

45CSR16
STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES
Response to Comments

The WV Department of Environmental Protection (DEP), Division of Air Quality (DAQ) commenced the public comment period for proposed legislative rule 45CSR16 (Rule 16) 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 45CSR16.

There were two written comments received during the public comment period from Mr. Bill Bissett, President of the West Virginia Manufacturers Association and Mr. Phil Tucker. There was one person (Mr. Phil Tucker) who provided verbal 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. No changes were made to 45CSR16 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 16 (Standards of Performance for New Stationary Sources).

RESPONSE 1: The DAQ acknowledges and appreciates the West Virginia Manufacturers Association's comment in support of the proposed revisions to 45CSR16.

COMMENT 2: The WVMA supports the technical update to 45 CSR 16-4.1.2.

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

Commenter 2: Mr. Phil Tucker (written and verbal comments combined)

COMMENT 3: Seemingly a problem. It appears that we're asking the public to provide data driven explanations while the public portal explicitly promises an archive of air quality annual reports and updates to track hazardous air pollutant emissions, information and industry sector in top six HAP emissions and stops at annual update 2018-2020.

So for 5 consecutive years (-2021, 2022, 2023, 2024, 2025) the agency has suppressed its statutory reporting. Asking people to actively give commentary on future rules with half a decade of possible missing toxics trends data. Especially when because of the way it's mixed, plus including court cases.

RESPONSE 3: For clarification, the DAQ does not ask the public to provide data driven explanations when soliciting public comment and the DAQ meets its federal reporting obligations to the U.S. EPA. Additionally, the DAQ publication website does not promise annual reports, it states the reports listed highlight the work of the DAQ including air monitoring network data, permitting numbers, compliance and enforcement activities, small business assistance and HAP emission trends. Data reported to the U.S. EPA is publicly available through U.S. EPA websites described in more detail below.

The DEP Fiscal Year Reports found on the DEP Public Information Office [website](https://dep.wv.gov/pio/Pages/Annual%20Report.aspx) (<https://dep.wv.gov/pio/Pages/Annual%20Report.aspx>) provides summaries of air monitoring, compliance and enforcement, education and outreach, hazardous and solid waste air program, permitting, planning, and small business assistance program updates.

The DAQ collects, quality assures, and submits air quality monitoring data to the U.S. EPA in accordance with federal regulations. The U.S. EPA regulations give states and other reporting organizations 90 days following the end of a calendar quarter to submit their data to EPA's Air Quality System (AQS). Agencies have until May 1 to certify their data for the previous year. The U.S. EPA typically publishes the previous year's complete data in July.

The U.S. EPA outdoor air quality data collected at monitors across the United States is available on its [website](https://www.epa.gov/outdoor-air-quality-data) (<https://www.epa.gov/outdoor-air-quality-data>). The data comes primarily from the AQS (Air Quality System) database. The data available from the U.S. EPA website is more flexible and available timelier than the air monitoring data previously provided in the DAQ annual reports. Users can choose from several ways of looking at the data:

- download data into a file (or view it on the screen)
- output the data into one of AirData's standard reports
- create graphical displays using one of the visualization tools
- investigate monitor locations using an interactive map

The U.S. EPA national air quality trends [website](https://www.epa.gov/air-trends) (<https://www.epa.gov/air-trends>) provides air quality trends for each criteria pollutant and provide air quality design values. The air quality trends summaries are intended to reflect actual air quality and therefore include concentrations that may have been impacted by episodic events like wildfires and dust storms. Air Quality Design Values are used to designate and classify nonattainment areas and intended to reflect air quality that is not impacted by exceptional events. Therefore, if concentrations are shown to be impacted by an exceptional event they are not included in design value calculations. The EPA defines exceptional events as unusual or naturally-occurring events that affect air quality but are not reasonably controllable using techniques that tribal, state, or local air agencies may implement.

