

45CSR33
ACID RAIN PROVISIONS AND PERMITS

RESPONSE TO COMMENTS

The WV Department of Environmental Protection (DEP), Division of Air Quality (DAQ) commenced the public comment period for proposed legislative rule 45 C.S.R. 33 on June 26, 2020. The public comment period concluded July 28, 2020 after satisfying the minimum 30-day period. The public hearing was held virtually to prevent the spread of COVID-19 in accordance with the Governor's Safer at Home Order and the WVDEP COVID-19 Policy on July 28, 2020. to accept oral and written comments on the proposed revisions to legislative rule 45 C.S.R. 33. Any comments received after this time are considered ex parte communications and cannot be considered in accordance with West Virginia Code Chapter 29A Article 3.

Two written comments were received for the proposed revisions to rule 45 C.S.R. 33 and three attendees provided verbal comments during the public hearing. The written comments were also provided verbally during the public hearing. A summary of the written and oral comments received are provided below along with the response to each comment. The original written comments and the public hearing transcript are provided as part of the formal rulemaking record.

There were no changes made to 45 C.S.R. 33 as a result of the comments.

Commenter 1: Aileen Curfman (written and verbal comments)

COMMENT A: 45CSR33 creates a DAQ rule that parallels an EPA rule addressing the possible effect of Covid-19 on an operator's testing program. If travel or plant access is prevented by Covid-19 safety precautions, a facility will be permitted to miss deadlines for tests normally performed by outside contractors. This rule allows the facility to continue to report their actual monitored data if the data would otherwise be considered valid and the delay is due to Covid-19 precautions.

RESPONSE A: 45CSR33 adopts by reference 40 CFR Part 75, Continuous Emissions Monitoring, which was amended April 22, 2020 and became effective at the federal level on the same date. The commenter's understanding of the amendment is correct; however, there is additional information about the amendment that explains the action in more detail.

The continuous emissions monitoring system (CEMS) required under 40 CFR Part 75, requires sources to continuously monitor emissions and other operating data every hour they are in operation. They are also required to conduct specific testing either on a specific time frame or in the event of a specific trigger that would require the quality assurance testing to be performed. Most of this testing is performed by outside contractors, rather than the skilled staff that oversees the highly automated monitoring systems. As explained in the federal register notice:

Some tests also require calibration gases to be obtained from outside facilities or require fuel samples to be analyzed at outside laboratories. Consequently, current travel, plant access, and other safety restrictions related to the novel coronavirus disease (COVID-19) emergency, as well as shutdowns of external facilities that provide necessary supplies or services, may make compliance with part 75 testing requirements difficult for some sources. Moreover, because of uncertainty regarding the duration of the restrictions and because tests requiring outside contractor personnel often must be scheduled months in advance, operators missing test deadlines now face considerable uncertainty as to when they will be able to reschedule and complete any delayed tests. However, the existing part 75 regulations require sources to report substitute data following all missed test deadlines until the tests are successfully completed, regardless of the reason for missing the test and the possible inability to reschedule the test for multiple months because of restrictions related to the emergency. Based on the reported dates of previous tests, EPA believes that from April to June of this year, approximately 1,000 units will face deadlines for part 75 tests that typically require outside contractor personnel. In light of the current COVID-19 national emergency, EPA has decided that a temporary alternative is needed to the part 75 data substitution requirements following tests that are not completed in a timely manner because of travel, plant access, or other safety restrictions related to the emergency. EPA believes that establishment of a temporary alternative is necessary to reduce risks to power plant operators and other essential personnel from exposure to COVID-19 and is consistent with similar social distancing efforts being taken at this time by all levels of government and the private sector while ensuring that mission-essential functions can be performed.

85 Fed. Reg. 22363-22364 (April 22, 2020).

COMMENT B: The EPA rule that this rule parallels became effective on June 1, 2020, and it expires after 180 days, or November 28, 2020. These amendments to the DAQ testing program will expire after 180 days. Since the DAQ rule is being proposed for 2021, the parallel EPA rule will no longer be in effect when the DAQ rule becomes effective. Why is this rule even being considered?

RESPONSE B: The EPA rule became effective April 22, 2020; therefore, the federal rule expires October 19, 2020.

The West Virginia legislative rulemaking process is typically a one-year cycle from the time a proposed rule is introduced for public comment until the time it becomes effective. The DAQ could have introduced 45CSR33 as an emergency rule as the EPA did; however, the DAQ chose to introduce 45CSR33 through the normal legislative process. Although the federal rule will expire prior to the state rule will being finalized and effective, the proposed state rule provides assurances to sources located in West Virginia that, if they must rely on the provisions afforded them at the federal level to delay testing as a result of COVID-19 restrictions, they will not later

become subject to state enforcement action should they meet a testing deadline under the circumstances and temporary requirements of the federal amendments. West Virginia has delegation of the Acid Rain permitting program and the U.S. EPA that administers the federal Acid Rain trading program. Accordingly, the state is obligated under the Clean Air Act to maintain consistency between federal and state rules.

COMMENT C: Instead of a rule that relaxes the testing deadlines, the DAQ should create a rule that adopts the CDC's recommendations for critical infrastructure workers in the manufacturing sector. If testing personnel and plant employees are required to follow the CDC recommendations, they will be able to carry out their duties safely. Employees will remain safe and testing deadlines will not be missed due to COVID-19.

