

45CSR30
REQUIREMENTS FOR OPERATING 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 45CSR30 on June 3, 2022. The public comment period concluded July 5, 2022, after satisfying the 30-day period. A public hearing was held virtually on July 5, 2022. The purpose of the public comment period and hearing was to accept oral and written comments on the proposed revisions to 45CSR30.

There were three written comments received during the public comment period regarding proposed revisions to 45CSR30. One person provided oral comments during the public hearing. A summary of the consolidated comments and responses are provided below, organized by the main comment theme.

The original comments received and the public hearing transcript are provided as part of the formal rulemaking record. The public hearing for 45CSR30 begins on page 13 of the transcript.

The following requirements were revised after reviewing and considering the comments received:

- 8.1.b.1 in response to Comment 5.
- 8.1.a.6 in response to Comment 7.
- 8.1.a.6.C in response to Comment 7.
- 8.3.b. in response to Comment 10.
- 8.4. in response to Comment 13.
- 7.3.b in response to Comment 22.
- 6.8.a.4.A.5 in response to Comment 23.

Commenter 1: Gregory Wooten, Environmental Engineer, American Electric Power

COMMENT 1: American Electric Power (AEP) supports the proposed changes to the fee structures under 45 CSR 30. The operating companies of American Electric Power have paid significant annual Title V operating fees under 45 CSR 30 for several decades.

AEP appreciates the exceptional stewardship that WVDEP has shown with these funds, operating a well-coordinated Title V permitting program, implemented with a frugal mindset. AEP has and will always support efforts by WVDEP to maintain a sufficiently funded program that allows USEPA to delegate administration of the permitting program by the WVDEP. We understand the current efforts by WVDEP to adjust the fee program to maintain sustainable funding of the program, even as the mix of permitted sources changes over time. The proposed regulatory changes are not unlike fee programs implemented by environmental agencies in other states.

RESPONSE 1: Thank you for your comment, a response is not necessary.

Commenter 2: Charlie Burd, Executive Director, Gas and Oil Association of West Virginia

Commenter 3: Rebecca McPhail, President, WV Manufacturers Association

COMMENT 2: Gas and Oil Association of West Virginia (GO WV) supports and endorses the comments submitted by the West Virginia Manufacturers Association (WVMA) on July 5, 2022.

RESPONSE 2: Thank you for your comment, a response is not necessary.

COMMENT 3: No immediate program threat. The Title V program does not appear to be in jeopardy. Almost two years ago, WVMA was invited by the Division of Air Quality (DAQ) to participate in a workgroup which proposed, as part of its mission, an adjustment of Title V permitting fees in a similar fashion as the proposed Rule. An investigation into the basis for the adjustment revealed that DAQ had collected more fees than needed to run the Title V program (the “Program”), and it was not in any immediate danger of underfunding (there was approximately \$5,700,000 in the Title V fund at the time). There does not appear to be an immediate threat to the sustainability of the Program.

RESPONSE 3: The DAQ values the input received from WVMA and others that participated in the stakeholder workgroup and listened to concerns regarding the importance of not collecting more fees than necessary to run the Title V Program. It was this concern, in part, that led to the proposed fee structure being calculated to match the average of the last three years of actual expenses. In recent years, expenses have been lower due to the restriction of travel during the pandemic, staff primarily working outside the office, and unfilled vacancies within DAQ. The proposed rule is not intended to increase funding to the Program.

The Program is routinely evaluated by Region 3 of the United States Environmental Protection Agency (EPA) to ensure that the DAQ continues to execute the Title V Program in accordance with the Clean Air Act, as amended (CAA) as a condition of the DAQ maintaining delegation of the Program. Although there does not appear to be an immediate threat to the Program, the EPA has identified the current DAQ fee collection structure in each of its last three program evaluation reports (September 2021, August 2019, and May 2015) with recommendations that DAQ consider altering its fee structure such that it is not based solely on emissions. The EPA’s Office of Inspector General in its review of Title V programs nationally categorized West Virginia’s Title V fee structure as “unsustainable”.

The DAQ has a legal obligation under the CAA to maintain funding to fully support the current and future Title V Program. Although the DAQ acknowledges that the Program is not under an immediate threat of underfunding; it has decided to proactively address the sustainability concerns raised by the EPA to ensure that underfunding of the Program does not occur.

COMMENT 4: Fee restructuring. GO WV and WVMA oppose the fee restructuring. The proposed rule changes are premised on the same beliefs that were discussed in 2020 regarding the sustainability of the Program: concerns about the imminent closure of one or more coal-fired power stations, which pay a large portion of Title V fees, and a belief that higher Program fees should be paid by those with more complex permits. Neither is a reason to change the Program fee structure.

RESPONSE 4: Although the DAQ does not agree with every decision the EPA makes, it does agree that it is not prudent to fund 60% of the Program revenue from the top 10 of approximately 500 Title V facilities located within West Virginia. The DAQ does not know if or when the remaining coal-fired power plants may retire and whether they remain or cease operation is not relevant to the development of a sustainable and diverse program as any source category regulated under this Program could face potential closure(s). The hope is that all West Virginia facilities remain operational; however, diversifying the revenue stream is in the best interest of the Program.

The corresponding federal counterpart regulation to 45CSR30 is 40CFR70 with §70.9 addressing fee requirements. The federal regulations identify what must be included in a state’s fee program provide

flexibility and mention that the fee schedule may include emissions fees, application fees, service-based fees or other types of fees, or combination thereof. Nothing in the provisions of this section requires a permitting authority to calculate fees on any particular basis or in the same manner for all Title V facilities, or categories of facilities, or all regulated air pollutants, provided that the permitting authority collects a total fee amount sufficient to meet the program support requirements.¹

Prior to convening the workgroup, the DAQ conducted thorough research and analyzed Title V fee structures from other states, reviewed survey results from regional air pollution control associations, and collected information from neighboring states. The DAQ has proposed what it believes is a simple combination of approaches that will work in West Virginia and do so in a way that should not create undue hardship on small businesses.

Unlike some surrounding states, the DAQ does not charge facilities for Title V permit applications (initial, renewal, modifications, or amendments) and permit application fees are not included in the revised fee structure. The annual Title V Fee is calculated by adding the base fee component, a complexity fee component, and an emissions fee component.

Please refer to other responses regarding sustainability, timing, and complexity.

COMMENT 5: Investment Income. Rather than adjusting fees, it seemed that the best course of action from the workgroup would be to manage the money that the DAQ had in reserve. As a result, the WVMA joined the DAQ in advocating for giving it the authority to invest excess fees, on the theory that this would help keep fees lower over time. To that end, House Bill 3082 (“H.B. 3082”) was passed in the 2022 Regular Legislative Session and became effective on June 9, 2022. H.B. 3082 allows the DAQ to invest excess fees and prevents the Legislature from sweeping the excess fees into the General Revenue. The investment income, even assuming low and safe returns, is likely to be significant, and should be considered when evaluating the need for more funds. The ability to invest excess income from the fund, will support the longevity of available funding.

RESPONSE 5: The DAQ appreciates WVMA advocating to give DAQ the authority to invest fees held in the Air Pollution Control Fund. The newly granted authority to invest funds was taken into consideration in developing the new fee structure and will benefit the regulated community by helping keep fees lower over time. In section 8.1.b.1, the calculation for the emissions fee factor (EFF) subtracts the Title V interest (TVI) earned from the Air Pollution Control Fund from the three-year fiscal average (TVE) of actual expenses. More of the fee balance that can be invested will increase the investment income and will lower the emissions fee factor, which facilities could see as a decrease in annual Title V costs as compared to the existing emissions only method of funding the Program.

In responding to this comment, the DAQ noticed that the fund name identified in TVE and TVI under paragraph 8.1.b.1 was incorrect and is correcting the name of the fund from “Air Quality Fund” to “Air Pollution Control Fund” as part of this response.

As observed in this calculation, the emissions fee factor is designed such that the agency will not collect more in fees than what is needed to cover expenses. As mentioned elsewhere in this response to comment document, the restructuring of the fees in this rule does not represent an increase to the overall Title V fees.

The estimated investment income for DAQ is \$86,200 annually.

¹ 40 CFR §70.9(b)(3).

COMMENT 6: Timing. Even if coal-fired plants close in the future, they will not close all at once, and overnight. Regulated coal-fired plants will have to get permission from the Public Service Commission to close, and there will be regulatory proceedings before that occurs. This will allow time for adjustment of fees. While we acknowledge that can be a long process in light of the West Virginia rule-making process, there is almost \$7,000,000 in the Title V fund, and there will be investment income from the fund. That income could be used for years to cover the loss from one or more power stations, allowing plenty of time to adjust fees if that is ever necessary.

