

**45CSR34**  
**EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**  
**RESPONSE TO COMMENTS**

The WV Department of Environmental Protection (DEP), Division of Air Quality (DAQ) commenced the public comment period for proposed legislative rule 45CSR34 on June 2, 2023. The public comment period concluded July 6, 2023, after satisfying the 30-day period. A public hearing was held virtually on July 6, 2023. The purpose of the public comment period and hearing was to accept oral and written comments on the proposed revisions to 45CSR34.

There was one written comment received during the public comment period from Mr. Duane Nichols of Mon Valley Clean Air Coalition (MVCAC) who also provided oral comments during the public hearing. A summary of the consolidated comments and responses are provided below.

The original comments received and the public hearing transcript are provided as part of the formal rulemaking record. There were not any changes made to 45CSR34 after reviewing and considering the comments received.

Commenter 1 Mon Valley Clean Air Coalition

COMMENT 1: Written comment periods need to end no earlier than three days after a verbal comment period, to give all concerned time to revise and extend their thoughts, ideas, and written comments. This is both logical and necessary for a rational a rational approach to the public role.

RESPONSE 1: The purpose of a public hearing is different than that of a public meeting. A public hearing is regulatory in nature with the sole purpose of receiving oral comments on the record in addition to or in lieu of written comments, unlike a public meeting that includes an interactive and educational component in addition to taking comments. The requirement for public hearings is to provide a full 30-day public notice period prior to the public hearing. The rulemaking timeline is dictated by Office of the Secretary of State and does not require a public hearing, although the DAQ does so to meet other federal regulatory requirements. The public comment period commenced June 2, 2023 and concluded July 6, 2023, allowing more than 30-days required by federal regulations.

COMMENT 2: As far as we're concerned results in radioactive isotopes that transform their chemical identity as they age and this involves in some cases an actual change of physical state from a solid to a gas. But, more than that, it's important to know that radioactive material has no limit in terms of their impact. In other words, there is no level below, which we cannot worry about the physical, the health and environmental impacts as such materials or deposit will volatilize or will deposit, will enter the food chain and otherwise be health hazards.

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



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

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## Tonight's Hearing

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**Duane Nichols** <nichols330@gmail.com>  
To: Laura.M.Jennings@wv.gov  
Cc: depadvocate@wv.gov

Thu, Jul 6, 2023 at 4:59 PM

Written comment periods need to end no earlier than three days after a verbal comment period, to give all concerned time to revise and extend their thoughts, ideas, and written comments.

This is both logical and necessary for a rational a rational approach to the public role.

Duane Nichols, MVCAC

Sent from my iPad

*IN RE: DIVISION OF AIR QUALITY PUBLIC HEARING*

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*RULE 45CSR34*

*07/06/2023*

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Realtimereporters.net

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DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF AIR QUALITY  
PUBLIC HEARING

IN RE:

DIVISION OF AIR QUALITY  
PROPOSED 2024 LEGISLATIVE RULES  
RULE 45CSR34

\* \* \*

Thursday, July 6, 2023  
Held remotely via Google Meets  
7:18 p.m.

\* \* \*

Appearing on behalf of the WV DEP  
Nicole Ernest  
Laura Jennings  
Sandra Adkins

Tammie Trigg, Court Reporter

1 \* \* \*

2 P R O C E E D I N G S

3 \* \* \*

4 MS. JENNINGS: Is the court reporter ready  
5 for the next hearing?

6 THE REPORTER: Yes, I'm ready.

7 MS. JENNINGS: Thank you.

8 The virtual public hearing for proposed  
9 legislative rule 45CSR34, Emission Standards for  
10 Hazardous Air Pollutants, will now come to order on this  
11 6th day of July 2023.

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

18 The purpose of this public hearing is to  
19 accept comments on proposed revisions to rule 45CSR34,  
20 Emission Standards for Hazardous Air Pollutants. This  
21 rule, last promulgated in 2023, incorporates and adopts  
22 National Emission Standards for hazardous air pollutants  
23 and other regulatory requirements promulgated by the  
24 U.S. EPA pursuant to the federal Clean Air Act.  
25 Promulgation of this rule is necessary for the state to

1 fulfill its responsibilities under the Clean Air Act and  
2 will enable the West Virginia Department of  
3 Environmental Protection to continue to be the primary  
4 enforcement authority for such National Emission  
5 Standards promulgated by the U.S. EPA.