Additional information about the air monitoring network may be found in the annual network plan, found on the air monitoring [website](https://dep.wv.gov/daq/air-monitoring/Pages/default.aspx) (<https://dep.wv.gov/daq/air-monitoring/Pages/default.aspx>). Links to the above-mentioned U.S. EPA websites can also be found in the Air Quality Index of the DAQ Air Monitoring [website](https://dep.wv.gov/daq/air-monitoring/Pages/AirQualityIndex.aspx) (<https://dep.wv.gov/daq/air-monitoring/Pages/AirQualityIndex.aspx>).

The DAQ submits emissions inventory data for criteria and hazardous air pollutants to the U.S. EPA on an annual basis. This data is used by the U.S. EPA to develop the National Emission Inventory (NEI) which can be accessed at its [website](https://www.epa.gov/air-emissions-inventories/get-air-emissions-data-0) (<https://www.epa.gov/air-emissions-inventories/get-air-emissions-data-0>).

Based on this comment, the DAQ will consider updating its website for clarification.

COMMENT 4: The blackout exists because you are using the fine print of these rules to build a legal shield for polluters. Under Section 4.1.2 of the proposed Series 16 rule, this agency explicitly mandates that Subparts B, Ba, C, Ca, Cb, Cc, Cd, Ce, Cf, Ea, Eb, Ec, WWW, XXX, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, LLLL, and MMMM and VVVV of 40 C.F.R. part 60 shall be excluded. Let us strip away the bureaucratic codes: those are the federal clean air standards governing Municipal Solid Waste Landfills, Commercial and Industrial Solid Waste

Incinerators, Sewage Sludge Incinerators, and Hospital and Medical Waste Incinerators. You are updating the document's date to 2026, but you are maintaining total, state-level immunity for heavy industrial waste combustion. All the exclusions is not something that is understandable.

RESPONSE 4: Large Municipal Waste Combustors, Small Municipal Waste Combustors, Hospital/Medical/Infectious Waste Incinerators, Commercial and Industrial Solid Waste Incinerators, Other Solid Waste Incinerators, Sewage Sludge Incinerators, and new Municipal Solid Waste Landfills for new and existing sources are outside the scope of 45CSR16 because they are regulated under 45CSR18 and 45CSR23, unless there are no existing sources located in West Virginia. Subparts related to how States are required to submit State Plans (Subparts B and Ba) are applicable to the State only and do not need to be adopted by reference.

The following subparts are emission guidelines for existing designated facilities: Subparts B, Ba, C, Ca, Cb, Cc, Ce, Cf, Ea, BBBB, DDDD, FFFF, and MMMM which are regulated under 45CSR18 and 45CSR23. The following New Source Performance Standards (NSPS) are also adopted by reference under 45CSR18 under 45CSR23: Subparts Eb, VVVV, AAAA, Ec, CCCC, EEEE, LLLL, WWW, and XXX. Subpart Cd provides requirements for sulfuric acid. Sulfuric Acid mist is regulated under 45CSR7.

COMMENT 5: I am here to ensure a profound objection to the structural surrender hidden inside Title 45, Series 16 is on the record. Let us not call this anything than what it is. Corporate Pollution Protection. West Virginians are not stupid. We know exactly what you are doing, and we are utterly furious that West Virginians are being subjected to this predictable corporate poisoning once again.

RESPONSE 5: Thank you for your comment, a response is not necessary.

COMMENT 6: The Division of Air Quality is hiding behind the defense that these updates are merely routine, mechanical maintenance to synchronize our codes with federal counterpart regulations effective June 1, 2026. But that selective efficiency is precisely what exposes your institutional malice. The fact that this agency can flawlessly update its internal legal text to the current year to satisfy federal oversight proves that your five-year failure to publish public air quality reports is not a staffing shortage, nor is it an administrative backlog. It is a deliberate, tactical choice to keep West Virginians in a data blackout while you quietly fast-track corporate compliance timelines.