RESPONSE 6: The DAQ was obligated to analyze the fee structure in response to recommendations to restructure the fees in the EPA program reports previously mentioned independent of any foreseen or unforeseen facility closures. After the DAQ conducted a detailed analysis, it reached out to key stakeholders from both the regulated and environmental communities in the Fall of 2020 to discuss its findings and possible solutions.

The air quality in West Virginia has improved dramatically since the 1990 amendments to the CAA. Implementation of the 1990 CAA amendments, including the Title V Program, have resulted in significant reductions in emissions, resulting in improved air quality. West Virginia is one of only 16 states in the country to be in attainment with all national ambient air quality standards. The cleaner air we all breathe is something to be celebrated. The initial Title V program funding was based solely on emissions, and with reduced emissions comes reduced funding.

The DAQ is not trying to predict the future of any one industry segment, it is trying to be proactive in acknowledging that a fee structure based solely on emissions is no longer in the best interest of the Program. Coal-fired power plants have been the primary source of funding since the inception of the Program. Based on the analysis the DAQ conducted in response to EPA program reviews, DAQ believes a more balanced and diversified approach to program funding is best for sustainability.

COMMENT 7: CPI Riser. We oppose the CPI riser in the Proposed Rule.

We note that Section 8.1.a.6 refers to the CPI for the “most recent calendar year”, which suggests that it is figured from January through December, not September through August. We would appreciate clarification on how the CPI is calculated for purposes of this section.

Calculation of CPI riser. The CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers (CPI-U) published by the U.S. Bureau of Labor Statistics, as of the close of the 12-month period ending on August 31 of each calendar year. On June 1 of each year, the CPI is determined for the upcoming fiscal year - presumably meaning the fees on July 1 will be adjusted by the CPI calculated for the previous year ending on August 31. Is this correct? For example, will the CPI used to set rates on July 1, 2025 be the CPI calculated for the 12 consecutive months that end with August 31, 2024?

RESPONSE 7: The application of the CPI riser is not new; it has been part of the Title V fee program since the program was developed (please see the strike-through text at section 8.4). Furthermore, the application of a CPI riser is a requirement under the CAA, as amended and 40 CFR Part 70, the corresponding federal counterpart regulation to this rule.

Regarding the use of the term “most recent calendar year” in 8.1.a.6, this is defined in 8.1.a.6.A as being the twelve (12) month period ending on August 31 of each calendar year for the purpose of the CPI calculation. Because “calendar year” is also used in conjunction with actual emissions elsewhere in the

rule, 8.1.a.6 will be modified to insert “as defined in subparagraph 8.1.a.6.A” to avoid confusion. Section 8.1.a.6.A is shown below for reference.

8.1.a.6.A. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers (CPI-U) published by the U.S. Bureau of Labor Statistics, as of the close of the twelve (12) month period ending on August 31 of each calendar year.

Because the methodology for calculating the CPI riser has not changed, the example calculation shown below is for the July 1, 2022, fees that were calculated from the 2020 – 2021 calendar year, for purposes of the CPI calculation, with the reference year of 1993:

	1992-1993	2020-2021
September	141.3	260.28
October	141.8	260.388
November	142	260.229
December	141.9	260.474
January	142.6	261.582
February	143.1	263.014
March	143.6	264.877
April	144	267.054
May	144.2	269.195
June	144.4	271.696
July	144.4	273.003
August	144.8	273.567
Average	143.175	265.447
CPI Multiplier	1.8540	
Base Fee	\$ 30.00	
Fee {\$/ton}	\$ 55.62	

As shown in the example above, the CPI riser was determined for the upcoming fiscal year for the fees on July 1, 2022, that were adjusted by the CPI calculated for the previous year (2020-2021) ending on August 31, 2021.

Regarding the commenter’s example to set rates on July 1, 2025, to be the CPI calculated for the 12 consecutive months that end with August 31, 2024, the example is correct; however, sections 8.1.a.6 and 8.1.a.6.C had incorrect years (2024 instead of 2025) that led to the commenter’s confusion. These dates have been corrected and are shown below.

Section 8.1.a.6 has been reworded as follows:

8.1.a.6. Consumer price index (CPI) riser. Effective July 1, 2025, the Title V base and complexity fees shall be increased by the percentage, if any, by which the Consumer Price Index for the most recent calendar year, as defined in 8.1.a.6.A, ending before the beginning of such year exceeds the Consumer Price Index for the reference calendar year 2023. For this rule:

Section 8.1.a.6.C has been reworded as follows:

8.1.a.6.C. On or before June 1, 2025, and each June 1 thereafter, the Secretary shall determine the CPI riser for the coming fiscal year. The fees adjusted pursuant to paragraph 8.1.a.6 are not cumulative and shall remain adjusted for not more than one year.

Please also see the response to Comment 17.

COMMENT 8: Complexity Fees. In support of the Proposed Rule, the DAQ cites the possible closure of one or more coal-fired power stations, which pay a large portion of Title V fees, and an assertion that higher program fees should be paid by those with more complex permits.

Most of the facilities considered complex have already obtained initial permits under the Program and have been issued subsequent renewals. These renewals are significantly less complex than initial permits.

Sections 8.1.a.3 and 8.1.a.4 Complexity Fees. These sections state Complexity Fees are “independent of the number of standards to which the source is subject.” Does this mean the source is subject to a \$1,000 fee for each standard that applies, or is the source subject to a single \$1,000 fee regardless of the number of standards that apply?

RESPONSE 8: In the statement of circumstances requiring the rule, the DAQ mentioned the recommendation by EPA in its fee evaluation reports and expanded on this by identifying the top ten sources as primarily being coal fired power plants contributing 60% of the revenue stream. The DAQ stated the fee restructuring will provide diversification, sustainability, and that the fee will include an emissions fee component in addition to adding a base fee and a complexity fee component, which is a similar concept incorporated into other states’ Title V programs.

The DAQ stated the complexity fee addresses the increased amount of work required by staff to enforce and permit sources subject to federal regulations. Most of the New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAP) regulations involve complex regulatory language. The DAQ considered the option of having a complexity fee based on the number of NSPS or NESHAP regulations the facility was subject to; however, it decided to apply the complexity fee independent of the number of standards to which the facility is subject. For example, if Facility A is subject to five (5) NSPS regulations and three (3) NESHAP regulations, the total complexity fee component for the NSPS regulations (CF111) would be \$1,000 and for the NESHAP regulations (CF112) the total would be \$1,000 under sections 8.1.a.3 and 8.1.a.4, respectively.

The DAQ disagrees with the assertion that renewal permits are less complex than initial permits. Renewal permits may or may not have the same permit requirements because federal regulations are ever evolving, and facilities are routinely changing their operations. The purpose of the renewal permits is to keep them evergreen with current state and federal regulations and facility operations. The comment appears to imply that West Virginia charges Title V permitting fees, like some of its neighboring states, in addition to the annual fees, which it does not. Furthermore, the Program fees are required, per 40 CFR §70.9, to be

sufficient to cover program costs (direct and indirect), including the development, administration, and enforcement of the program, not just the cost of reviewing permit applications and taking final action on those applications. More staff time is required to conduct inspections and review compliance reports for facilities that are more complex in nature.

COMMENT 9: Incentive for lower emissions. We understand the logic of moving to a fee structure based on the complexity of the Title V permit process; however, we think it just as reasonable to remain with the original justification for fees, which is lowering emissions. Businesses in West Virginia are rewarded, in the form of lower Program fees, for reducing emissions. That has in fact occurred, which is good for the environment, and something to be celebrated.

RESPONSE 9: To clarify, the original justification for fees was to be in compliance with the CAA, which requires a delegated air pollution control agency to demonstrate it meets certain minimum requirements, including that the owner or operator of Title V facilities obtain a permit and pay an annual fee sufficient to cover all reasonable (direct and indirect) costs required to develop and administer Program requirements. 40 CFR Part 70 requires that costs include, but not limited to, the following activities as they relate to the Program:

- Preparing applicable regulations or guidance for permitting or enforcement
- Reviewing and acting on permits (including revisions or renewals)
- General administrative costs of running the permit program (including compliance certification)
- Implementing and enforcing the terms of any Title V permit
- Adequate resources to determine which sources are subject to the program
- Emissions and ambient monitoring
- Modeling, analyses, or demonstrations
- Preparing inventories and tracking emissions
- Providing direct and indirect support to sources under the Small Business Assistance Program to determine and meet their obligations

The DAQ activities corresponding with the above list developed from 40 CFR § 70.9 include Planning, Title V Permitting, Compliance & Enforcement, Monitoring, Modeling, Emissions Inventory, and Small Business Assistance. The DAQ Small Business Assistance program helps small businesses understand their applicable air regulatory requirements, prepares their permit applications, and provides guidance on complying with their permit. This assistance program is free of charge and is a cost avoidance for these businesses in lieu of hiring an environmental consultant.