RESPONSE C: The DAQ does not have any authority under West Virginia Code to establish a rule adopting CDC's recommendations for critical infrastructure workers in the manufacturing sector.

COMMENT D: While COVID-19 presents clear risks to the health and safety of West Virginians, we must remember that greenhouse gases are causing damage that is being documented today. Two examples are increasing temperatures and extreme weather events. In the long run, these weather-related changes pose an even greater threat to our safety than the current pandemic. Weather-related issues like desertification and reduced pollination of crops are already threatening food supplies in many countries. A study reported in the Proceedings of the National Academy of Sciences on May 25, 2020 reported that currently, less than 1% of the Earth's surface is uninhabitable because of hot and dry conditions. By 2070, that number will rise to 19% unless we take additional steps to curb greenhouse gases. Famine, migration, and political instability will bring disastrous results. Now is not the time to create loopholes in our air quality monitoring program.

RESPONSE D: Proposed Rule 45CSR33 does not create a loophole in air quality monitoring for sources subject to the Acid Rain program. The federal action being adopted under 45CSR33 does not suspend the existing Part 75 requirements to continuously monitor and report emissions for every operation hour in a control period nor does it change any emission limits under the program.

The Part 75 data substitution requirements generally apply to two different scenarios. The first scenario occurs when a CEMS fails to record data or when the data obtained are suspect. The second scenario occurs when the quality assurance test requirements are not met. The EPA limited its amendment to the second scenario during the federal emergency, while leaving the first scenario intact.

[T]he amendments allow sources to continue to report monitored data as valid instead of requiring the sources to report substitute data in instances where data from a monitoring system would otherwise be considered invalid solely because of failure to complete a required test by the applicable deadline and where the failure to complete the test is attributable to travel, plant access, and other safety

restrictions implemented to address the COVID-19 national emergency. . . Sources are required to complete any delayed tests as soon as practicable after relevant emergency-related restrictions no longer apply. The emergency period for which a source can report valid data under the amended provisions is limited to the duration of the COVID-19 national emergency plus a grace period of 60 days to complete delayed tests, but no later than the date of expiration of the amendments (*i.e.*, 180 days from publication in the Federal Register).

85 Fed. Reg. 22367 (April 22, 2020)

There are additional recordkeeping and reporting requirements associated with any delayed testing.

COMMENT E: Thousands of West Virginia teachers and students will be returning to their classrooms on September 8, 2020. There is no reason why a small number of testing technicians cannot visit a correspondingly small number of source facilities. I urge the DAQ to adopt and enforce the CDC standards, and to continue monitoring and testing programs during the pandemic.

RESPONSE E: The DAQ does not have authority under the West Virginia Code to enforce the CDC standards at source facilities. To maintain delegation of the Acid Rain program, the DAQ is obligated under the federal Clean Air Act to adopt corresponding federal amendments to the Acid Rain program, in this case, 40 CFR Part 75. The U.S. EPA addresses the number of facilities potentially impacted by discussing the facilities subject to relative accuracy test audits (RATAs) which involve stack testing by stating:

According to data reported to EPA, part 75 RATAs were performed at 1,033 monitoring locations in the second quarter of 2019. Given the typical four-quarter interval between required RATAs, EPA therefore believes that approximately 1,000 units will have deadlines to perform RATAs in April, May, and June of 2020. Since the beginning of March 2020, EPA has been contacted by nine power plant owners (who collectively operate over 300 units subject to part 75 requirements), an emissions data acquisition and handling system (DAHS) vendor, two consulting companies, and two state regulatory agencies indicating that stack testing requirements will be difficult or impossible to meet on a timely basis in locations where plant access has been limited or where local or state governments have imposed shelter-in- place or other restrictions for all but essential activities.

85 Fed. Reg. 22366 (April 22, 2020).

Commenter 2: James Kotcon, Conservation Chair, WV Chapter of Sierra Club (written and verbal comments)

COMMENT F: The WV Chapter of Sierra Club opposes the revision to 45-CSR-33 which proposes to adopt the EPA's emergency rule amending 40 CFR Part 75, in regard to continuous

DAQ Response to Comment - 45 C.S.R. 33

emissions monitoring systems and addresses the effect of COVID-19 on an operator's testing program. This proposed rule allows the facility to continue to report their actual monitored data if the data would otherwise be considered valid and the delay is due to COVID-19 precautions.

The Part 75 rule for monitoring is intended to assure accurate monitoring of emissions, especially those involved in the Acid Rain trading program. If operators do not test the accuracy of their emissions monitoring, the original Part 75 rule required them to assume higher emissions rates, and to acquire emissions trading credits for those higher emissions rates. This created a strong incentive to assure accurate monitoring. Allowing operators to delay testing to verify the accuracy of their emissions monitoring creates a significant incentive to allow higher emissions, and to allow their monitoring program to under-report those emissions.

RESPONSE F: The DAQ having delegation of the Acid Rain program is obligated under the federal Clean Air Act to keep the state program consistent with the federal program which is the reason the revision to legislative rule 45CSR33 was proposed.