RESPONSE 6: The Clean Air Act authorizes the U.S. EPA to delegate implementation and enforcement of the federal New Source Performance Standards to State agencies, which is the case for West Virginia. In essence that provides the authority for West Virginia to include the emission limits, pollution control requirements, monitoring, recordkeeping and reporting requirements to state air quality permits issued to regulated sources in West Virginia following permit application and review of the applicant's ability to meet the federal standards. It also authorizes West Virginia DAQ to be the primary compliance and enforcement authority of these federal standards. An essential requirement to maintain delegation of these programs is to routinely update the delegations and adopt any amendments or new requirements since the last update, unless the State is specifically not accepting delegation of a specific subpart. States that are delegated authority of the NSPS program cannot adopt anything less stringent than the federal requirements. West Virginia code does not authorize the DAQ to adopt anything more stringent than the federal requirements. Therefore, West Virginia incorporates by reference the nearly 100 standards.

Facilities subject to an applicable NSPS are subject to the federal regulation on the federal effective date of the rule and are required to comply with the standards and requirements in accordance with the deadlines established

in the federal regulations. Although the State has primacy to implement and enforce this program, the U.S. EPA maintains certain authorizations and may also enforce the federal program.

See also response to Comment 3.

COMMENT 7: Now, look at the devastating, cross-media crescendo of these exclusions. Because you refuse to track accidental chemical release parameters under Section 112(r), you treat facilities like Peoples Cartage on Camden Avenue as unpoliced ghosts, completely ignoring your own December 15, 2025, Consent Order No. HW-25-005, which caught them suffering multiple volatile fires from mismanaged calcium hypochlorite. Because of that specific failure, a Wood County State of Emergency is active right now as three of their warehouses burn in a massive polymer inferno—on the exact physical footprint where the catastrophic IEI Plastics fire burned out of control for eight straight days in 2017.

Just over two months ago, on April 22, 2026, a violent chemical reaction and toxic gas release at the Ames Goldsmith plant in Institute killed two workers and hospitalized dozens. For decades, the heavy industrial smokestacks along the Kanawha River corridor have been permitted to release concentrated atmospheric pollution that rains directly back down into the water column, turning the Kanawha River into a poisoned chemical conduit. Further south, the heavy process dust and unmonitored particulate matter exempted from rigorous oversight release fugitive atmospheric fallout that settles directly into the valleys of Logan County and blankets the ridges of Boone County, contaminating the very air families breathe and poisoning the critical headwater streams that feed rural groundwater systems.

RESPONSE 7: Section 112 of the Clean Air Act is not within the scope of Rule 16; however, the comment is addressed in the response to comments under 45CSR34.

COMMENT 8: Nature does not operate in regulatory silos, your failure to regulate industrial air emissions directly dictates the toxic ruin of our water tables. Let the record reflect that West Virginia currently holds the nation's highest percentage of public water systems with health-based violations. Exactly 29.2% of this state's public water systems violate federal Safe Drinking Water Act standards—nearly three times the national average. When factoring in all types of infractions, an alarming 79.1% of West Virginia systems face violations.

RESPONSE 8: Under the authority of Chapter 22, Article 5 of the W. Va. Code, the DAQ regulates industrial air emissions in accordance with Title 45 of the Code of State Rules, including 45CSR16 which is the subject of this comment and response.

COMMENT 9: Your failure to regulate industrial emissions has left 130 public water systems contaminated with detectable PFAS 'forever chemicals'. Communities from Follansbee, Chester, and Weirton, down to Berkeley Springs, Charles Town, and Martinsburg are systematically turning on their taps to a dose of carcinogens. In Berkeley County, residents exhibit PFAS blood levels 2.5 times higher than the national average due to localized industrial contamination. Do not cite the June 2026 \$450 million federal settlement against Chemours as a victory; the \$11.25 million trickling to the state is an insult while our lawmakers scramble to pass an emergency \$250 million infrastructure package just to keep our water columns drinkable.

RESPONSE 9: PFAS is an umbrella of chemicals and not one specific chemical. Depending on the specific chemical, DAQ regulates PFAS chemicals which meet the definition of Volatile Organic Compounds (VOCs) or Ozone Depleting Compounds (ODC) under 45CSR21. There are not any corresponding federal standards

regulating PFAS chemicals. The DAQ is not authorized to promulgate legislative rules or programs which are more stringent than any federal rule or program except under limited circumstances.