The DAQ agrees West Virginia businesses should continue to be incentivized to reduce emissions in the form of lower Program fees which is why there remains an emissions fee (EF) component. Facilities with lower emissions will have a smaller Program fee than similar facilities with the same base fee and complexity fee.

Complexity concerns were addressed in the response to Comment 8.

COMMENT 10: Section 8.3.b. The Secretary should not have unfettered discretion to make adjustments to emissions calculations. Section 8.3.b should be amended by striking discretionary language as reflected below, leaving the DAQ free to correct errors, but not make whatever change is desired:

8.3.b. Emissions submitted by a source are subject to review by the Secretary. The Secretary shall make or shall require the source to make ~~such adjustments or~~ corrections to the

emissions calculations ~~as the Secretary deems necessary.~~

RESPONSE 10: The DAQ concurs that only corrections to the actual emissions should be made by the Secretary and has reworded 8.3.b as indicated below. Because 8.3 addresses actual emissions and not emissions calculations, the suggested wording was not used verbatim.

8.3.b. Emissions submitted by a source are subject to review by the Secretary. The Secretary shall make or shall require the source to make ~~such adjustments or~~ corrections to the emissions ~~as the Secretary deems necessary.~~

COMMENT 11: The fund has grown. If the reduced emissions had put the Program funding in jeopardy, we would agree that some change would be needed. But to the best of our ability to understand the data we have been given by the DAQ; the Title V fund has continued to grow while emissions have shrunk. That indicates to us that the DAQ is pulling in more fee income than it is paying out, which calls into question the need for any revision to the fee structure. The system is not broken, so we urge no fixes to it.

RESPONSE 11: As mentioned elsewhere in this response document, the DAQ is not requesting an increase in funding, it is requesting the fee to be restructured to fund the Program now and into the future.

Expenses have decreased significantly in the past five (5) fiscal years primarily because of lower salary expenditures due to unfilled DAQ vacancies, with less staff supporting the Program. It is imperative that the DAQ be able to attract and retain qualified applicants to fill these positions to continue providing the same level of service that stakeholders expect. Additionally, expenses were lower during the work from home situation and reduced travel during the COVID-19 pandemic during the last two (2) fiscal years. The DAQ does not expect this trend to continue.

Revenues have decreased in the past five (5) years due to decreasing emissions. This trend is expected to continue.

The revised fee structure will self-correct because it is calculated based on the past 3-year average of actual expenses; therefore, it is designed to be sustainable into the future without growing and collecting more than needed to support the direct and indirect costs of the Program.

The need to revise the fee structure is addressed in other responses.

COMMENT 12: Additional revenue streams. DAQ fails to consider additional revenue streams that support the Title V Program and make fee restructuring unnecessary.

RESPONSE 12: To reiterate, the revised fee structure is not a request for additional fees. The additional revenue streams referred to in the comment appear to be EPA grants and enforcement penalties. The DAQ does not receive any EPA grants to cover the Title V Program, 40 CFR§ 70.9 requires that the Title V sources pay sufficient annual fees to cover program costs. The DAQ did consider the use of enforcement penalty fees before proposing the revised fee structure; however, for the reasons provided below, they were not included in the proposed revised fee structure calculation.

The DAQ works with facilities found to be out of compliance with the Program and typically provides the facility the opportunity to come into compliance with the Program, because the goal is for all facilities to be in compliance with air quality rules and regulations. This may be accomplished by bringing to the facility's attention what deficiency(ies) needs (need to be) corrected and may require a revision to the air

quality permit, or it may be accomplished with assistance from the DAQ's Small Business Assistance Program. Enforcement does however become necessary occasionally and then penalty fees are assessed against the source, which avoids EPA oversight or intervention.

Although the DAQ is philosophically opposed to relying on penalty income to fund the Program, it consulted with EPA based on concerns raised by the regulated community. The EPA was very clear that while the DAQ may bridge a funding gap with Title V penalty money, it cannot rely on penalty money to fund the Program. These moneys can also be used to provide additional funding to the Program's investments, which would increase the investment income used to support the Title Program as discussed in previous comments.

COMMENT 13: The Title V fund is sustainable. The funds in the Title V account and the potential for investment income are more than sufficient to sustain the Title V program for years to come. While we realize that investment only recently became an option for the DAQ, what estimates of future investment income have been made? Are the available funds and investment income considered in DAQ's determination of Title V program revenue?

RESPONSE 13: The DAQ respectfully disagrees that the current Title V funding is sustainable for reasons previously addressed in this response to comment document. The investment income is addressed in the response to Comment 5. The fund balance is addressed in the response to Comment 14. The DAQ understands the commenters' concerns and in response, has added the following for insertion as 8.4 (and correspondingly, renumbering the existing 8.4 to 8.5).

8.4. If the Air Pollution Control Fund 3336/9310 balance becomes higher than necessary to effectively operate the Title V program, the Director may waive the CPI riser used in the calculations under 8.1 for the coming fiscal year. Higher than necessary is defined as 150% of the TVE, or the three (3) fiscal year average of expenses.

COMMENT 14: Fund balance. Consideration of the funds available in the Title V account. We have been told there is approximately \$7,000,000 in available funds in the Title V account. The DAQ can also realize investment income on these funds. The funds in the Title V account and the potential for investment income are more than sufficient to sustain the Title V program for years to come. While we realize that investment only recently became an option for the DAQ, what estimates of future investment income have been made? Are the available funds and investment income considered in DAQ's determination of Title V program revenue?

RESPONSE 14: The DAQ acknowledges that there is currently a balance in the Title V account; however, it does not want to wait until there is an urgent funding crisis before it acts. The revised fee structure does not represent an increase to Program funding.

The investment income is addressed in the response to Comment 5. See also the response to Comment 11.

COMMENT 15: EPA Title V program review. We have seen the EPA Title V program review, which mentions concerns about the state's Title V funding. It's not clear what the EPA considered when it made that observation, or exactly what it meant. EPA referred to the prospect of declining revenues in the future, without mentioning any of the countervailing arguments we have provided here, and incredibly did not address the huge, and growing, Title V trust account. A huge surplus that continues to increase would seem to be the most powerful argument against a fee increase or fee revision.

RESPONSE 15: The EPA identified the current emissions only fee structure in three consecutive Program evaluations. The DAQ cannot ignore the results of EPA's evaluations of its program, especially combined with the Office of Inspector General also highlighting the nationwide funding of Title V programs, particularly those fees based solely on emissions.

COMMENT 16: Summary. The Program is well funded, and mechanisms are already in place to sustain the Program. The reserved funds for the Program, investment returns, and current Program fees provide more than sufficient funding for the Program and make the proposed fee restructuring unnecessary and unreasonable. Therefore, the WVMA opposes the rule changes proposed by the DAQ.

RESPONSE 16: No additional response is required beyond those already provided within this response to comment document.

COMMENT 17: GO WV and WVMA request that DAQ revise the proposed rule in accordance with the comments provided.

RESPONSE 17: In consideration of the comments provided by GO WV and WVMA, the DAQ revised sections 8.1.a.6 and 8.1.a.6.C describing the CPI riser, 8.3.b addressing errors in actual emissions reported, and 8.4 providing conditions when the Director may waive the CPI riser.

Commenter 4: James Kotcon, Conservation Chair, WV Chapter of Sierra Club

COMMENT 18: Section. 2.24 the definition for a hazardous air pollutant was redefined to match that of the federal rule and resulting in the deletion of Table 45-30A. I support this change because having separate lists of what is a hazardous air pollutant leads to confusion, duplication, and it's difficult to keep up with both of those. It will be simpler for the public and for the agency, if we simply refer to that list, as you have done.

RESPONSE 18: Thank you for your comment, a response is not necessary.

COMMENT 19: Under section 2.26.a.1 (definition of a major source under § 112 of the CAA), there is certainly no need for the sentence striking the reference to Table 45-30A if that table is deleted. I would also recommend striking the next sentence: *Emissions from any oil or gas, exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control* etc. That loophole allows pipelines and their associated compressor stations to functionally be equivalent to a major source but not have to do the major source reviews. That provides a real benefit to those oil and gas pipeline facilities in avoiding that kind of review, but it leaves the public at risk of very significant air pollutants. I reviewed several gas pipeline applications where every single compressor station is just below the limit for a major source. You know, instead of a hundred percent of a major source, it's 95% or 98% or 97% and there's one after another of these along, a major pipeline. The industry is designing their compressors and their associated facilities to circumvent the requirement for a major source review. There are several rule changes that are needed, but certainly, this is one of those. I recommend striking that last sentence that any stationary source or group of stationary sources located within a contiguous area and under common control should be considered a major source.

RESPONSE 19: To avoid confusion referencing Table 45-30A which is being struck, the DAQ for consistency and clarification, is removing the reference under §45-30-2.26.a.1, as originally proposed.

The definition of a major source under section 112 of the CAA provided in §45-30-2.26.a.1 is the same definition provided under 40 CFR 70.2; therefore, the DAQ will not be revising the definition as requested by the commenter.