The requirement for substitute data as a result of delayed testing will once again be effective upon the expiration of the temporary emergency rule. The U.S. EPA addressed the penalties associated with substitute data as follows:

In ordinary circumstances, requiring operators to report substitute data when quality-assurance testing deadlines are missed appropriately provides operators with a strong incentive to conduct the required tests in a timely manner, just as they are provided with a strong incentive to maintain high availability of their monitoring equipment. However, in circumstances where an operator may be unable to meet test deadlines because of the COVID-19 outbreak, and where it may not be possible to complete the delayed test for an extended period for reasons outside the operator's control, requiring data substitution cannot induce more timely compliance with quality-assurance requirements. Indeed, to the extent the desire to avoid an extended period of data substitution requirements incentivizes the operator to proceed with testing instead of more rigorously complying with travel, plant access, and other safety restrictions imposed to address the current COVID-19 emergency, the data substitution requirements may put plant operators and other personnel at risk and be in tension with immediate public health imperatives.

85 Fed. Reg. 22365 (April 22, 2000)

COMMENT G: Given that the EPA Part 75 amendment expires 180 days after the effective date (April 22, 2020), it seems unlikely that the legislative rule will have any affect, but it does have a significant potential to create confusion. Since the amendment to 45CSR33 is being proposed for 2021, the parallel EPA rule regarding the Part 75 COVID-19 waiver for monitoring requirements is likely to no longer be in effect when the DAQ rule becomes effective.

RESPONSE G: Please refer to the response to COMMENT B above.

COMMENT H: Given that air pollution emissions exacerbate the susceptibility to the Coronavirus that causes COVID-19, that many West Virginians, something over 100, have already died from that disease this year, the West Virginia Sierra Club advocates for a rule that adopts the CDC's recommendations for critical infrastructure workers in the manufacturing sector. If testing personnel and plant employees are required to follow the CDC recommendations, they will be able to carry out their duties safely. Employees will remain safe and testing deadlines will not be missed due to Covid-19. Importantly, operators will not have a significant financial incentive to allow increased emissions, thereby protecting all West Virginians.

RESPONSE H: Please refer to the response to COMMENT C above.

COMMENT I: We urge that this rule be withdrawn.

RESPONSE I: After consideration of all comments received, a thorough review of the EPA's rationale provided in the federal register notice, and for the reasons stated in all DAQ responses to comments received on this rule, the DAQ will not withdraw the rule for consideration by the 2021 West Virginia Legislature.

Commenter 3: David White, Appalachian and Atlantic Defense Council

COMMENT J: I want to commend DEP and the DAQ for trying to balance between competing interests. These are difficult times as far as getting people into facilities and plants to conduct some of the testing, to do some of the calibrations and some of the work that's required to and staff testers, necessary to do the type of work that is required to maintain these monitoring systems.

RESPONSE J: No response required.

COMMENT K: While there is, obviously, concern that there's going to be opportunities taken by certain companies or regulated entities to try to use and take advantage of the current situation, I don't believe that any of the efforts that the DAQ is endeavoring to do in the current proposed regulation really do that. I think they are making acknowledgement of some of the conditions that are out there while requiring compliance with the acid rain permitting program.

RESPONSE K: No response required.

Jennings, Laura M

From: Aileen <acurfman@gmail.com>
Sent: Tuesday, July 28, 2020 12:57 PM
To: DEP Comments
Subject: [External] DAQ 2021 Rule Comments— Verbal Testimony on 45CSR33 (Acid Rain Provisions and Permits)

CAUTION: External email. Do not click links or open attachments unless you verify sender.

I would like to thank you for providing the opportunity to comment on the proposed 2021 Legislative Rules.

45CSR33 creates a DAQ rule that parallels an EPA rule addressing the possible effect of Covid-19 on an operator's testing program. If travel or plant access is prevented by Covid-19 safety precautions, a facility will be permitted to miss deadlines for tests normally performed by outside contractors. This rule allows the facility to continue to report their actual monitored data if the data would otherwise be considered valid and the delay is due to Covid-19 precautions. These amendments to the DAQ testing program will expire after 180 days.

The EPA rule that this rule parallels became effective on June 1, 2020, and it expires after 180 days, or November 28, 2020. Since the DAQ rule is being proposed for 2021, the parallel EPA rule will no longer be in effect when the DAQ rule becomes effective. Why is this rule even being considered?

Instead of a rule that relaxes the testing deadlines, the DAQ should create a rule that adopts the CDC's recommendations for critical infrastructure workers in the manufacturing sector. These recommendations include health screening for employees prior to entering the workplace, regular monitoring of employees for symptoms, wearing masks or cloth face coverings, social distancing, and regular sanitizing of the workspace. These recommendations are based on current knowledge of how diseases spread. They are similar to the "universal precautions" that medical personnel have used for decades. If testing personnel and plant employees are required to follow the CDC recommendations, they will be able to carry out their duties safely, just as doctors and nurses do. Employees will remain safe and testing deadlines will not be missed due to Covid-19.

While Covid-19 presents clear risks to the health and safety of West Virginians, we must remember that greenhouse gases are causing damage that is being documented today. Two examples are increasing temperatures and extreme weather events. In the long run, these weather-related changes pose an even greater threat to our safety than the current pandemic. Weather-related issues like desertification and reduced pollination of crops are already threatening food supplies in many countries. A study reported in the Proceedings of the National Academy of Sciences on May 25, 2020 reported that currently, less than 1% of the Earth's surface is uninhabitable because of hot and dry conditions. By 2070, that number will rise to 19% unless we take additional steps to curb greenhouse gases. Famine, migration, and political instability will bring disastrous results. Now is not the time to create loopholes in our air quality monitoring program.

Thousands of West Virginia teachers and students will be returning to their classrooms on September 8, 2020. There is no reason why a small number of testing technicians cannot visit a correspondingly small number of source facilities. I urge the DAQ to adopt and enforce the CDC standards, and to continue monitoring and testing programs during the pandemic.