COMMENT 10: Your political leadership went all the way to the Supreme Court of the United States in *West Virginia v. EPA* to weaponize the 'Major Questions Doctrine,' arguing that federal bureaucrats have no right to dictate local environmental policy. Your lawyers are sitting in the Fourth Circuit Court of Appeals right now in *West Virginia Surface Owners' Rights Organization v. Zeldin*, aggressively demanding 'regulatory primacy'—swearing under oath that local state agencies possess the competence and oversight to police heavy industrial hazards without federal interference.

RESPONSE 10: Thank you for your comment, a response is not necessary.

COMMENT 11: The contextual logic of your behavior proves that you do not fight for local state control so you can protect West Virginians; you fight for local control so you can enforce a five-year public data blackout, strike chemical accident prevention programs from your books, and grant absolute regulatory immunity to corporate incinerators and plastics plants while our communities are left to burn.

RESPONSE 11: Thank you for your comment, a response is not necessary.

COMMENT 12: If these updates go through, the EPA will solely stop the poisoning in our communities. When they are so short staffed to come test or do anything, who can West Virginians call to request to stop being poisoned, the state? There will be no more protections for West Virginians. The only protections left will be for the corporations who poison and pollute, and those who forgot their roots, and decided to start licking their boots.

RESPONSE 12: The updates to Rule 16 are required to satisfy the DAQ's regulatory obligation to maintain implementation delegation of the federal New Source Performance Standards Program. See also response to Comment 6.

COMMENT 13: West Virginia's political and regulatory leadership does not expend immense legal and financial capital fighting the EPA to protect the citizens of West Virginia from federal overreach. They fight the EPA to eliminate independent, outside oversight.

RESPONSE 13: Thank you for your comment, a response is not necessary.

COMMENT 14: By capturing local control, implementing data blackouts, and carving out explicit corporate immunities in state codes, the state ensures that heavily influential industries can operate with maximum profitability, minimal liability, and absolute secrecy. The system operates precisely as intended: it converts the state's environmental protection framework into a legal protective shield for the polluter at the structural cost of public health. You have turned the WVDEP into a legal shield for polluters and I will not allow the rubber-stamping of the poisoning of the good people of West Virginia to happen in the dark.

RESPONSE 14: See responses to Comments 3, 4, and 6.

COMMENT 15: I object to the ratification of these rules and you should too, but you won't and we all know it. The most valuable thing in the world right now is information and data. But who provides it, what's the source of all this wealth? People. Start valuing us like it. Thank you.

RESPONSE 15: See response to Comment 3.

COMMENT 16: Document “DAQ Public Notice 2027 Rules” was provided with the request it be added to the public record. The document was a link to the public notice for the DAQ rules proposed for the 2027 legislative session.

RESPONSE 16: The document will be filed with public comments received in the rulemaking record.

COMMENT 17: Document “public meeting for WVDEP.docx.pdf” was provided with the request it be added to the public record. The document is the written comments from Mr. Tucker for DAQ proposed legislative rules 45CSR16 and 45CSR34.

RESPONSE 17: The comments are summarized in this response to comment document, and the complete written comments will be filed with public comments received in the rulemaking record.

COMMENT 18: Document “Rivers-Amsted-Suit.pdf” was provided with the request it be added to the public record. The document was a link to a Clean Water Act court case *West Virginia Rivers Coalition and West Virginia Highlands Conservancy v. Amsted Graphite Materials, LLC* Court Case 1:26-cv-00046-TSK filed 4/23/26 in the U.S. District Court for the Northern District of West Virginia at Clarksburg.

RESPONSE 18: The document will be filed with public comments received in the rulemaking record.

COMMENT 19: Document “Publications” was provided with the request it be added to the public record. The document was a link to the DAQ Air Quality Annual Update Reports website which was mentioned during verbal comments.

RESPONSE 19: The document will be filed with public comments received in the rulemaking record.



