

45CSR5
CONTROL OF AIR POLLUTION FROM THE OPERATION OF COAL PREPARATION PLANTS,
COAL HANDLING OPERATIONS AND COAL REFUSE DISPOSAL AREAS
Response to Comments

The WV Department of Environmental Protection (DEP), Division of Air Quality (DAQ) commenced the public comment period for proposed legislative rule 45CSR5 (Rule 5) on June 5, 2026. The public comment period concluded July 7, 2026, after satisfying the 30-day period. A public hearing was held virtually on July 7, 2026. The purpose of the public comment period and hearing was to accept oral and written comments on the proposed revisions to 45CSR5.

There was one written comment received during the public comment period from Mr. Bill Bissett, President of the West Virginia Manufacturers Association. There were no verbal comments provided 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. No changes were made to 45CSR5 after reviewing and considering the comments received.

Commenter 1: West Virginia Manufacturers Association (WVMA)

COMMENT 1: On behalf of the WVMA and its member companies, please accept this comment in favor of your agency's proposed rule 45 CSR 5 (Control of Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas).

RESPONSE 1: The DAQ acknowledges and appreciates the West Virginia Manufacturers Association's comment in support of the proposed revisions to 45CSR5.

COMMENT 2: The WVMA provided preliminary information related to the SSM related rules which were revised in the 2024 session and are proposed for the 2027 session. The WVMA is disappointed that the agency is withdrawing its SSM rule provisions. While the WVMA recognizes that DAQ is between a "rock and a hard place" with the USEPA, the WVMA believes that the WVDEP DAQ can maintain its position, in reliance both on the D.C. Circuit's ruling and the fact that the Trump Administration has signaled that it will not revoke primacy for issues like the SSM rules.

RESPONSE 2: The DAQ appreciates the preliminary summary information provided by the WVMA and acknowledges the U.S. EPA published a final rule partially withdrawing the West Virginia Finding of Failure to Submit (FFS) June 12, 2026, which removed related deadlines that could have triggered sanctions or the imposition of Federal Implementation Plans.

Although the EPA partially withdrew the FFS based on the 2024 court decision, emission limitations must apply at all times to be approvable into a State Implementation Plan unless the State determines that an emission limitation is not "necessary or appropriate". The U.S. EPA acknowledges that an emission limitation may include different numerical levels or other specific control requirements that apply during different modes of operation, such as startup or shutdown. The DAQ initially promulgated 45CSR1 (Alternative Emission Limitations During Startup and Shutdown Operations) in 2017 (revised it in 2024) to provide a mechanism for sources that may be unable to comply with applicable emission limits during startup or shutdown events to apply for an alternative

emission limitation (AEL) in accordance with the requirements of Rule 1. Since the rule became effective, no source has applied for an AEL.

COMMENT 3: The WVMA supports changes to 45 CSR 5 (“Control of Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas”), which clarify test options available to permittees.

RESPONSE 3: Thank you for your comment, a response is not necessary.



West Virginia Manufacturers Association

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July 7, 2026

Ms. Laura Jennings
West Virginia Department of
Environmental Protection
Division of Air Quality
Charleston, WV 25304
laura.m.jennings@wv.gov

Subject: Comments on DAQ's Proposed 2027 Rules

Dear Ms. Jennings:

The West Virginia Manufacturers Association (“WVMA”) represents manufacturers across West Virginia that collectively employ thousands of West Virginians and operate facilities subject to the state’s air quality permitting and compliance requirements. Our members are committed to operating responsibly, investing in modern environmental controls, and maintaining compliance with applicable state and federal environmental standards. On behalf of the WVMA and its member companies, please accept this comment in favor of your agency’s proposed rules:

1. 45 CSR 2 (“Control of Particulate Matter Air Pollution from the Combustion of Fuel in Indirect Heat Exchangers”);
2. 45 CSR 3 (“Control of Air Pollution from the Operation of Hot Mix Asphalt Plants”);

3. 45 CSR 5 (“Control of Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas”);
4. 45 CSR 6 (“Control of Air Pollution from Combustion of Refuse”);
5. 45 CSR 7 (“Control of Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations”);
6. 45 CSR 10 (“Control of Air Pollution from the Emission of Sulfur Oxides”);
7. 45 CSR 16 (“Standards of Performance for New Stationary Sources”);
8. 45 CSR 18 (“Control of Air Pollution from Combustion of Solid Waste”);
9. 45 CSR 21 (“Control of Air Pollution from the Emission of Volatile Organic Compounds”); and
10. 45 CSR 34 (“Emission Standards for Hazardous Air Pollutants”).