Aileen Curfman
1067 Comstock Dr.
Shepherdstown, WV 25443



**SIERRA
CLUB**

Sierra Club

West Virginia Chapter

P.O. Box 4142
Morgantown, WV 26504

July 27, 2019

Sandra Adkins
WVDEP – Division of Air Quality
601 57th St., SE
Charleston, WV 25304
Via e-mail to: dep.comments@wv.gov

Re: Comments on Air Quality draft rules, 45-CSR-23, MSW Landfills; 45-CSR-33, Acid Rain Program; and 45-CSR-44, Control of Greenhouse Gas Emissions From Existing Coal-Fired Electric Utility Generating Units

Dear Ms. Adkins:

Please accept the following comments on behalf of the WV Chapter of Sierra Club, and our approximately 2600 members.

45-CSR-23. MSW Landfills;

Paragraph 7.6.a.4. appears to have a typo. The deletion creates an incomplete sentence and makes the wording unclear.

45-CSR-33. Acid Rain Program.

We oppose the revision to 45-CSR-33 which proposes to implement an EPA rule addressing the effect of Covid-19 on an operator's testing program. This proposed rule allows the facility to continue to report their actual monitored data if the data would otherwise be considered valid and the delay is due to Covid-19 precautions. The EPA rule amends 40-CFR-Part 75 regarding Continuous Emissions Monitoring Systems, and the Part 75 amendment expires 180 days after the effective date (April 22, 2020).

Since the amendment to 45-CSR-33 is being proposed for 2021, the parallel EPA rule regarding the Part 75 COVID-19 waiver for monitoring requirements is likely to no longer be in effect when the DAQ rule becomes effective. Yet the Statement of Circumstances for the proposed rule emphasizes this as a justification for the rule change.

The Part 75 rule for monitoring is intended to assure accurate monitoring of emissions, especially those involved in the Acid Rain trading program. If operators do not test the accuracy of their emissions monitoring, the original Part 75 rule required them to assume higher emissions rates, and to acquire emissions trading credits for those higher emissions rates. This created a strong incentive to assure accurate monitoring. Allowing operators to delay testing to verify the accuracy of their emissions monitoring creates a significant incentive to allow higher emissions, and to allow their monitoring program to under-report those emissions.

Given that air pollution emissions exacerbate susceptibility to the coronavirus that causes COVID-19, and that many West Virginians that have already died from that disease, the West Virginia Sierra Club advocates for a rule that adopts the CDC's recommendations for critical infrastructure workers in the manufacturing sector. These recommendations include health screening for employees prior to entering the workplace, regular monitoring of employees for symptoms, wearing masks or cloth face coverings, social distancing, and regular sanitizing of the workspace. These recommendations are based on current knowledge of how diseases spread. They are similar to the "universal precautions" that medical personnel have used for decades. If testing personnel and plant employees are required to follow the CDC recommendations, they will be able to carry out their duties safely, just as doctors and nurses do. Employees will remain safe and testing deadlines will not be missed due to Covid-19.

Importantly, operators will not have a significant financial incentive to allow increased emissions, thereby protecting all West Virginians.

And coincidentally, given that the EPA rule change is set to expire before the proposed WV rule takes effect, operators will not be faced with uncertainty over which monitoring rules apply.

45-CSR-44. Control of Greenhouse Gas Emissions From Existing Coal-Fired Electric Utility Generating Units

This proposed rule falls short in several important ways and should be amended to fully comply with the Clean Air Act. In particular, the proposed rule, like the EPA Affordable Clean Energy rule (ACE) on which it is based, fails to adequately address climate change, the very reason for the rule's existence. The emissions reductions that would be achieved are negligible, and fail to protect the health of West Virginians, and the health of our environment.

It is becoming increasingly evident that the climate crisis is much more serious than was believed even a few years ago, and requires rapid reductions in greenhouse gas emissions. Emissions of greenhouse gases are cumulative, and delays today mean we must take much more draconian steps in the near future. Thus, the proposed rule falls well short of the emissions reductions needed in this decade. This creates a significant potential for even more drastic disruptions of our energy industries in the near future, as we struggle to catch up with required emissions reductions.

Like the ACE, the proposed rule fails to account for indirect health benefits from more stringent emissions reductions. In fact, by upgrading power plants, the proposed heat rate improvements may actually increase total greenhouse gas emissions, and likewise increase the emissions of harmful fine particulates, NO_x, SO₂ and other pollutants compared to no rule at all. The Clean Air Act requires an emissions reduction, not just an emissions rate reduction.

Importantly, the rule fails to define the minimum emissions reduction levels that must be achieved. The proposed rule ignores co-firing with less-emitting fuels, carbon capture and sequestration technologies, or reductions in use of higher-emitting facilities; indeed, the rule explicitly prohibits emissions averaging or co-firing as emissions reduction approaches. By focusing on reducing the emissions rate, rather than total emissions reductions, the rule omits consideration of approaches that might reduce emissions much more cost-effectively than can be achieved with ACE, and allows scenarios that may actually increase emissions.

The proposed rule, like ACE, wrongly deregulates gas and oil-fired power plants. This is particularly egregious given that gas has replaced coal as the largest source of electric power generation in the US.