6 Revisions to the rule include the annual  
7 incorporation by reference of the National Emission  
8 Standards for hazardous air pollutants promulgated by  
9 the U.S. EPA under 40 CFR Parts 61 and 63 as of June  
10 1st, 2023.

11 The floor is now open for comments. As a  
12 reminder, please keep your comments on topic and limit  
13 them to five minutes. Nicole, has anyone preregistered  
14 to provide comments on proposed rule 34? If so, please  
15 unmute their line and call on them now.

16 MS. ERNEST: Thanks, Laura.

17 For those who have preregistered to speak, I  
18 will call your name. Please unmute your line. I  
19 apologize in advance if I pronounce anyone's name  
20 incorrectly.

21 Duane Nichols, please unmute your line and  
22 clearly state your name and indicate if you're  
23 representing any group or organization.

24 MR. NICHOLS: Thank you very much.

25 My name is Duane Nichols, and I'm with the Mon

1 Valley Clean Air Coalition concerned with air pollution  
2 in the upper Mon Valley West Virginia, as well as  
3 Western Pennsylvania, as well as throughout northern  
4 parts of our state.

5 We wish simply to state that as far as we're  
6 concerned, radioactive material results in radioactive  
7 isotopes that transform their chemical identity as they  
8 age and this involves, in some cases, an actual change  
9 of physical state from a solid to a gas.

10 But, more than that, it's important to know  
11 that radioactive material has no limit in terms of their  
12 impact. In other words, there is no level below which  
13 we cannot worry about the physical, the health and  
14 environmental impacts as such materials will volatilize  
15 or will deposit, will enter the food chain and otherwise  
16 be health hazards.

17 Thank you for this opportunity to speak on  
18 this matter.

19 MS. ERNEST: Thank you.

20 There are no other registered commenters. If  
21 you did not preregister to speak, but would like to do  
22 so, please use the "raise hand" option.

23 (Short pause)

24 MS. ERNEST: There being nothing further,  
25 this public hearing for proposed rule 45CSR34 is

1 concluded. The public hearing for proposed rule 45CSR44  
2 will begin momentarily.

3 MS. JENNINGS: Thank you, Nicole.

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5 (Whereupon, this hearing was concluded at 7:22 p.m.)

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1 THE STATE OF :  
WEST VIRGINIA : SS: C E R T I F I C A T E  
2 COUNTY OF OHIO :

3 I, TAMMIE TRIGG, Registered Professional  
Reporter and Notary Public within and for the State of  
4 West Virginia, duly commissioned and qualified, do  
hereby certify that the proceedings within were by me  
5 reduced to stenotype; afterwards reduced to Computer  
Aided Transcription under my direction and control; that  
6 the foregoing is a true and correct transcription of the  
proceedings.  
7

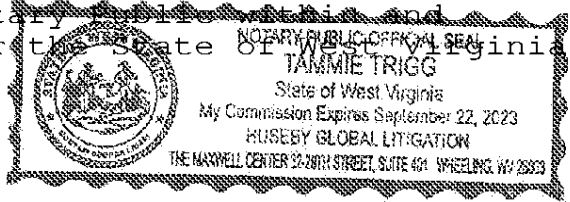
8 I do further certify that these proceedings  
were taken at the time and place in the foregoing  
9 caption specified, and was completed without  
adjournment.  
10

11 I do further certify that I am not a  
relative, counsel or attorney of either party, or  
12 otherwise interested in the event of this action.