As a preliminary matter, nearly all 10 proposed rules that have been selected for amendment during this cycle feature language inserted by the agency in 2023 and 2024 that was designed to account for changes at USEPA related to “startup, shutdown, and maintenance” (“SSM”) of facilities with air permits. It is the WVMA’s understanding that those changes were implemented to address alterations in those rules that were brought about after the USEPA threatened West Virginia’s primacy in the mid-2010s.

The USEPA initially issued “SIP calls” that required states (like West Virginia) to address SSM issues in response to a petition filed by the Sierra Club. Originally, the USEPA claimed that granting blanket exemptions or "affirmative defenses" to facilities during equipment breakdowns or other SSM events violates the Clean Air Act.

Following that logic, the USEPA issued “SIP calls” to the affected states, such as West Virginia. This required states to update their clean air plans to ensure that excess emissions are minimized at all times and subject to enforcement action. These West Virginia SSM changes were designed to address those SIP calls.

In March 2024, during pendency of the underlying West Virginia rule changes, the United States Court of Appeals for the D.C. Circuit vacated the USEPA's SIP Call, deciding the USEPA exceeded its authority under the Clean Air Act when ordering states to eliminate automatic SSM exemptions and affirmative defenses.

Before that court ruling, the USEPA had issued a formal "Finding of Failure to Submit" against West Virginia in April 2023 because the state had not updated its Clean Air Act plan. This finding put West Virginia at risk of facing federal sanctions. Since the court's 2024 decision, however, the USEPA finalized a rule on June 12, 2026 that partially withdrew the Findings of Failure to Submit for West Virginia and five other state or local agencies. The WVMA understands that the WVDEP DAQ and USEPA have engaged in discussions about SSM principles and that USEPA, regardless of the D.C. Circuit action, will not approve West Virginia rules with these SSM severability provisions intact.

The WVMA is disappointed that the agency is withdrawing its SSM rule provisions. While the WVMA recognizes that DAQ is between a "rock and a hard place" with the USEPA, the WVMA believes that the WVDEP DAQ can maintain its position, in reliance both on the D.C. Circuit's ruling and the fact that the Trump Administration has signaled that it will not revoke primacy for issues like the SSM rules.

Turning to the individual rules, the WVMA supports the DAQ's proposed changes across the suite of rules submitted 2027 legislative session. Significant proposals are addressed briefly in turn below.

The WVMA supports the DAQ's proposed changes to 45 CSR 2 modernize compliance demonstration and monitoring by recognizing continuous particulate matter monitoring systems (CPMS), clarifying testing options, and aligning the rule with modern EPA-approved technologies while maintaining the underlying particulate emission standards. The proposed revisions also improve regulatory clarity, by expressly identifying the available compliance options in Sections three and eight.

The WVMA also supports changes to 45 CSR 5 (“Control of Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas”), which clarify test options available to permittees.

The WVMA supports the technical update to 45 CSR 16-4.1.2.

The WVMA applauds the DAQ’s proposed changes to 45 CSR 18. The issue of whether a process “combusts” solid waste is one that is increasingly at the fore of permit challenges as new technologies allow for the pyrolysis of waste, which emits far fewer compounds which may be potentially detrimental to human health and the environment. The WVMA appreciates the clarifications. The WVMA also thanks DAQ for the new provisions at § 45-18-10 which clearly lay out requirements for new facilities.

We appreciate the DAQ’s elimination of several out-of-date processes from the rule and the general cleanup and housekeeping related to 45 CSR 21.

In sum, the WVMA is pleased to submit this support for most of the DAQ’s proposed 2027 rule changes. The DAQ has, as usual, met its statutory obligation with regard to rulemaking with thoughtfulness, skill, and dedication.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Bissett", with a long horizontal flourish extending to the right.

Bill Bissett, Ed.D.

President

West Virginia Manufacturers Association

In the Matter Of:
DIVISION OF AIR QUALITY PUBLIC HEARING

PUBLIC HEARING

July 07, 2026



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WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY
PUBLIC HEARING
PROPOSED 2027 LEGISLATIVE RULES
45CSR5

Taken On
July 7, 2026

at

6:14 p.m.

on behalf of

West Virginia
Department of Environmental Protection
Division of Air Quality

via

Google Meet Videoconference

* * * * *

Transcript of the public hearing in the
above matter, held pursuant to notice via Google
Meet Videoconference, on the 7th day of July, 2026.