Specific issues with the proposed rule include the following:

1) The rule (Section 1.1.a) arbitrarily omits major sources of greenhouse gases by focusing solely on coal-fired electric utility generating units. Other major sources need to be included, including gas-fired electric generating facilities, compressor stations, and other fossil-fuel fired industrial boilers. This is implicit in defining “fossil fuel” (section 2.23) and “natural gas” (Section 2.31), among others.

2) The rule arbitrarily limits the permit requirements, performance standards, monitoring, etc. (Section 1.1.b, 1.1.c, etc.) for the “Best System of Emissions Reductions” to heat rate improvements, neglecting a wide range of alternative technologies that would reduce greenhouse gas emissions in West Virginia.

3) The rule limits the definition of “greenhouse gas” (section 2.24) to carbon dioxide, and omits methane, nitrous oxide, ozone, and other relevant greenhouse gases. As such, this definition is scientifically indefensible, and will not achieve the reductions in greenhouse gases needed to protect human health and the environment. The most relevant definitions are readily available in the literature and are normally expressed as carbon dioxide equivalents (CO₂e). The Federal Register definitions section does not define “greenhouse gases” as only carbon dioxide, thus this provision appears to make West Virginia’s rule significantly weaker than even the very weak federal ACE rule.

4) The definition of “heat rate” (Section 2.25) is excessively wordy. The last two sentences can be omitted, as they do not add to the definition. Similar editing to reduce wordiness can be achieved throughout the rule.

5) The definition of “mechanical output” (section 2.29) can be simplified by changing “745.7” to “0.0007457” and deleting “then dividing by 1,000,000”.

6) It is not clear why the rule (or the ACE rule on which it is based) only applies to facilities “that commenced construction on or before Jan. 8, 2014” (Section 3.1, 3.3.a., etc.). The rule should be amended to include new facilities as well.

7) Likewise, it is not clear why municipal waste or commercial waste incinerators are not included (Section 3.1.g and 3.1.h). The rule should be revised to include these facilities, or a counterpart rule should be established.

8) Typographical. The last line of Section 4.2 refers to “sections 4”. Either another rule section should be cited, or the word should be the singular “section”.

9) Section 4.4 directs the owner or operator of an affected unit to propose a performance standard, but offers no specific criteria that the performance standard must meet. As such, this offers the owners or operators of regulated units the opportunity to essentially offer a voluntary standard. It is essentially a request for the owners to “do what you think is best”, rather than an explicit set of standards that must be met. This approach simply does not acknowledge the seriousness of the climate crisis, or offer an emissions control strategy adequate to address the climate crisis. WV-DEP must set the regulatory standards and the criteria for performance that regulated units must meet. Language in section 4.5 that offers consideration of site-specific factors such as cost, age of the facility, etc. provides additional invitation to propose the weakest possible standard. This also creates an unfair advantage to allow the oldest and dirtiest facilities to continue operating, and presents a competitive disadvantage to those facilities that do adopt more stringent standards. The rule thus creates incentives for a “race to the bottom” that undermines any effort to reduce emissions.

10) Section 4.11 allows the applicant to propose a compliance schedule, and does not impose any firm deadlines, other than the provision in section 5.6.c that the secretary adopt “increments of progress”. This is a prescription for delay, undermining any effort to actually reduce greenhouse gas emissions. The rule must propose a firm deadline for compliance, and be as soon

as practicable, not later than the end of 2022. If warranted, a variance process can be considered, but such a process must have enforceable incentives to achieve significantly enhanced reductions in greenhouse gas emission in exchange for delays in implementation.

11) Section 5.4 allows the secretary to consider the remaining useful life of a unit, but does not indicate what “remaining useful life” is so short as to justify waiver of emissions reduction requirements. The section should be amended to require that no remaining useful life greater than five years would be considered. We support making the shutdown date a permit requirement for this exemption.

Thank you for the opportunity to provide these comments.

Sincerely,



James Kotcon
Conservation Chair
WV Chapter of Sierra Club
jkotcon@gmail.com

45-CSR-8. Ambient Air Standards. Adopts new EPA reference method. No Comments.

45-CSR-16. New Source Standards. (CI-ICE and Wood-burners). Continues and expands the exemption for wood-burning stoves and forced-air furnaces. Oppose?

45-CSR-18. Combustion of Solid Waste. No Comments.

45-CSR-23-MSW Landfills.

Typo. 7.6.a.4. The deletion creates an incomplete sentence and makes the wording unclear.

45-CSR-33. Acid Rain Program. Aileen's comments on EPA's 180-day expiration (from April 22, 2020) means the rule change is not needed, and legislative approval would not take effect before the EPA waiver expires.

45-CSR-34. HAPS. No Comments

DEPARTMENT OF ENVIRONMENTAL PROTECTION PUBLIC HEARING

ACID RAIN PROVISIONS AND PERMITS

07/28/2020



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DEPARTMENT OF ENVIRONMENTAL PROTECTION

DIVISION OF AIR QUALITY

PUBLIC HEARING TEXT - VIRTUAL HEARING

PROPOSED 2021 LEGISLATIVE RULES

July 28, 2020 - 6:00 PM

Held via Microsoft TEAMS

45CSR33, Acid Rain Provisions and Permits

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1 45CSR33, Acid Rain Provisions and Permits

2 -- oOo --

3 MS. JENNINGS: Kristina, are you ready to
4 proceed?

5 COURT REPORTER: I am.

6 MS. JENNINGS: Thank you.

7 The public hearing for the proposed
8 Legislative Rule 45CSR33, Acid Rain Provisions and
9 Permits, will now come to order on this 28th day of July
10 2020, held virtually to prevent the spread of COVID-19
11 in accordance with the Governor's Safer at Home Order
12 and the West Virginia Department of Environmental
13 Protection COVID-19 policy.