13  
14 IN WITNESS THEREOF, I have hereunto set my  
hand and affixed my seal of office at Wheeling, West  
Virginia, on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

*Tammie Trigg*

17 TAMMIE TRIGG, Registered  
Professional Reporter and  
18 Notary Public within and  
for the State of West Virginia



19  
20 My commission expires:  
September 22, 2023  
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<p><b>1</b></p> <hr/> <p><b>1st</b> 3:10</p> <hr/> <p><b>2</b></p> <hr/> <p><b>2023</b> 2:11,21 3:10</p> <hr/> <p><b>3</b></p> <hr/> <p><b>34</b> 3:14</p> <hr/> <p><b>4</b></p> <hr/> <p><b>40</b> 3:9</p> <p><b>45CSR34</b> 2:9,19 4:25</p> <p><b>45CSR44</b> 5:1</p> <hr/> <p><b>6</b></p> <hr/> <p><b>61</b> 3:9</p> <p><b>63</b> 3:9</p> <p><b>6th</b> 2:11</p> <hr/> <p><b>7</b></p> <hr/> <p><b>7:22</b> 5:5</p> <hr/> <p><b>A</b></p> <hr/> <p><b>accept</b> 2:19</p> <p><b>accepted</b> 2:12</p> <p><b>Act</b> 2:24 3:1</p> <p><b>actual</b> 4:8</p> <p><b>addressed</b> 2:16</p> <p><b>adopts</b> 2:21</p> <p><b>advance</b> 3:19</p> <p><b>age</b> 4:8</p>	<p><b>air</b> 2:10,20,22,24 3:1,8 4:1</p> <p><b>annual</b> 3:6</p> <p><b>anyone's</b> 3:19</p> <p><b>apologize</b> 3:19</p> <p><b>authority</b> 3:4</p> <hr/> <p><b>B</b></p> <hr/> <p><b>begin</b> 5:2</p> <hr/> <p><b>C</b></p> <hr/> <p><b>call</b> 3:15,18</p> <p><b>cases</b> 4:8</p> <p><b>CFR</b> 3:9</p> <p><b>chain</b> 4:15</p> <p><b>change</b> 4:8</p> <p><b>chemical</b> 4:7</p> <p><b>Clean</b> 2:24 3:1 4:1</p> <p><b>close</b> 2:13</p> <p><b>Coalition</b> 4:1</p> <p><b>comment</b> 2:15</p> <p><b>commenters</b> 4:20</p> <p><b>comments</b> 2:12, 17,19 3:11,12,14</p> <p><b>concerned</b> 4:1,6</p> <p><b>concluded</b> 5:1,5</p> <p><b>continue</b> 3:3</p> <p><b>court</b> 2:4</p> <hr/> <p><b>D</b></p> <hr/> <p><b>day</b> 2:11</p> <p><b>Department</b> 3:2</p> <p><b>deposit</b> 4:15</p> <p><b>Duane</b> 3:21,25</p>	<p><b>E</b></p> <hr/> <p><b>Emission</b> 2:9,20, 22 3:4,7</p> <p><b>enable</b> 3:2</p> <p><b>enforcement</b> 3:4</p> <p><b>enter</b> 4:15</p> <p><b>environmental</b> 3:3 4:14</p> <p><b>EPA</b> 2:24 3:5,9</p> <p><b>ERNEST</b> 3:16 4:19,24</p> <hr/> <p><b>F</b></p> <hr/> <p><b>federal</b> 2:24</p> <p><b>floor</b> 3:11</p> <p><b>food</b> 4:15</p> <p><b>fulfill</b> 3:1</p> <hr/> <p><b>G</b></p> <hr/> <p><b>gas</b> 4:9</p> <p><b>group</b> 3:23</p> <hr/> <p><b>H</b></p> <hr/> <p><b>hand</b> 4:22</p> <p><b>hazardous</b> 2:10, 20,22 3:8</p> <p><b>hazards</b> 4:16</p> <p><b>health</b> 4:13,16</p> <p><b>hearing</b> 2:5,8,13, 18 4:25 5:1,5</p> <hr/> <p><b>I</b></p> <hr/> <p><b>identity</b> 4:7</p> <p><b>impact</b> 4:12</p>	<p><b>impacts</b> 4:14</p> <p><b>important</b> 4:10</p> <p><b>include</b> 3:6</p> <p><b>included</b> 2:15</p> <p><b>incorporates</b> 2:21</p> <p><b>incorporation</b> 3:7</p> <p><b>incorrectly</b> 3:20</p> <p><b>involves</b> 4:8</p> <p><b>isotopes</b> 4:7</p> <hr/> <p><b>J</b></p> <hr/> <p><b>JENNINGS</b> 2:4,7 5:3</p> <p><b>July</b> 