COMMENT 20: The second recommended change, then is in 2.26.b.22 where they list petroleum storage and transfer units with a total storage capacity, exceeding 300,000 barrels would be considered major sources and should consider fugitive emissions. I think a similar exemption or definition using that general capacity would be appropriate such that fugitive emissions from gas facilities would also need to be considered. So, I would recommend adding that provision as a new subsection.

RESPONSE 20: The list of stationary sources where fugitive emissions are considered in determining whether it is a major stationary source under §45-30-2.26.b is the same definition provided under 40 CFR 70.2; therefore, the DAQ will not be revising the definition as requested by the commenter.

COMMENT 21: With regard to section 6.8.a.3.A. 4 and 5, there are a number of deletions there that deal with the public comment. The provision that was added, gives the secretary a little bit too much discretion to define what is generally accepted methods for who is included and not included in a public mailing list and it gives the secretary a little bit too much discretion to delete the name of people who fail to respond in an adequate period of time. While I do recognize the need to update the mailing list, I would strongly encourage that there be explicit, definitions that would assure the public that they would get this public notice and that this would not be required.

RESPONSE 21: Section 6.8.a.3.A.4 was updated to match the federal counterpart language in 40 CFR § 70.7(h) and consolidated 6.8.a.3.A.4 and 6.8.a.3.A.5. The language being struck was more prescriptive than the “generally accepted methods” used in the federal counterpart, reflecting those methods may evolve over time as communication methods evolve. The ability for the public to sign-up for the DEPLISTSERV, for instance, meets this requirement. The public may subscribe or unsubscribe to the DEP LISTSERV at any time.

COMMENT 22: Three other suggestions. In section 7.3.b, the final sentence says that *USEPA must provide a permit applicant a copy of the objection*. I recommend that that sentence be deleted. I don't think a state agency can mandate a requirement of a federal agency.

In section 7.4.a, I would like to define what are the unusual circumstances that would preclude or allow the EPA to modify a permit or the secretary to issue that permit? I think that some of those provisions especially the last sentence in 7.4.a seems to be in contradiction.

The last sentence in 7.4.a, *the permittee will not be in violation of the requirement to submit a timely and complete application*, that could be deleted from that section.

RESPONSE 22: The DAQ agrees that a state agency cannot mandate a requirement of a federal agency, and the last sentence under 7.3.b, *U.S. EPA must provide the permit applicant a copy of the objection*, that was underlined for addition in the proposed rule has been removed from 7.3.b.

Section 7.4.a was added because of a revision to the federal counterpart language in 40 CFR § 70.8(d) (Public petitions to the Administrator), specifically the last two sentences. The federal counterpart reference is copied in its entirety below with emphasis added to the new text under § 45-30-7.4.a:

Public petitions to the Administrator. The program shall provide that, if the Administrator does not object in writing under paragraph (c) of this section, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. The petitioner shall provide a copy of such petition to the permitting authority and the applicant. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in § 70.7(h) of this part, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the permitting authority shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. *If the permitting authority has issued a permit prior to receipt of an EPA objection under this paragraph, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in § 70.7(g)(4) or (g)(5)(i) and (ii) of this part except in unusual circumstances, and the permitting authority may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.*

The intention of the last sentence is to not hold the permittee in violation for submitting a timely and complete permit application if a public petition is made to the U.S. EPA.

COMMENT 23: Section 6.8.a.4 A.5 the requirement is added to add contact info for the applicant. It does not however assure that that applicant or a person with information would respond. I've had some issues with that in the past and specifically with a permit earlier this year when we attempted to contact the applicant and that information went into a black hole and I never did get anything back from that company.

In section, 6.8.a.4.A.3, there is a mandate for a description of the business to be operated. There was an instance where the business description was overly vague and did not communicate to the public what they were involved with and so if there is a way to beef up those two sections, I would very much appreciate it because it's led to a lot of controversy up here in Morgantown.

RESPONSE 23: Section 6.8.a.4 A.5 is in reference to providing the public with the contact information for the DAQ staff person (or website) to obtain further information, such as the draft permit, fact sheet, or application. This has been clarified as follows:

6.8.a.4.A.5. Name, address, and telephone number or an email or website address of a person the Secretary from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, fact sheet, and the application;

The intention of the requirement in section, 6.8.a.4.A.3, is to provide a brief description in the public notice; however, the corresponding fact sheet and application should have a more detailed explanation of the change that is made publicly available.



Jennings, Laura M <laura.m.jennings@wv.gov>

Proposed DAQ 2023 Rule Comments

1 message

Gregory J Wooten <gjwooten@aep.com>

Tue, Jul 5, 2022 at 10:19 AM

To: "Jennings, Laura M" <Laura.M.Jennings@wv.gov>

Cc: Scott Weaver <saweaver@aep.com>, Kathy M Milenkovski <kmilenkovski@aep.com>, Karla Drummond <kadrummond@aep.com>

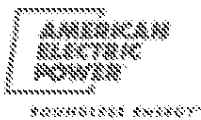
Dear Ms. Jennings,

On behalf of American Electric Power, the following comments are offered in support of the WVDEP DAQ 2023 proposed regulatory revisions. The operating companies of American Electric Power have paid significant annual Title V operating fees under 45 CSR 30, as well as significant permitting fees under 45 CSR 22 for several decades. AEP appreciates the exceptional stewardship that WVDEP has shown with these funds, operating a well-coordinated Title V permitting program, implemented with a frugal mindset. AEP has and will always support efforts by WVDEP to maintain a sufficiently funded program that allows USEPA to delegate administration of the permitting program by the WVDEP. We understand the current efforts by WVDEP to adjust the fee program so as to maintain sustainable funding of the program, even as the mix of permitted sources changes over time. The proposed regulatory changes are not unlike fee programs implemented by environmental agencies in other states. AEP supports the proposed changes to the fee structures under 45 CSR 22 and 45 CSR 30.

Thank you,

Stay safe.

Greg Wooten

**GREGORY J WOOTEN | ENVIRONMENTAL ENGINEER STAFF**

GJWOOTEN@AEP.COM | A:8.200.1262

1 RIVERSIDE PLAZA, COLUMBUS, OH 43215



Jennings, Laura M <laura.m.jennings@wv.gov>

Proposed DAQ 2023 Rule Comments

Joseph C. Unger <junger@spilmanlaw.com>

Tue, Jul 5, 2022 at 1:58 PM

To: "Laura.M.Jennings@wv.gov" <Laura.M.Jennings@wv.gov>

Cc: "Mark D. Clark" <MClark@spilmanlaw.com>, "David L. Yaussy" <DYaussy@spilmanlaw.com>, Charlie Burd <cburd@gowv.com>

Hello,

Please find attached comments by the Gas and Oil Association of West Virginia regarding proposed DAQ 2023 Legislative Rules 45 CSR 22 and 45 CSR 30. Please let me know if you have any questions or difficulties opening the documents.

Thanks,

Joseph C. Unger

Spilman Thomas & Battle, PLLC

Associate

O 304.340.3850

M 740.606.8440

junger@spilmanlaw.com

2 attachments

 **2022-07-05 GO WV Comments on Proposed Changes to 45 CSR 22.PDF**
71K

 **2022-07-05 GO WV Comments on Proposed Changes to 45 CSR 30.PDF**
72K



**Comments on Proposed Changes to
45 CSR 30
Requirements for Operating Permits
July 5, 2022**

To: Sandra Adkins
Division of Air Quality
WV Department of Environmental Protection
601 57th St. S.E.
Charleston, WV 25304

Via E-mail: Laura.M.Jennings@wv.gov

The Gas and Oil Association of WV, Inc. ("GO WV") appreciates the opportunity to submit these comments concerning the proposed changes to Legislative Rule 45 CSR 30, Requirements for Operating Permits. The West Virginia Department of Environmental Protection ("DEP") published a notice on June 1, 2022, soliciting comments on proposed changes to the Air Quality Management Fee Program rule and requested that comments be submitted by July 5, 2022 ("Proposed Rule").

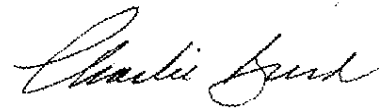
GO WV provides these comments in support of and endorses the comments submitted by the West Virginia Manufacturers Association ("WVMA") on July 5, 2022. In the Proposed Rule, the Division of Air Quality ("DAQ") claims that fees should be restructured and a Consumer Price Index (CPI) increase should be implemented to sustainably cover the costs of the Title V program. In support of the Proposed Rule, the DAQ cites the possible closure of one or more coal-fired power stations, which pay a large portion of Title V fees, and an assertion that higher program fees should be paid by those with more complex permits. However, DAQ fails to consider additional revenue streams that support the Title V Program and make fee restructuring unnecessary.