14 Comments and testimony will be accepted until
15 the close of this hearing and will be made part of the
16 rule making record. Any question regarding revisions to
17 the rules should be included with your comments, and any
18 such question will be addressed as part of the response
19 to comments in the rule making record.

20 The purpose of this public hearing is to
21 accept comments on proposed revisions to Rule 45CSR33,
22 Acid Rain Provisions and Permits. This rule establishes
23 and adopts general provisions and the operating permit
24 program requirements for affected sources and affected

1 units under the Acid Rain Program promulgated by the
2 United States Environmental Protection Agency under
3 Title IV of the Clean Air Act.

4 The standards and the associated reference
5 methods, performance specifications, and other test
6 methods which are appended to these standards are
7 incorporated by reference.

8 The rule is being revised to incorporate by
9 reference a revision to Federal counterpart regulation,
10 40 CFR Part 75, Continuous Emissions Monitoring
11 published on April 22, 2020. The Federal amendments
12 expire 180 days from April 22, 2020.

13 Upon authorization and promulgation, 45CSR33,
14 will be submitted to the United States Environmental
15 Protection Agency to fulfill federal obligations under
16 the Clean Air Act, including delegations and
17 authorizations.

18 Stephanie, has anyone pre-registered to
19 provide comment or testimony in regard to proposed rule
20 45CSR33? If so, please unmute their line now & call on
21 them now. Please ask them to state clearly their name
22 and any affiliation.

23 As a reminder, please limit testimony to one
24 witness for each organization and limit testimony to

1 five minutes for each witness.

2 MS. HAMMONDS: Thanks, Laura. Cross
3 examination of commenters is not allowed. As Laura
4 stated, DAQ will not be responding to comments tonight.

5 We have one commenter registered, Alieen
6 Curfman.

7 ALIEEN CURFMAN

8 MS. CURFMAN: Hello, I am Alieen Curfman.
9 I'm commenting on my own behalf as a private citizen.
10 I'd like to thank you for providing the opportunity to
11 comment on the proposed '20-'21 legislative rules.

12 45CSR33 creates a DAQ rule that parallels an
13 EPA rule addressing the possible effects of COVID-19 on
14 an operator's testing program. If travel or plant
15 access is prohibited by COVID-19 safety precautions, a
16 facility will be permitted to miss deadlines for tests
17 normally performed by outside contractors.

18 This rule allows the facility to continue to
19 report their actual monitored data if data would
20 otherwise be considered and the delay is due to COVID-19
21 precautions.

22 These amendments to the DAQ testing program
23 will expire after 180 days. The EPA rule that this rule
24 parallels became effective on June 1, 2020, and it

1 expires after 180 days or November 28, 2020. Since the
2 DAQ rule is being proposed for 2021, the parallel EPA
3 rule will no longer be in effect when the DAQ rule
4 becomes effective.

5 Why is this rule even being considered?
6 Instead of a rule that relaxes the testing deadlines,
7 the DAQ should create a rule that adopts the CDC's
8 recommendation for critical infrastructure workers in
9 the manufacturing sector.

10 These recommendations include health screening
11 for employees prior to entering the workplace, regular
12 monitoring of employees for symptoms, wearing masks or
13 cloth face coverings, social distancing, and regular
14 sanitizing of the work space.

15 These recommendations are based on current
16 knowledge on how diseases spread. They are similar to
17 the universal precautions that medical personnel have
18 used for decades. If testing personnel and plant
19 employees are required to follow the CDC
20 recommendations they will be able to carry out their
21 duties safely just as doctors and nurses do. Employees
22 will remain safe and testing deadlines will not be
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24 While COVID-19 present clear risks to the

1 health and safety of West Virginians, we must remember
2 that greenhouse gases are causing damage that is being
3 documented today. A few examples are increasing
4 temperatures and extreme weather events.

5 In the long run, these weather related changes
6 pose an even greater threat to our safety than the
7 current pandemic. Weather related issues like the
8 desertification and reduced pollination of crops are
9 already threatening food supplies in many countries.

10 A study reported in the proceedings of the
11 National Academy of Sciences on May 25, 2020, reported
12 that currently less than 1 percent of the earth's
13 surface is uninhabitable because of hot and dry
14 conditions, but by 2070, that number will rise to 19
15 percent unless we take additional steps to curb
16 greenhouse gases.

17 Famine migration and political instability
18 will bring disastrous results. Now is not the time to
19 create loopholes in our quality monitoring program.
20 Thousands of West Virginian teachers and students will
21 be returning to their classroom on September 8th, 2020.
22 There is no reason why a small number of testing
23 technicians cannot visit a correspondingly small number
24 of source facilities.

1 I urge the DAQ to adopt and enforce the CDC's
2 standards and to continue monitoring and testing
3 programs during the pandemic. Thank you.

4 MS. HAMMONDS: Thank you, Ms. Curfman.

5 If you did not register to comment and but
6 would like to at this time, please use the Raise Your
7 Hand feature or comment in the Chat and we will
8 recognize you to provide your comments.