West Virginia Manufacturers Association

2001 Quarrier Street
Charleston, WV 25311
304-342-2123
www.wvma.com

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



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

Proposed DAQ 2027 Rule Comments

2 messages

P T <tuck12052@gmail.com>

Tue, Jul 7, 2026 at 6:04 PM

To: "laura.m.jennings@wv.gov" <laura.m.jennings@wv.gov>

Ms. Jennings,

Below is a link and attachment I'd like to add into the public record regarding the July 7th 2026 WVDEP DAQ proposed rules public comment meeting. Thank you.



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20-1530_n758.pdf



chemours-cd.pdf



DAQ Public Notice-2027 Rules....



HW-25-005 Peoples Cartage, I...



public meeting for WVDEP.doc...



Rivers-Amsted-Suit.pdf



W. Va. industrial fire: another c...



Publications

All the best,

Phil T

Jennings, Laura M <laura.m.jennings@wv.gov>
Draft To: P T <tuck12052@gmail.com>

Wed, Jul 8, 2026 at 9:53 AM

Laura J

[Quoted text hidden]

Public Comment

Regarding: West Virginia Division of Air Quality 2027 Proposed Legislative Rules (45CSR16 & 45CSR34)

Hearing Date: July 7, 2026

"Good evening. My name is Phil. I am here to ensure a profound objection to the structural surrender hidden inside Title 45, Series 16 and Series 34 is on the record. Let us not call this anything than what it is. Corporate Pollution Protection. West Virginians are not stupid. We know exactly what you are doing, and we are utterly furious that West Virginians are being subjected to this predictable corporate poisoning once again.

Tonight, the Division of Air Quality is hiding behind the defense that these updates are merely routine, mechanical maintenance to synchronize our codes with federal counterpart regulations effective June 1, 2026. But that selective efficiency is precisely what exposes your institutional malice. The fact that this agency can flawlessly update its internal legal text to the current year to satisfy federal oversight proves that your five-year failure to publish public air quality reports is not a staffing shortage, nor is it an administrative backlog. It is a deliberate, tactical choice to keep West Virginians in a data blackout while you quietly fast-track corporate compliance timelines.

Your own public portal explicitly promises an archive of 'Air Quality Annual Reports and Updates' to track 'Hazardous Air Pollutant Emission trends, information by industry sector and top six HAP emissions.' Yet, your public archive stops dead at the 'Air Quality Annual Update: 2018-2020.' For five consecutive calendar years—2021, 2022, 2023, 2024, and 2025—this agency has suppressed its statutory reporting. You are standing there demanding that citizens provide data-driven commentary on future rules while you actively conceal half a decade of baseline toxic trends from the public eye.

The blackout exists because you are using the fine print of these rules to build a legal shield for polluters. Under Section 4.1.2 of the proposed Series 16 rule, this agency explicitly mandates that Subparts B, Ba, C, Ca, Cb, Cc, Cd, Ce, Cf, Ea, Eb, Ec, WWW, XXX, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, LLLL, and MMMM and VVVV of 40 C.F.R. part 60 shall be excluded. Let us strip away the bureaucratic codes: those are the federal clean air standards governing Municipal Solid Waste Landfills, Commercial and Industrial Solid Waste Incinerators, Sewage Sludge Incinerators, and Hospital and Medical Waste Incinerators. You are updating the document's date to 2026, but you are maintaining total, state-level immunity for heavy industrial waste combustion.

Now, look at the devastating, cross-media crescendo of these exclusions.

Because you refuse to track accidental chemical release parameters under Section 112(r), you treat facilities like Peoples Cartage on Camden Avenue as unpoliced ghosts, completely ignoring your own December 15, 2025, Consent Order No. HW-25-005, which caught them suffering multiple volatile fires from mismanaged calcium hypochlorite. Because of that specific failure, a Wood County State of Emergency is active right now as three of their warehouses burn in a massive polymer inferno—on the exact physical footprint where the catastrophic IEI Plastics fire burned out of control for eight straight days in 2017.