As pointed out in the comments by the WVMA, power form coal operations remains attractive given the high price of natural gas and the closure of coal-fired plants will not be immediate. There is almost \$7,000,000 in the Title V fund that can be drawn from in the event of closure of coal-fired plants. DAQ has the ability to invest excess income from the fund, which will support the longevity of available funding. GO WV also agrees with the WVMA that businesses in West Virginia should be rewarded with lower fees for reducing emissions.

The current fee structure has resulted in a large Title V fund that is sufficient to support the Title V program for years to come. While GO WV understands the DAQ's concerns in support of fee restructuring and the implementation of a CPI riser, the Title V program does not appear to be in jeopardy and restructuring is unnecessary. Therefore, GO WV opposes the fee restructuring and CPI riser in the Proposed Rule.

GO WV respectfully submits these comments and requests that DAQ revise the Proposed Rule accordingly.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Charlie Burd".

Charlie Burd
Executive Director
Gas and Oil Association of WV, Inc.
300 Summers Street, Suite 820
Charleston, WV 25301
(304) 344-9867



Jennings, Laura M <laura.m.jennings@wv.gov>

Proposed DAQ 2023 Rule

Joseph C. Unger <junger@spilmanlaw.com>

Tue, Jul 5, 2022 at 1:27 PM

To: "Laura.M.Jennings@wv.gov" <Laura.M.Jennings@wv.gov>

Cc: "David L. Yaussy" <DYaussy@spilmanlaw.com>, "rebecca@wvma.com" <rebecca@wvma.com>, "Keatley, Robert L." <robert.l.keatley@dupont.com>, "Mark D. Clark" <MClark@spilmanlaw.com>

Hello,

Please find attached comments by the West Virginia Manufacturers Association regarding proposed DAQ 2023 Legislative Rules 45 CSR 22 and 45 CSR 30. Please let me know if you have any questions or difficulties opening the documents.

Thanks,

Joseph C. Unger

Spilman Thomas & Battle, PLLC

Associate

O 304.340.3850

M 740.606.8440

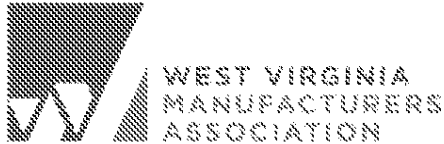
junger@spilmanlaw.com

2 attachments**2022-07-05 WVMA Comments Concerning Proposed Changes to 45 CSR 22.PDF**

68K

**2022-07-05 WVMA Comments Concerning Proposed Changes to 45 CSR 30.PDF**

69K



2001 Quarrier Street
Charleston, WV 25311
304-342-2123

www.wvma.com

COMMENTS CONCERNING PROPOSED CHANGES TO RULE 45 CSR 30 REQUIREMENTS FOR OPERATING PERMITS

July 5, 2022

To: Sandra Adkins
Division of Air Quality
WV Department of Environmental Protection
601 57th St. S.E.
Charleston, WV 25304

Via E-mail: Laura.M.Jennings@wv.gov

GENERAL COMMENTS

The West Virginia Manufacturers Association (“WVMA”) appreciates the opportunity to submit these comments concerning the proposed changes to Legislative Rule 45 CSR 30, Requirements for Operating Permits (the “Rule”). The West Virginia Department of Environmental Protection published a notice soliciting comments on the proposed changes on June 1, 2022 and requested that comments be submitted by July 5, 2022.

Almost two years ago, the WVMA was invited by the Division of Air Quality (“DAQ”) to participate in a workgroup which proposed, as part of its mission, an adjustment of Title V permitting fees in a similar fashion as the proposed Rule. An investigation into the basis for the adjustment revealed that DAQ had collected more fees than needed to run the Title V program (the “Program”), and it was not in any immediate danger of underfunding (there was approximately \$5,700,000 in the Title V fund at the time).

Rather than adjusting fees, it seemed that the best course of action would be to manage the money that the DAQ had in reserve. As a result, the WVMA joined the DAQ in advocating for giving it the authority to invest excess fees, on the theory that this would help keep fees lower over time. To that end, House Bill 3082 (“H.B. 3082”) was passed in the 2022 Regular Legislative Session and became effective on June 9, 2022. H.B. 3082 allows the DAQ to invest excess fees and prevents the Legislature from sweeping the excess fees into the General Revenue. The investment income, even assuming low and safe returns, is likely to be significant, and should be considered when evaluating the need for more funds.

We don't believe that anything has changed since passage of H.B. 3082 that would require re-visiting Title V fees. The proposed Rule changes are premised on the same beliefs that were discussed in 2020 regarding the sustainability of the Program: concerns about the imminent closure of one or more coal-fired power stations, which pay a large portion of Title V fees, and a belief that higher Program fees should be paid by those with more complex permits. Neither is a reason to change the Program fee structure.

It is likely that some coal-fired plants will be closed in the future. However, that may not be as soon as once thought. High natural gas prices, which are likely to remain high for some time due to demand from Europe and other places, make coal an attractive power option, surprising to those who wrote coal's obituary a few years ago. Renewables, while being implemented slowly in the PJM region, are not significant competition, and even if they were, baseload power is needed when weather-dependent energy sources do not have the inputs needed to operate. The need for coal plants is likely to continue in the future, and even if some closures occur due to economic or environmental reasons, coal-fired power is likely to continue for a number of years.

Even if coal-fired plants close in the future, they will not close all at once, and overnight. Regulated coal-fired plants will have to get permission from the Public Service Commission to close, and there will be regulatory proceedings before that occurs. This will allow time for adjustment of fees. While we acknowledge that can be a long process in light of the West Virginia rule-making process, there is almost \$7,000,000 in the Title V fund, and there will be investment income from the fund. That income could be used for years to cover the loss from one or more power stations, allowing plenty of time to adjust fees if that is ever necessary. In short, there does not appear to be an immediate threat to the sustainability of the Program.

As for moving to a fee structure based on the complexity of the Title V permit process, we understand the logic of such an approach. However, we think it just as reasonable to remain with the original justification for fees, which is lowering emissions. Businesses in West Virginia are rewarded, in the form of lower Program fees, for reducing emissions. That has in fact occurred, which is good for the environment, and something to be celebrated. In addition, a majority of the facilities considered complex have already obtained initial permits under the Program and have been issued subsequent renewals. These renewals are significantly less complex than initial permits.

If the reduced emissions had put the Program funding in jeopardy, we would agree that some change would be needed. But to the best of our ability to understand the data we have been given by the DAQ, the Title V fund has continued to grow while emissions have shrunk. That indicates to us that the DAQ is pulling in more fee income than it is paying out, which calls into question the need for any revision to the fee structure. The system is not broken, so we urge no fixes to it.

We have seen the EPA Title V program review, which mentions concerns about the state's Title V funding. It's not clear what the EPA considered when it made that observation, or exactly what it meant. EPA referred to the prospect of declining revenues in the future, without mentioning any of the countervailing arguments we have provided here, and incredibly did not address the huge, and growing, Title V trust account. A huge surplus that continues to increase would seem to be the most powerful argument against a fee increase or fee revision.

Ultimately, the Program is well funded and mechanisms are already in place to sustain the Program. The reserved funds for the Program, investment returns, and current Program fees provide more than sufficient funding for the Program and make the proposed fee restructuring unnecessary and unreasonable. Therefore, the WVMA opposes the rule changes proposed by the DAQ.

SPECIFIC COMMENTS

- 1. Consideration of the funds available in the Title V account.** We have been told there is approximately \$7,000,000 in available funds in the Title V account. The DAQ can also realize investment income on these funds. The funds in the Title V account and the potential for investment income are more than sufficient to sustain the Title V program for years to come. While we realize that investment only recently became an option for the DAQ, what estimates of future investment income have been made? Are the available funds and investment income considered in DAQ's determination of Title V program revenue?
- 2. Sections 8.1.a.3 and 8.1.a.4 Complexity Fees.** These sections state Complexity Fees are "independent of the number of standards to which the source is subject." Does this mean the source is subject to a \$1,000 fee for each standard that applies, or is the source subject to a single \$1,000 fee regardless of the number of standards that apply?
- 3. Calculation of CPI riser.** The CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers (CPI-U) published by the U.S. Bureau of Labor Statistics, as of the close of the 12 month period ending on August 31 of each calendar year. On June 1 of each year, the CPI is determined for the upcoming fiscal year - presumably meaning the fees on July 1 will be adjusted by the CPI calculated for the previous year ending on August 31. Is this correct? For example, will the CPI used to set rates on July 1, 2025 be the CPI calculated for the 12 consecutive months that end with August 31, 2024?

We note that Section 8.1.a.6 refers to the CPI for the "most recent calendar year", which suggests that it is figured from January through December, not September through August. We would appreciate clarification on how the CPI is calculated for purposes of this section.

