$ requirements are not retroactive to some earlier permits or permitting actions. DAQ has not created a loophole to obstruct the Clean Air Act. Rather, the new language in subsection 16.10 correctly comports with the federal counterpart PSD program under 40 CFR §51.166. The new language contains a provision in the PSD Specific Exemptions at subsection 16.10 which exempts PSD permitting requirements associated with the revised PM NAAQS that otherwise apply to permits issued on or after March 18, 2013. Permit applications that qualify for under this provision are not required to show that emissions increases will not cause or contribute to a violation of the revised annual $PM_{2.5}$ NAAQS, and rather may continue to be processed in accordance with the previously applicable PM NAAQS. This is a normal progression of a states's approvable PSD program, and does not necessarily diverge from EPA's previous implementation strategies of earlier PSD program revisions. The revised language is consistent with an approvable PSD program into West Virginia's State Implementation Plan.

COMMENT C. The commenter states, *"Section 25. We continue to object to the use of Plant-wide Applicability Limits (PALs) an 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.)"*

RESPONSE C. DAQ notes the PSD PAL provisions were not subject to revision in the proposed rule, as they comport to the federal counterpart. A PAL is an approach that provides owners or operators of major stationary sources, with the ability to manage facility-wide emissions without triggering major NSR. The added flexibility of a PAL allows industry to respond rapidly to market changes consistent with the goals of the NSR program. EPA requires that states adopt the PAL provisions of the counterpart federal PSD/NSR Rule, Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR) [67FR80189]. That is the primary reason the PAL provisions are incorporated into 45CSR14. But the agency is also convinced that PALs benefit the public and the environment. DAQ can only establish a PAL by using a public process that affords citizens the opportunity to comment upon the proposed PAL. This process is designed to assure local communities that air emissions from major stationary sources will not exceed the facility-wide cap set forth in the permit unless the sources first meet the major NSR requirements.

A PAL provides a more complete perspective to the public because in setting a PAL, DAQ accounts for all current processes and all emissions units together and reflects the long-term maximum amount of emissions it would allow from the source. Moreover, to comply with a PAL the source must meet monitoring requirements prescribed in the rules that ensure that both DAQ and the public have sufficient information from which to determine plant wide compliance. Additionally, the PAL regulations promote voluntary improvements in pollution controls by creating an incentive for sources to control existing and new emissions units to maintain a maximum amount of operational flexibility under the PAL. Most importantly, for pollutants subject to a PAL, the rule prohibits serial, small, unrelated emissions increases, which otherwise could have occurred under previous regulations.