ESQUIRE DEPOSITION SOLUTIONS
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www.esquiresolutions.com

APPEARANCES:

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL
PROTECTION DIVISION OF AIR QUALITY:

Nicole Ernest
Laura Jennings

PARTICIPANTS:

Phil Tucker

P R O C E E D I N G S

(Hearing commenced at 6:14 p.m)

MS. JENNINGS: The virtual public hearing for the proposed legislative rule 45CSR5 (Control of Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas) will now come to order on this 7th day of July, 2026.

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

The purpose of this public hearing is to accept comments on proposed revisions to Rule 5 which was last promulgated in the 2024 session. Rule 5 establishes emission standards for particulate matter from the operation of coal preparation plants, coal handling operations and coal refuse disposal areas and sets forth permitting, monitoring, testing, recordkeeping and reporting requirements.

1 The rule was revised in 2024; however,
2 it is not approvable as a SIP revision by EPA due
3 to the severability language. The rule is being
4 revised primarily to address SIP approvability
5 concerns with the severability language in section
6 17 by removing this language. Additional revisions
7 include allowing the use of other equivalent EPA
8 approved test methods as an alternative to Method 9
9 in section 12.4 and other miscellaneous
10 typographical updates.

11 The floor is now open for comments.
12 As a reminder, please keep your comments on topic
13 and limit them to five minutes.

14 Nicole, has anyone pre-registered to
15 provide comments on proposed rule 45CSR5? If so,
16 please call on them now.

17 MS. ERNEST: Thank you, Laura. We do
18 not have any participants pre-registered to speak
19 tonight. However, we would like to open the floor
20 to anyone who wishes to make a comment at this
21 time.

22 If you would like to speak, please
23 unmute your microphone, state your first and last
24 name, and any organization you represent, and

1 proceed with your remarks.

2 Hearing no comments related to this
3 matter, Laura, I will yield the floor to you.

4 MS. JENNINGS: Thanks, Nicole. Is the
5 court reporter ready for the next rule?

6 COURT REPORTER: I am.

7 MS. JENNINGS: There being nothing
8 further, the public hearing for proposed rule
9 45CSR5 is concluded.

10 (Hearing concluded at 6:17 p.m.)

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

3 I, Brad L. Cooper, a Notary Public within
4 and for the County and State aforesaid, duly
5 commissioned and qualified, do hereby certify that
6 the foregoing proceedings were duly taken by me and
7 before me at the time and place and for the purpose
8 specified in the caption hereof.

9 I do further certify that the said
10 proceedings were recorded by means of digital audio
11 and/or video recording, Stenomask, and/or correctly
12 taken by me in shorthand notes, and that the same
13 were accurately written out in full and reduced to
14 typewriting by means of computer-aided
15 transcription by me or under my supervision.

16 My commission expires May 14, 2028.

17 Given under my hand this 10th day of July,
18 2026.

19 *Brad L. Cooper*
20

21 BRAD L. COOPER, Notary Public
22
23
24

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**List of Registrants for DAQ 2027 Legislative Rules
Held on Tuesday, July 7, 2026, at 6:00 p.m. via Google Meets**

First name	Last name	Organization	Email Address	Street address	City, state and zip code	Comment?	If yes, which proposed rule(s)?
Nicole	Ernest	WVDAQ	nicole.d.ernest@wv.gov	601 57th Street SE	Charleston, WV 25213	No	
Laura	Jennings	West Virginia DEP, Division of Air Quality	laura.m.jennings@wv.gov	601 57th Street, SE	Charleston, WV 25304	No	
Mike	Tony	Charleston Gazette-Mail	mtony@hdmediallc.com	1001 Virginia St. E	Charleston, WV 25301	No	
Phil	Tucker	Self	Tuck12052@gmail.com	838 South Park Road	Charleston, WV 25304	Yes	45CSR16 45CSR34

First name	Last name	Email	Duration	Time joined	Time exited
Brad	Cooper	wvu8***@***.com	1 hr 11 min	5:45 PM	6:56 PM
Nicole D	Ernest	nicole.d.ernest@wv.gov	1 hr 25 min	5:41 PM	7:05 PM
Laura M	Jennings	laura.m.jennings@wv.gov	1 hr 16 min	5:49 PM	7:05 PM
Richard Eric	Ray	richard.eric.ray@wv.gov	1 hr 1 min	5:55 PM	6:56 PM
P	T	tuck*****@***.com	1 hr 5 min	5:51 PM	6:56 PM