- 4. Section 8.3.b.** The Secretary should not have unfettered discretion to make adjustments to emissions calculations. Section 8.3.b should be amended by striking discretionary language as reflected below, leaving the DAQ free to correct errors, but not make whatever change is desired:

8.3.b. Emissions submitted by a source are subject to review by the Secretary. The Secretary shall make or shall require the source to make ~~such adjustments or~~ corrections to the emissions calculations. ~~as the Secretary deems necessary.~~

The WVMA respectfully submits these comments and requests that DAQ revise the proposed Rule accordingly.

Respectfully submitted,



Rebecca McPhail, President
WV Manufacturers Association

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

PUBLIC HEARING
PROPOSED 2023 LEGISLATIVE RULES

July 5, 2022 6:00 P.M.
Held Remotely via Google Meet

In Attendance:

Stephanie Hammonds
Laura Jennings
Terry Fletcher
Sandra Adkins

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PROCEEDINGS

MR. FLETCHER: Good evening, everyone. Thank you for participating in the public hearings this evening. My name is Terry Fletcher. I am the Chief Communications Officer with the West Virginia Department of Environmental Protection.

I want to welcome everyone to the public hearings for the Division of Air Quality's Five Proposed Rules for the upcoming 2023 West Virginia legislative session. There will be a separate public hearing for each of the five DAQ proposed rules.

The hearings will be held sequentially and will commence immediately following the conclusion of the hearing for the previous proposed rule.

With me this evening from the Division of Air Quality are Stephanie Hammonds, an Environmental Resource Specialist with the Compliance and Enforcement Section; and Laura Jennings, a Technical Analyst with the Planning Section. Court reporter Kristina Guthrie is also participating this evening.

The purpose of each of the public hearings is to receive public comments on the record regarding each of the proposed DAQ rules. Each public hearing is being recorded and a court reporter is in attendance to meet

1 Clean Air Act requirements and to consider comments in
2 the rulemaking process.

3 Because the purpose of the public hearing is
4 to listen to your comments, it is not a forum to engage
5 the DAQ in open discussion or debate about the proposed
6 rules. Unlike a public meeting, the DAQ will not be
7 responding to questions during the hearing. All
8 comments received will be addressed in a response to
9 comment document that will be part of the official rule
10 making record made available on the Secretary of State's
11 website.

12 All participants have been muted upon entry
13 into the meeting to ensure we are not interrupting
14 others or talking over one another. Participants were
15 asked to pre-register to speak and will be called upon
16 by Stephanie Hammonds when it is their turn to provide
17 their comments.

18 When called upon, you will be unmuted and told
19 to go ahead with your comments. Please clearly state
20 your name and indicate if you are representing any
21 groups or organizations and we ask that you limit your
22 comments to five minutes.

23 Please specify when your comment is finished
24 so we can re-mute you and if you did not pre-register as

1 a speaker but would like to speak, please use the raise
2 hand feature in Google Meets.

3 As a reminder, video demonstrations and screen
4 sharing by witnesses is not permitted. The chat feature
5 in Google Meets will be monitored during the public
6 hearing to assist with any technical issues.

7 We ask that everyone be respectful and
8 considerate of each other by refraining from using foul
9 language and from name calling, interrupting others
10 while they are speaking, and we ask that everyone keep
11 their comments on the topic of the proposed rules so
12 that our time together is used efficiently.

13 All that being said, I am now turning this
14 over to Laura Jennings with the Division of Air Quality.
15 Laura?

16 MS. JENNINGS: Thanks, Terry. Is the court
17 reporter ready?

18 COURT REPORTER: Yes, ma'am. Thank you.

19 45CSR16

20 Standards of Performance for New Stationary Sources

21 Also In Attendance: Joseph Unger, James Kotcon

22 MS. JENNINGS: Okay. Thank you. Okay. Our
23 first hearing this evening is for 45CSR16 (Standards of
24 Performance for New Stationary Sources). The virtual

1 public hearing for the proposed legislative Rule 45CSR16
2 - Standards of Performance for New Stationary Sources
3 will now come to order on this 5th day of July, 2022.

4 Oral comments and testimony will be accepted
5 until the close of this hearing and will be made part of
6 the rulemaking record. Any questions regarding
7 revisions to the rules should be included with your
8 comments, and any such question will be addressed as
9 part of the response to comments in the rulemaking
10 record.

11 The purpose of this public hearing is to
12 accept comments on proposed revisions to Rule 45CSR16 -
13 Standards of Performance for New Stationary Sources.
14 This rule establishes and adopts national standards of
15 performance for new stationary sources and other
16 regulatory requirements promulgated by the United States
17 Environmental Protection Agency pursuant to Section
18 111(b) of the Federal Clean Air Act.

19 This rule codifies general procedures and
20 criteria to implement standards of performance for new
21 stationary sources set forth in 40CFR Part 60. The rule
22 also adopts associated appendices, reference methods,
23 performance specifications and other test methods which
24 are appended to such standards.

1 Revisions to this rule are necessary to
2 maintain consistency with current federal regulations,
3 and for the State to fulfill its responsibilities under
4 the Clean Air Act and enable the West Virginia
5 Department of Environmental Protection to continue to be
6 the primary enforcement authority for such national
7 standards promulgated by the U.S. EPA.

8 Revisions to the rule include the annual
9 incorporation by reference of the Federal regulations as
10 of June 1, 2022. Upon authorization and promulgation of
11 45CSR16, the rule will be submitted to the U.S. EPA to
12 fulfill delegation obligations in accordance with the
13 Federal Clean Air Act.

14 The floor is now open for comments. As a
15 reminder, please keep your comments on topic and limit
16 them to five minutes.

17 Stephanie, has anyone pre-registered to
18 provide comments on proposed rule 45CSR16? If so,
19 please unmute their line & call on them now.

20 MS. HAMMONDS: Thanks, Laura and good evening,
21 everyone. We had one person who registered to provided
22 comments and that's Jim Kotcon. Mr. Kotcon, you can go
23 ahead with your comments, please.

24 MR. KOTCON: My name is Jim Kotcon. I serve

1 as the Conversation Chair for the West Virginia Chapter
2 of Sierra Club. I did in fact request an opportunity to
3 speak to each of the rules because while I normally
4 would be submitted written comments, I have not had a
5 chance to do that yet and that period has elapsed.

6 At this point, my only comments on Reg 16 is
7 that we certainly support any upgrades and approve the
8 rule or support the rule as submitted and hope that it
9 is adopted. Thank you.

10 MS. HAMMONDS: Thank you, Mr. Kotcon. Now, if
11 anyone did not pre-register to comment but would like to
12 do so now, please use the raise your hand feature.

13 Okay, Laura. I don't see any hands raised.

14 MS. JENNINGS: Okay, thanks, Stephanie.

15 MS. HAMMONDS: Thank you.

16 MS. JENNINGS: There being nothing further,
17 this public hearing for proposed rule 45CSR16 is
18 concluded. The public hearing for proposed rule 45CSR22
19 will begin momentarily.

20 Kristina, are you ready to proceed?

21 Okay.

22 COURT REPORTER: Yes, ma'am. Thank you.

23 MS. JENNINGS: Thank you. Okay.

24 45CSR22

1 Air Quality Management Fee Program

2 Also In Attendance: Joseph Unger, James Kotcon

3 MS. JENNINGS: The virtual public hearing for
4 proposed Legislative Rule 45CSR22 (Air Quality
5 Management Fee Program) will now come to order on this
6 5th day of July, 2022.

7 Oral comments and testimony will be accepted
8 until the close of this hearing and will be made part of
9 the rulemaking record. Any questions regarding
10 revisions to the rule should be included with your
11 comments, and any such question will be addressed as
12 part of the response to comments in the rulemaking
13 record.

14 The purpose of this public hearing is to
15 accept comments on proposed revisions to Rule 45CSR22 -
16 Air Quality Management Fee Program. This rule
17 establishes a program to collect fees for Certificates
18 to Operate (CTO) and for permits to construct, modify or
19 relocate sources of statutory air pollution in
20 accordance with 45CSR13, 14 and 19.

21 All sources subject to air emission rules
22 promulgated under Title 45, including air permit or
23 registration requirements, are subject to this rule.
24 The fees collected under this rule fund the Division of

1 Air Quality's non-Title V program budget to maintain an
2 effective air quality management program.

3 Revisions to the rule generally include
4 updating the rule and increasing the fees since the rule
5 was last revised over 30 years ago. Upon authorization
6 and promulgation, there is no further action required
7 for the state-only Rule 45CSR22.

8 The floor is now open for comments. As a
9 reminder, please keep your comments on topic and limit
10 them to five minutes.

11 Stephanie, has anyone pre-registered to
12 provide comments on proposed rule 45CSR22? If so,
13 please unmute their line and call on them now.

14 MS. HAMMONDS: Thanks, Laura. We had one
15 person register to comment, Mr. Kotcon. You can go
16 ahead with your comments, please.