9 Mr. Kotcon, please unmute your line and give
10 us your comments.

11 JAMES KOTCON

12 MR. KOTCON: My name is James Kotcon. I serve
13 as the conservation's chair for the West Virginia
14 chapter of Sierra Club, and I'm speaking tonight on
15 behalf of our 2,600 members across West Virginia.

16 We oppose the revision to 45CSR33. In large
17 part, the proposed revision is to adopt the EPA's
18 Emergency rule amending 40 CFR Part 75, that is in
19 regards to continuous emissions monitoring systems.

20 Given that the Part 75 amendment that EPA is
21 proposing expires in 180 days after it's effective date,
22 April 22nd, it seems unlikely that this legislative rule
23 will have any affect but it does have a significant
24 potential to create confusion.

1 This Part 75 rule for monitoring is intended
2 to ensure accurate monitoring of emissions, especially
3 those involving the acid rain training program. If
4 operators do not pass the accuracy of their emissions
5 monitoring, the original Part 75 rule required them to
6 assume higher emission rates and to acquire emissions
7 training credits for those high emission rates.

8 This creates a strong incentive for accurate
9 monitoring and for allow operators to delay testing to
10 verify the accuracy of their monitoring.

11 The proposed Part 75 revision creates a
12 significant incentive to allow higher emissions and to
13 allow their monitoring program to under report those
14 emissions.

15 Given that air pollution emissions exacerbate
16 the susceptibility to the Coronavirus that causes COVID-
17 19, that many West Virginians, something over 100, have
18 already died from that disease this year the West
19 Virginia Sierra Club advocates that a rule be adopted to
20 allow or require CDC's recommendation for critical
21 infrastructure workers, that includes social distancing,
22 wearing face masks, and regular sanitization.

23 It is important to recognize that by
24 withdrawing the rule, operators will no longer have a

1 significant financial incentive to allow increased
2 emissions and would thereby protect all West Virginians.
3 And coincidentally, given that the EPA rule is set to
4 expire before the West Virginia rule will take effect,
5 operators of the regulated facilities will not be faced
6 with uncertainty over which monitoring rules apply.

7 We urge that this rule be withdrawn and we
8 thank you for the opportunity to provide that comment.

9 MS. HAMMONDS: Thank you Mr. Kotcon.

10 If anyone else did not register but would like
11 to comment, please the Raise Your Hand feature or
12 comment in the Chat and we will recognize you to provide
13 your comments.

14 Mr. White, please unmute your line and provide
15 your comments.

16 DAVID WHITE

17 MR. WHITE: Good afternoon. Nice to see some
18 familiar names on the list of roster there.

19 I haven't really dug into the revision to 33
20 but I did want to commend DEP and the OAQ for trying to
21 balance between competing interests. These are
22 difficult times as far as getting people into facilities
23 and plants to conduct some of the testing, to do some of
24 the calibrations and some of the work that's required to

1 ensure that all of the monitoring equipment is meeting
2 the various specifications that each of the acid rain
3 permits require.

4 So while there has been a lot of concern
5 expressed in the community about this being a weakening
6 of regulations, in practical effect, there's no
7 standards that appear to be lessened. It looks like it
8 is a decent balancing of concerns and in consideration
9 getting people into facilities, generally contractors
10 and staff testers, necessary to do the type of work that
11 is required to maintain these monitoring systems.

12 And while there is, obviously, concern that
13 there's going to be opportunities taken by certain
14 companies or regulated entities to try to use and take
15 advantage of the current situation, I don't believe that
16 any of the efforts that the OAQ is endeavoring to do in
17 the current proposed regulation really do that.

18 I think they are -- I commend them on making
19 acknowledgement of some of the conditions that are out
20 there while requiring compliance with the acid rain
21 permitting program. So that's all. Thank you.

22 MS. HAMMONDS: Thank you, Mr. White.

23 If anyone else did not register to comment but
24 would like to at this time, please raise your hand, use

1 the Raise Your Hand feature or comment in the Chat and
2 we will recognize you to provide your comments.

3 Laura, I do not see anyone else.

4 MS. JENNINGS: Okay. Not seeing anyone
5 further, I would like to thank all of the commenters for
6 their comments and this hearing, this public or proposed
7 rule 45CSR33 is concluded.

8 The public hearing for proposed rule 45CSR34
9 will begin momentarily.

10 -- oOo --

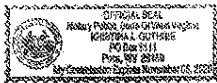
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1 STATE OF WEST VIRGINIA
2 COUNTY OF KANAWHA, to wit:

3 I, Kristina Guthrie, Professional Reporter and
4 Notary Public within and for the County and State
5 aforesaid, duly commissioned and qualified, do hereby
6 certify that the foregoing proceedings were duly
7 transcribed by me from stenographic notes taken in the
8 foregoing proceedings to the best of my skill and
9 ability.

10 I do further certify that the said proceedings
11 were correctly taken by me in shorthand notes, and that
12 the same were accurately written out in full and reduced
13 to typewriting by means of computer-aided transcription.