This is an uninterrupted, state-wide pattern of ecological degradation. Just over two months ago, on April 22, 2026, a violent chemical reaction and toxic gas release at the Ames Goldsmith plant in Institute killed two workers and hospitalized dozens. For decades, the heavy industrial smokestacks along the Kanawha River corridor have been permitted to release concentrated atmospheric pollution that rains directly back down into the water column, turning the Kanawha River into a poisoned chemical conduit. Further south, the heavy process dust and unmonitored particulate matter exempted from rigorous oversight release fugitive atmospheric fallout that settles directly into the valleys of Logan County and blankets the ridges of Boone County, contaminating the very air families breathe and poisoning the critical headwater streams that feed rural groundwater systems.

Because nature does not operate in regulatory silos, your failure to regulate industrial air emissions directly dictates the toxic ruin of our water tables. Let the record reflect that West Virginia currently holds the nation's highest percentage of public water systems with health-based violations. Exactly 29.2% of this state's public water systems violate federal Safe Drinking Water Act standards—nearly three times the national average. When factoring in all types of infractions, an alarming 79.1% of West Virginia systems face violations.

Your failure to regulate industrial emissions has left 130 public water systems contaminated with detectable PFAS 'forever chemicals'. Communities from Follansbee, Chester, and Weirton, down to Berkeley Springs, Charles Town, and Martinsburg are systematically turning on their taps to a dose of carcinogens. In Berkeley County, residents exhibit PFAS blood levels 2.5 times higher than the national average due to localized industrial contamination. Do not cite the June 2026 \$450 million federal settlement against Chemours as a victory; the \$11.25 million trickling to the state is an insult while our lawmakers scramble to pass an emergency \$250 million infrastructure package just to keep our water columns drinkable.

This brings us to the final, devastating intersection of your legal strategy.

Your political leadership went all the way to the Supreme Court of the United States in *West Virginia v. EPA* to weaponize the 'Major Questions Doctrine,' arguing that federal bureaucrats have no right to dictate local environmental policy. Your lawyers are sitting in the Fourth Circuit Court of Appeals right now in *West Virginia Surface Owners' Rights Organization v. Zeldin*, aggressively demanding 'regulatory primacy'—swearing under oath that local state agencies possess the absolute competence and oversight to police heavy industrial hazards without federal interference.

Tonight, the math is complete, and the mask is entirely off. The contextual logic of your behavior proves that you do not fight for local state control so you can protect West Virginians; you fight for local control so you can enforce a five-year public data blackout, strike chemical accident prevention programs from your books, and grant absolute regulatory immunity to corporate incinerators and plastics plants while our communities are left to burn.

If these updates go through, the EPA will solely stop the poisoning in our communities. When they are so short staffed to come test or do anything, who can West Virginians call to request to stop being poisoned, the state? There will be no more protections for West Virginians. The only protections left will be for the corporations who poison and pollute, and those who forgot their roots, and decided to start licking their boots.

Occam's razor dictates that the simplest explanation is usually the correct one. The simplest explanation of this entire dynamic is regulatory capture.

West Virginia's political and regulatory leadership does not expend immense legal and financial capital fighting the EPA to protect the citizens of West Virginia from federal overreach. They fight the EPA to eliminate independent, outside oversight.

By capturing local control, implementing data blackouts, and carving out explicit corporate immunities in state codes, the state ensures that heavily influential industries can operate with maximum profitability, minimal liability, and absolute secrecy. The system operates precisely as intended: it converts the state's environmental protection framework into a legal protective shield for the polluter at the structural cost of public health. You have turned the WVDEP into a legal shield for polluters and I will not allow the rubber-stamping of the poisoning of the good people of West Virginia to happen in the dark.

Therefore, I object to the ratification of these rules and you should too, but you won't and we all know it. The most valuable thing in the world right now is information and data. But who provides it, what's the source of all this wealth? People. Start valuing us like it. Thank you.