17 MR. KOTCON: Thank you. I do have a few
18 comments on 45CSR22. With respect to Section 1.1, one
19 of the amendments that's being proposed is to add the
20 word "statutory" to air pollution. The definition of
21 statutory in Section 2.17 refers to Reg 13 where it has
22 a very broad and inclusive definition. I think this is
23 an important addition and very much support adding that
24 to this section.

1 Second, you define in Section 1.5 the Sunset
2 Provision and state that it does not apply. While that
3 may seem to me at least as a little bit redundant, it is
4 clear that that Sunset Provision should not apply to
5 this rule. So long ago I was given the advice if given
6 the choice between confusion and redundancy, pick
7 redundancy. This seems a little redundant but it's fine
8 with me.

9 On a broader topic, Section 3.3 identifies fee
10 increases, especially those in Table 45CSR22(a) and
11 22(b). We would certainly support those fee increases
12 with the proviso that fees on these permits should fully
13 reimburse the agency for the actual cost of reviewing
14 those permit applications.

15 In particular, it is not clear that the
16 proposed fee for the 111(b) requirements would be
17 adequate to meet and fully reimburse the agency for the
18 cost of those and I would encourage you to review that
19 and be able to fully justify that.

20 Finally, with respect to Section 4.3(e), this
21 establishes a Consumer Price Index riser. I think that
22 that riser is a reasonable and prudent approach. It is
23 certainly a useful and necessary business practice for
24 any other business that I've run across and it would

1 help DEP avoid the need to revise these permit fees to
2 meet up with the cost of inflation.

3 As I think everyone is well aware, inflation
4 has been rising dramatically for the last year or two
5 and that has left the agency in a difficult position and
6 so we would fully support both that fee increase and the
7 Consumer Price Index riser.

8 My only recommendation is that as that riser
9 adjusts the fees on an annual basis, it might be helpful
10 if DEP were to publish annually on their web page or
11 elsewhere a table listing the current fees with that
12 consumer price index riser.

13 Having the actual number would avoid any
14 confusion on the part of the regulated community as to
15 what the fee should be and it wouldn't necessarily have
16 to be a rule modification each year but it would be very
17 helpful to the regulated community.

18 So with that and those minor modifications, I
19 certainly would support the rule. Thank you.

20 MS. HAMMONDS: Thank you, Mr. Kotcon.

21 If anyone did not pre-register to comment but
22 would like to do so now, please use the raise hand
23 feature.

24 Okay, Laura, I don't see anyone.

1 MS. JENNINGS: Okay. Thank you, Stephanie.
2 There being nothing further, this public hearing for
3 proposed Rule 45CSR22 is concluded. The public hearing
4 for proposed Rule 45CSR30 will begin momentarily.

5 Is the court reporter ready to proceed to the
6 next hearing?

7 COURT REPORTER: I am. Thank you.

8 45CSR30

9 Requirements for Operating Permits

10 Also In Attendance: James Kotcon, Joseph Unger, Robert
11 Keatly

12 MS. JENNINGS: Okay. Thank you. The virtual
13 public hearing for the proposed legislative Rule 45CSR30
14 (Requirements for Operating Permits) will now come to
15 order on this 5th day of July, 2022.

16 Oral comments and testimony will be accepted
17 until the close of this hearing and will be made part of
18 the rulemaking record. Any questions regarding
19 revisions to the rules should be included with your
20 comments, and any such question will be addressed as
21 part of the response to comments in the rulemaking
22 record.

23 The purpose of this public hearing is to
24 accept comments on proposed revisions to Rule 45CSR30 -
Requirements for Operating Permits. This rule provides

1 for the establishment of a comprehensive air quality
2 permitting system consistent with the requirements of
3 Title V of the Clean Air Act and the state operating
4 permit program requirements of 40CFR Part 70.

5 The rule establishes: The obligation for a
6 source to obtain a Title V operating permit;
7 applicability for other sources, including exemptions
8 and deferred sources; permit application, content,
9 issuance, renewal, reopening, revision, review,
10 suspension, modification, revocation and reissuance
11 requirements; and Title V fee requirements.

12 All fees collected pursuant to this rule shall
13 be expended solely to cover all reasonable direct and
14 indirect costs required to administer the Title V
15 operating permit program and accounted for in accordance
16 with this rule.

17 There are three main purposes for revising the
18 rule. First, the fee structure is being revised as
19 recommended by the U.S. EPA. Federal regulations
20 require that fees from Title V sources are sufficient to
21 sustainably cover the Title V program costs.

22 Currently, the fee structure is based solely
23 on the amount of pollutants emitted by a source. The
24 proposed fee is being re-structured for diversification

1 and sustainability. The proposed fee will continue to
2 include an emissions component; however, it will also
3 include a base fee component and a complexity fee
4 component.

5 Second, the rule is being revised to comport
6 with federal counterpart regulations.

7 Lastly, obsolete transitional language is
8 being removed and clarifications are being made.

9 Upon authorization and promulgation of
10 45CSR30, the rule will be submitted to the U.S. EPA to
11 fulfill obligations under the Federal Clean Air Act.

12 The floor is now open for comments. As a
13 reminder, please keep your comments on topic and limit
14 them to five minutes. Stephanie, has anyone
15 pre-registered to provide comments on proposed Rule
16 45CSR30? If so, please unmute their line and call on
17 them now.

18 MS. HAMMONDS: Thanks, Laura. We had one
19 person register, Mr. Kotcon. If you would like to go
20 ahead with your comments now.

21 MR. KOTCON: Thank you. Let me start off by
22 saying that my comments on this rule are quite extensive
23 and then I'll be very brief on the remaining rules. I
24 do hope there will be a little bit of flexibility in

1 that time limit.

2 With regard to Section 2.24, the definition
3 for a "hazardous air pollutant" was redefined to match
4 that of the Federal rule and resulting in the deletion
5 of Table 45CSR38. I very much support that change.

6 Having separate lists of what is a hazardous
7 air pollutant leads to confusion, duplication, and it's
8 difficult to keep up with both of those. It will be
9 simpler for the public and for the agency if we simply
10 refer to that list as you have done here, so I support
11 that change.

12 In Section 2.26(a), under Section 2.26(a)(1),
13 there is certainly no need for the sentence striking the
14 reference to Table 4530(a) if that table is deleted. I
15 would also recommend striking the next sentence,
16 Emissions from any oil or gas exploration or a
17 production well and associated equipment and emissions
18 from any pipeline compressor or pump stations shall not
19 be aggregated with the emissions from other similar
20 units, whether or not such units are in a contiguous
21 area under common control, et cetera.

22 That particular new pool allows pipelines and
23 their associated compressor stations to functionally be
24 equivalent to a major source but not have to do the

1 major source reviews. That provides a real benefit to
2 those oil and gas pipeline facilities in avoiding that
3 kind of review but it leaves the public at risk of very
4 significant air pollutants.

5 I reviewed a number of gas pipeline
6 applications where every single compressor station is
7 just below the limit for a major source. You know,
8 instead of 100 percent of a major source, it's 95
9 percent or 98 percent or 97 percent, and there's one
10 after another of these along a major pipeline.

11 It is clear that the industry is designing
12 their compressors and their associated facilities to
13 circumvent the requirement for a major source review,
14 and there are several rule changes that are needed but
15 certainly this is one of those and I recommend striking
16 that last sentence that any stationary source or group
17 of stationary sources located within a contiguous area
18 and under common control should be considered a major
19 source.

20 The second change then is in 2.26 (b) under
21 Subsection 22 where they list petroleum storage and
22 transfer units with a total storage capacity exceeding
23 300,000 barrels would be considered major sources and
24 should consider fugitive remissions.

1 I think a similar exemption or definition
2 using that general capacity would be appropriate such
3 that fugitive remissions from gas facilities would also
4 need to be considered. So I would recommend adding that
5 provision, a new subsection there.

6 With regard to Section 6.(a) 3.(a), 4 and 5,
7 there are a number of deletions there that deal with the
8 public comment. I don't believe that the provision that
9 was added, it gives the secretary a little bit too much
10 discretion to define what is generally accepted methods
11 for who is included and not included in a public mailing
12 list.

13 And it gives the secretary a little bit too
14 much discretion to delete the name of people who failed
15 to respond in an adequate period of time. While I do
16 recognize the need to update the mailing list, I would
17 strongly encourage that there be explicit definitions
18 that would assure the public that they would get this
19 public notice and that this would not be required.

20 Three other suggestions, in Section 7.3, there
21 is a 7.3(b), the final sentence says that a CPA must
22 provide a permit applicant a copy of the objection. I
23 recommend that that sentence be deleted. I don't think
24 a state agency can mandate a requirement of a federal

1 agency.