14 Given under my hand this 5th day of August,
15 2020.



Kristina Guthrie

19
20 Kristina Guthrie, Professional
21 Reporter and Notary Public
22
23
24

1	affect 7:23 afternoon 9:17 air 8:15 amending 7:18 amendment 7:20 apply 9:6 April 7:22 assume 8:6	compliance 10:20 concern 10:4,12 concerns 10:8 concluded 11:7 conditions 10:19 conduct 9:23 confusion 7:24 conservation's 7:13 consideration 10:8 continue 7:2 continuous 7:19 contractors 10:9 Coronavirus 8:16 COVID- 8:16 create 7:24 creates 8:8,11 credits 8:7 critical 8:20 Curfman 7:4 current 10:15,17	distancing 8:21 dug 9:19	G
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2	C	calibrations 9:24 CDC's 7:1 8:20 CFR 7:18 chair 7:13 chapter 7:14 Chat 7:7 9:12 11:1 Club 7:14 8:19 coincidentally 9:3 commend 9:20 10:18 comment 7:5,7 9:8,11,12 10:23 11:1 commenters 11:5 comments 7:8,10 9:13,15 11:2,6 community 10:5 companies 10:14 competing 9:21	effect 9:4 10:6 effective 7:21 efforts 10:16 Emergency 7:18 emission 8:6,7 emissions 7:19 8:2,4,6,12,14,15 9:2 endeavoring 10:16 enforce 7:1 ensure 8:2 10:1 entities 10:14 EPA 7:20 9:3 EPA's 7:17 equipment 10:1 exacerbate 8:15 expire 9:4 expires 7:21 expressed 10:5	H
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4				I
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DAQ Public Hearing - Proposed 2021 Legislative Rules
Registration to Virtually Attend - July 28, 2020

ID	Start time	Completion time	First Name	Last name	Email Address	Organization (if not affiliated with a group, type "Self")	Street Address	City, State and Zip Code
1	6/15/2020 12:56	6/15/2020 12:56	Stephanie	Hammonds	Stephanie.E.Hammonds@wv.gov	WVDEP-DAQ	601 57th Street, SE	Charleston, WV 25304
2	6/22/2020 17:52	6/22/2020 17:54	Edward	Andrews	edward.s.andrews@wv.gov	WVDEP/Division of Air Quality	601 57th Street, SE	Charleston, WV 25304
3	6/29/2020 11:52	6/29/2020 12:04	Kaitlin	Meszaros	meszaros@pinyon-env.com	Pinyon Environmental, INC.	3222 S. Vance Street, Suite 200	Lakewood, CO 80227
4	7/7/2020 10:44	7/7/2020 10:46	Todd	Shrewsbury	todd.h.shrewsbury@wv.gov	West Virginia Division of Air Quality	601 57th Street SE	Charleston, WV 25304
5	7/7/2020 10:51	7/7/2020 10:53	Laura	Crowder	Laura.M.Crowder@wv.gov	WVDEP DAQ	601 57th Street, SE	Charleston, WV 25304
6	7/7/2020 13:53	7/7/2020 13:54	Laura	Jennings	laura.m.jennings@wv.gov	WV DAQ	601 57th Street, SE	Charleston, WV 25304
7	7/9/2020 16:56	7/9/2020 16:58	Trevor	Galley	trevor_galley@tcenergy.com	TC Energy	1700 MacCorkle Ave SE	Charleston, WV 25314
8	7/13/2020 14:52	7/13/2020 14:54	David	Flannery	dave.flannery@steptoe-johnson.com	Steptoe & Johnson PLLC	Chase Plaza 17th Floor	25302
9	7/20/2020 8:43	7/20/2020 8:45	David	Fewell	david.r.fewell@wv.gov	WVDAQ	601 57th Street, SE	Charleston, WV 25304
10	7/20/2020 16:58	7/20/2020 16:59	Aileen	Curfman	acurfman@gmail.com	West Virginia Sierra Club	1067 Comstock Dr.	Shepherdstown, WV 25443
11	7/27/2020 14:15	7/27/2020 14:16	Aileen	Curfman	acurfman@gmail.com	West Virginia Sierra Club	1067 Comstock Dr.	Shepherdstown, WV 25443
12	7/27/2020 16:34	7/27/2020 16:35	Jason	Wandling	jason.e.wandling@wv.gov	WVDEP	601 57th St. SE	Charleston, WV 25301
13	7/27/2020 17:58	7/27/2020 17:58	Kaitlin	Meszaros	meszaros@pinyon-env.com	Pinyon Environmental, Inc.	3222 S. Vance Street Suite 200	Lakewood, CO 80227
14	7/28/2020 11:08	7/28/2020 11:09	Bev	McKeone	beverly.d.mckeone@wv.gov	WVDEP, DAQ	601 57th Street SE	Charleston WV 25304
15	7/28/2020 11:51	7/28/2020 11:52	David	White	envattorney2013@gmail.com	Appalachian and Atlantic Defense Council	179 Church Street	Chillicothe, Ohio 45601
16	7/28/2020 12:12	7/28/2020 12:13	James	Kotcon	jkotcon@gmail.com	West Virginia Chapter of Sierra Club	PO Box 4142	Morgantown, WV 26504
17	7/28/2020 13:38	7/28/2020 13:40	Sandra	Adkins	sandra.k.adkins@wv.gov	WVDEP	601 57th Street, SE	Charleston, WV 25304
18	7/28/2020 14:23	7/28/2020 14:28	Fred	Tipane	frederick.tipan@wv.gov	WV DEP/DAQ	601 57th ST SE	Charleston, WV 25304
19	7/28/2020 15:35	7/28/2020 15:36	Terry	Fletcher	terry.a.fletcher@wv.gov	WVDEP	123 Swarthmore Ave.	Charleston, WV 25302
20	n/a - Added by LMJ 7/29/20		Angie	Rosser		West Virginia Rivers Coalition	3501 MacCorkle Ave SE #129	Charleston, WV 25304