<https://apps.dep.wv.gov/Documents/DAQ/PublicNotices/2027-DAQ-Legislative-Rules/DAQ%20Public%20Notice-2027%20Rules.pdf>

<https://westvirginiawatch.com/wp-content/uploads/2026/05/Rivers-Amsted-Suit.pdf>

<https://dep.wv.gov/daq/Pubs/Pages/default.aspx>

In the Matter Of:
DIVISION OF AIR QUALITY PUBLIC HEARING

PUBLIC HEARING

July 07, 2026



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EsquireSolutions.com

* * * * *

WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY
PUBLIC HEARING
PROPOSED 2027 LEGISLATIVE RULES
45CSR16

Taken On
July 7, 2026

at

6:32 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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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 6:32 p.m)

MS. JENNINGS: The virtual public hearing for the proposed legislative rule 45CSR16 (Standards of Performance for New Stationary Sources) 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 45CSR16. This rule, last promulgated in the 2026 session, establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency pursuant to Section 111(b) of the federal Clean Air Act.

This rule codifies general procedures and criteria to implement standards of performance

1 for new stationary sources set forth in 40 CFR Part
2 60. The rule also adopts associated appendices,
3 reference methods, performance specifications and
4 other test methods which are appended to such
5 standards.

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

14 Revisions to the rule include updating
15 the annual incorporation by reference (IBR) of the
16 New Source Performance Standards (NSPS) promulgated
17 by the EPA under 40 CFR part 60 as of June 1, 2026,
18 by updating the IBR dates in subsections 1.6 and
19 4.1.

20 Additionally, 40 C.F.R. Part 60
21 subpart VVVV (Standards of Performance for Large
22 Municipal Waste Combustors) was added to the
23 exclusion list in section 4.1.2 because solid waste
24 combustion NSPSs are adopted under 45CSR18.

1 The floor is now open for comments. As
2 a reminder, please keep your comments on topic and
3 limit them to five minutes.

4 Nicole, has anyone pre-registered to
5 provide comments on proposed rule 45CSR16? If so,
6 please call on them now.

7 MS. ERNEST: Thank you, Laura. We
8 have one person pre-registered to provide comment
9 tonight. I invite Phil Tucker to go ahead and
10 speak now.

11 Phil, please unmute your microphone,
12 state your first and last name, and any
13 organization you represent, and proceed with your
14 remarks. Please specify when your comment is
15 finished and mute your mic.

16 MR. TUCKER: Yeah. This is one of the
17 main ones. Phil Tucker, just a constituent in West
18 Virginia. I'm not representing anything, just a
19 citizen.

20 45 Series 16 is seemingly a problem.
21 It appears that we're asking the public to provide
22 data-driven explanations while the West Virginia
23 DEP Public Portal that explicitly promises an
24 archive of air quality annual reports and updates

1 to track hazardous air pollutant emissions,
2 information and industry sector in top six HAP
3 emissions stops at Air Quality Annual Update 2018
4 to 2020.

5 So for five consecutive calendar years
6 - 2021, 2022, 2023, 2024, 2025 - the agency has
7 suppressed its statutory reporting. Asking people
8 to actively give commentary on future rules with
9 half a decade of possible missing baseline toxic
10 transits, I don't really know. Especially when
11 because of the way that it's mixed, plus including
12 court cases, because under Section 4.12 of the
13 proposed series 16 rule, it explicitly mandates
14 several subparts, and those apply to the federal
15 Clean Air Act. And those standards governing
16 municipal solid waste landfills, commercial and
17 industrial solid waste incinerators, sewage sludge
18 incinerators, hospital and medical waste
19 incinerators, all to be excluded.

20 And it gets even worse going into
21 Section 34, but that's just a -- that's just a
22 future thing I'll get into when we get there.

23 That is -- that is not really
24 something that is understandable, especially when

1 you include Section, well, i guess, 34. So I'll
2 just end it there and wait until the end.

3 MS. ERNEST: Thank you for your
4 comment, Phil.

5 Hearing no further comments related to
6 this matter, Laura, I will yield the floor to you.

7 MS. JENNINGS: Thanks, Nicole. There
8 being nothing further, the public hearing for
9 proposed rule 45CSR16 is concluded.

10 The public hearing for proposed rule
11 45CSR18 will begin momentarily.

12 (Hearing concluded at 6:39 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
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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