2 Likewise, in Section 7.4(a), I would like to
3 define what are the unusual circumstances that would
4 preclude or allow the EPA to modify a permit or the
5 secretary to issue that permit. I think that some of
6 those provisions, especially the last section or
7 sentence in 7.4(a) seems to be contradictory and that
8 last sentence, the permittee will not be in violation of
9 any requirements to submit a final and complete
10 application, that could be deleted from that section.

11 I appreciate the change to give these comments
12 and I will be happy to address anything that is unclear
13 in these comments if you have any questions. Thank you.

14 (Following comments were added at the end but
15 placed under the appropriate section 45CSR30
16 by reporter.)

17 MR. FLETCHER: Mr. Kotcon, did you have
18 another comment to add?

19 MR. KOTCON: Yes, thank you. I apologize. I
20 missed a couple of comments on my review of 45CSR30 and
21 I will just mention those.

22 In Section 6.8(a) 4(a) 5, the requirement is
23 added to have contact info for the applicant. It does
24 not, however, assure that that applicant or information,

1 person with information would respond, and I've had some
2 issues with that in the past, specifically with a permit
3 earlier this year from Marion Energy Partners. When we
4 attempted to contact the applicant, you know, that
5 information went into a black hole and I never did get
6 anything back from that company.

7 In Section 6.8(a) 4(a) 3, there is a mandate
8 for a description of the business to be operated. In
9 that case, with Marion Energy Partners, their business
10 description is really overly vague and did not
11 communicate to the public what they were involved with,
12 and so if there is a way to beef up those two sections,
13 I would very much appreciate it because it's led to a
14 lot of controversy up here in Northern county.

15 That's all I have and again, I apologize for
16 not getting the item in the right place.

17 MS. HAMMONDS: Thank you, Mr. Kotcon. So we
18 are at the end of the registered commenters list. If
19 you did not pre-register to provide comment but would
20 like to do so, please use the raise hand option.

21 Okay, Laura, I do not see any hands raised.

22 MS. JENNINGS: Okay. Thank you, Stephanie.
23 There being nothing further, this public hearing for
24 proposed Rule 45CSR30 is concluded. The public hearing

1 for proposed Rule 45CSR34 will begin momentarily.

2 Is the court reporter ready to proceed to the
3 next hearing?

4 COURT REPORTER: Yes, ma'am. Thank you.

5 45CSR34

6 Emission Standards for Hazardous Air Pollutants

7 Also In attendance: James Kotcon, Joseph Unger, Robert
8 Keatly

9 MS. JENNINGS: Okay. Thank you. The virtual
10 public hearing for the proposed legislative Rule 45CSR34
11 (Emission Standards for Hazardous Air Pollutants) will
12 now come to order on this 5th day of July, 2022.

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

20 The purpose of this public hearing is to
21 accept comments on proposed revisions to Rule 45CSR34 -
22 Emission Standards for Hazardous Air Pollutants. This
23 rule incorporates and adopts national emission standards
24 for hazardous air pollutants and other regulatory

1 requirements promulgated by the United States
2 Environmental Protection Agency pursuant to the Federal
3 Clean Air Act.

4 Promulgation of this rule is necessary for the
5 State to fulfill its responsibilities under the Clean
6 Air Act and will enable the West Virginia Department of
7 Environmental Protection to continue to be the primary
8 enforcement authority for such national emission
9 standards promulgated by the U.S. EPA.

10 Revisions to the rule include the annual
11 incorporation by reference of National Emission
12 Standards for Hazardous Air Pollutants promulgated by
13 the U.S. EPA under 40CFR Parts 61 and 63 as of June 1,
14 2022.

15 Upon authorization and promulgation of
16 45CSR34, the rule will be submitted to the U.S. EPA to
17 fulfill delegation obligations in accordance with the
18 Federal Clean Air Act.

19 The floor is now open for comments. As a
20 reminder, please keep your comments on topic and limit
21 them to five minutes. Stephanie, has anyone
22 pre-registered to provide comments on proposed Rule
23 45CSR34? If so, please unmute their line & call on them
24 now.

1 MS. HAMMONDS: Thank you, Laura. We have one
2 person who registered, Mr. Kotcon.

3 MR. KOTCON: Thank you. I confess that I have
4 not reviewed every last line of the Federal counterpart
5 updates but subject to any advice I might later get from
6 National Sierra Club, we would support the ongoing
7 updates. We think it's a good routine to follow. Thank
8 you.

9 MS. HAMMONDS: Thank you, Mr. Kotcon. Is
10 there anyone who did not register to speak but would
11 like to do so now? Please use the raise hand feature.

12 Laura, I do not see any hands raised.

13 MS. JENNINGS: Okay. Thank you, Stephanie.
14 There being nothing further, this public hearing for
15 proposed Rule 45CSR34 is concluded. The public hearing
16 for proposed Rule 45CSR40 will begin momentarily.

17 Is the court reporter ready to proceed to the
18 next hearing?

19 COURT REPORTER: Yes, ma'am.

20 45CSR40

21 Control of Ozone Season Nitrogen Oxides Emissions

22 Also in attendance: James Kotcon, Joseph Unger, Robert
23 Keatly

24 MS. JENNINGS: Okay, thank you. The virtual

1 public hearing for the proposed legislative Rule 45CSR40
2 (Control of Ozone Season Nitrogen Oxides Emissions) will
3 now come to order on this 5th day of July, 2022.

4 Oral comments and testimony will be accepted
5 until the close of this hearing and will be made part of
6 the rulemaking record. Any question regarding revisions
7 to the rules should be included with your comments, and
8 any such question will be addressed as part of the
9 response to comments in the rulemaking record.

10 The purpose of this public hearing is to
11 accept comments on proposed revisions to Rule 45CSR40 -
12 Control of Ozone Season Nitrogen Oxides Emissions.

13 This rule establishes nitrogen oxides (or NOX)
14 ozone season emission limitation, monitoring,
15 recordkeeping, reporting, excess emissions, and NOX
16 budget demonstration requirements for large industrial
17 boilers and combustion turbines that have a maximum
18 design heat input greater than 250 mmBTU/hr, in
19 accordance with 40CFR 51.121; NOX ozone season emission
20 reduction, compliance plan, monitoring, recordkeeping
21 and reporting requirements for affected stationary
22 internal combustion engines; and NOX ozone season
23 control standards, compliance plan, monitoring,
24 recordkeeping, and reporting requirements for applicable

1 cement manufacturing kilns.

2 The rule is being revised to update the
3 characterization of units that are not subject to this
4 rule because they are subject to a Federal NOX ozone
5 season trading program. Upon authorization and
6 promulgation of 45CSR40, the rule will be submitted to
7 the U.S. EPA to fulfill federal obligations in
8 accordance with the Clean Air Act.

9 The floor is now open for comments. As a
10 reminder, please keep your comments on topic and limit
11 them to five minutes. Stephanie, has anyone
12 pre-registered to provide comments on proposed Rule
13 45CSR40? If so, please unmute their line & call on them
14 now.

15 MS. HAMMONDS: Thank you, Laura. Mr. Kotcon
16 has registered to provide oral comments and Mr. Kotcon,
17 if you'd like to go ahead, please.

18 MR. KOTCON: Thank you. The -- again, I will
19 apologize at not having reviewed the updates on all of
20 those Federal requirements and so subject to any
21 contradiction from National Sierra Club, we would
22 certainly support the routine update.

23 I would also add that having followed ozone
24 levels in West Virginia for many years, air quality is

1 improving fairly significantly and I urge DEP to keep up
2 the good work and, obviously, we can do more but we are
3 definitely heading in the right direction. Thank you.

4 MS. HAMMONDS: Thank you, Mr. Kotcon. If you
5 did not pre-register to provide oral comments but would
6 like to do so now, please use the raise your hand
7 feature.

8 Laura, I do not see any hands raised.

9 MS. JENNINGS: Okay. Thank you, Stephanie.
10 There being nothing further, this public hearing for
11 proposed Rule 45CSR40 is concluded. There are no
12 further public hearings this evening.

13 I would like to thank everyone in attendance
14 for your interest and your participation in the public
15 hearings and public comment process this evening and I
16 wish you all a good evening. Thank you.

17 MR. FLETCHER: Okay. All right. Well, if
18 that is it, then we will go ahead and close the
19 proceedings. All right. Thanks, everyone, for
20 attending.

21 COURT REPORTER: Thank you. Have a great
22 night.

23 MS. JENNINGS: Thanks.

24 (Proceeding was concluded at 6:49 p.m.)

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 [] day of [], 2021.

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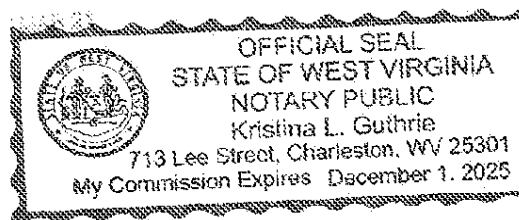
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24

Kristina Guthrie

Kristina Guthrie, Professional
Reporter and Notary Public



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