2:11</p> <p><b>June</b> 3:9</p> <hr/> <p><b>L</b></p> <hr/> <p><b>Laura</b> 3:16</p> <p><b>legislative</b> 2:9</p> <p><b>level</b> 4:12</p> <p><b>limit</b> 3:12 4:11</p> <hr/> <p><b>M</b></p> <hr/> <p><b>made</b> 2:13</p> <p><b>material</b> 4:6,11</p> <p><b>materials</b> 4:14</p> <p><b>matter</b> 4:18</p> <p><b>minutes</b> 3:13</p> <p><b>momentarily</b> 5:2</p> <p><b>Mon</b> 3:25 4:2</p> <hr/> <p><b>N</b></p> <hr/> <p><b>National</b> 2:22 3:4,7</p>	<p><b>Nichols</b> 3:21,24,25</p> <p><b>Nicole</b> 3:13 5:3</p> <p><b>northern</b> 4:3</p> <hr/> <p><b>O</b></p> <hr/> <p><b>open</b> 3:11</p> <p><b>opportunity</b> 4:17</p> <p><b>option</b> 4:22</p> <p><b>Oral</b> 2:12</p> <p><b>order</b> 2:10</p> <p><b>organization</b> 3:23</p> <hr/> <p><b>P</b></p> <hr/> <p><b>p.m.</b> 5:5</p> <p><b>part</b> 2:13,16</p> <p><b>parts</b> 3:9 4:4</p> <p><b>pause</b> 4:23</p> <p><b>Pennsylvania</b> 4:3</p> <p><b>physical</b> 4:9,13</p> <p><b>pollutants</b> 2:10, 20,22 3:8</p> <p><b>pollution</b> 4:1</p> <p><b>preregister</b> 4:21</p> <p><b>preregistered</b> 3:13,17</p> <p><b>primary</b> 3:3</p> <p><b>promulgated</b> 2:21,23 3:5,8</p> <p><b>Promulgation</b> 2:25</p> <p><b>pronounce</b> 3:19</p> <p><b>proposed</b> 2:8,19 3:14 4:25 5:1</p> <p><b>Protection</b> 3:3</p> <p><b>provide</b> 3:14</p>
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<p><b>public</b> 2:8,18 4:25 5:1</p> <p><b>purpose</b> 2:18</p> <p><b>pursuant</b> 2:24</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>question</b> 2:14,16</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>radioactive</b> 4:6,11</p> <p><b>raise</b> 4:22</p> <p><b>ready</b> 2:4,6</p> <p><b>record</b> 2:14,17</p> <p><b>reference</b> 3:7</p> <p><b>registered</b> 4:20</p> <p><b>regulatory</b> 2:23</p> <p><b>reminder</b> 3:12</p> <p><b>reporter</b> 2:4,6</p> <p><b>representing</b> 3:23</p> <p><b>requirements</b> 2:23</p> <p><b>response</b> 2:16</p> <p><b>responsibilities</b> 3:1</p> <p><b>results</b> 4:6</p> <p><b>revisions</b> 2:14,19 3:6</p> <p><b>rule</b> 2:9,15,19,21, 25 3:6,14 4:25 5:1</p> <p><b>rulemaking</b> 2:14, 17</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>short</b> 4:23</p> <p><b>simply</b> 4:5</p>	<p><b>solid</b> 4:9</p> <p><b>speak</b> 3:17 4:17,21</p> <p><b>Standards</b> 2:9,20, 22 3:5,8</p> <p><b>state</b> 2:25 3:22 4:4, 5,9</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>terms</b> 4:11</p> <p><b>testimony</b> 2:12</p> <p><b>topic</b> 3:12</p> <p><b>transform</b> 4:7</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>U.S.</b> 2:24 3:5,9</p> <p><b>unmute</b> 3:15,18,21</p> <p><b>upper</b> 4:2</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>Valley</b> 4:1,2</p> <p><b>Virginia</b> 3:2 4:2</p> <p><b>virtual</b> 2:8</p> <p><b>volatilize</b> 4:14</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>West</b> 3:2 4:2</p> <p><b>Western</b> 4:3</p> <p><b>words</b> 4:12</p> <p><b>worry</b> 4:13</p>	
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