

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 (Rule 34) 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 45CSR34.

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. One person (Mr. Phil Tucker) 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 45CSR34 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 34 (Emission Standards for Hazardous Air Pollutants).

RESPONSE 1: The DAQ acknowledges and appreciates the West Virginia Manufacturers Association's comment in support of the proposed revisions to 45CSR34.

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

COMMENT 2: For Series 34, there is a very consistent problem with all of it that relates to the rest of the previous series. Section 4.1.2 (technically corrected from 4.12) explicitly abdicates State oversight over catastrophic chemical accident prevention. Section 4.1.3 (technically corrected from 4.13) explicitly excludes 18 separate area source air toxic categories lifting state tracking from neighborhoods of which they operate and toxic chemical production. Section 4.1.4 (technically corrected from 4.14) blinds the state to radioactive gas and radon emissions that happens when you are creating energy such as coal, natural gas, stuff like that.

RESPONSE 2: The DAQ has not proposed any revisions to sections 4.1.2, 4.1.3, or 4.1.4. The decision to not request delegation of the federal risk management program and certain radionuclides and radon NESHAPs was made over 30 years ago, presumably on the basis that the state agency didn't have the expertise and the U.S. EPA was better equipped to administer the risk management program and the above referenced subparts. The DAQ accepts delegation of most NESHAP standards; however, is not staffed to request delegation of all area source NESHAP regulations. Area sources are small minor sources.

Although the state does not have delegation of the federal counterpart regulations identified in 4.1.2, 4.1.3, or 4.1.4, applicable sources are nonetheless subject to these requirements.

COMMENT 3: 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, which is flammable. 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. And that doesn't even include the reported fires that started before then around 2012, 2006, I think 2002.

And if you just look at the rest of it, just over two months ago, April 20 -- or April 22nd, 2026, violent chemical reaction and toxic gas releases at the Ames Goldsmith Plant in Institute. It killed two workers - I think one was an EMS - 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 3: See response to Comment 2.

COMMENT 4: 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 4: 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 45CSR34 which is the subject of this comment and response.

COMMENT 5: In court they are arguing about regulatory primacy in *West Virginia Surface Owner Rights Organization v. Zeldin* demanding regulatory primacy swearing under oath that local state agencies possess the competence and oversight to police heavy industrial hazards without federal interference. 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.

RESPONSE 5: The DAQ acknowledges the commenter's concerns regarding broader environmental litigation and jurisdictional disputes. However, these specific legal cases are outside the scope of this administrative rulemaking, which is strictly focused on updating 45CSR34 to incorporate the most recent federal emission standards by reference so that the state maintains its implementation authority. Thank you for your comment, a response is not necessary.

COMMENT 6: So why -- you know, we can't be sitting here doing both of these, because at that point, the only -- the only reasonable solution to that is that there is nobody for West Virginians to turn to when they are being polluted and poisoned. Because the State says they can do whatever they want to and the federal government, well, they've already kind of won several cases.

RESPONSE 6: West Virginia DAQ must comply with West Virginia Code and implement and comply with federal regulations. It cannot do whatever it wants.

COMMENT 7: 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 7: 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 8: This is a Corporate Pollution Protection Program and we should not be rubber-stamping the poisoning of the good people of West Virginia.

RESPONSE 8: The DAQ acknowledges the commenter's concerns regarding industrial pollution and public health. The agency remains committed to its statutory mandate to protect West Virginia's air quality. The adoption of the updates to 45CSR34 is a necessary step to ensure the DAQ retains the authority to enforce federal hazardous air pollutant standards at the state level. Thank you for your comment, a response is not necessary.

COMMENT 9: There is no reason to capture local control and implement blackouts, not provide information, data, all just to increase the maximum profitability and minimal liability of this entire system, especially at the structural cost of West Virginia's public health.

RESPONSE 9: The DAQ adopts the National Ambient Air Quality Standards (NAAQS) which are established by the U.S. EPA to establish primary standards for the criteria air pollutants that are protective of public health. The emission limits and air pollution controls are established and implemented as part of the State Implementation Plan. West Virginia is in attainment with all NAAQS throughout the state.

COMMENT 10: 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 10: The Clean Air Act authorizes the U.S. EPA to delegate implementation and enforcement of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) 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 NESHAP 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 roughly 100 standards.

Facilities subject to an applicable NESHAP 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 11.

COMMENT 11: 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.

RESPONSE 11: 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 12: 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 12: The DAQ notes the commenter's statements regarding the agency's motives and oversight. The agency strongly disagrees with the assertion that it grants regulatory immunity to applicable sources. Furthermore, as detailed in Responses 10 and 11, the DAQ transparently reports required emissions and monitoring data to the U.S. EPA, which is publicly available, and continues to enforce federal hazardous air pollutant standards as required by law.

COMMENT 13: 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 13: The updates to Rule 34 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 10.

COMMENT 14: 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 14: The DAQ acknowledges the commenter's perspective on the state's relationship with the U.S. EPA. As outlined in Response 10, even when the DAQ takes primary delegation of federal programs like the NESHAPs, the U.S. EPA maintains specific authorizations and oversight functions, meaning independent federal oversight is not eliminated.

COMMENT 15: 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 15: See responses to Comments 2, 10, and 11.

COMMENT 16: 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 16: The DAQ acknowledges the commenter's formal objection to the proposed rule and appreciates their participation in the public hearing process. The agency recognizes the critical importance of transparent environmental data, which it continues to maintain and provide through state and federal portals as detailed in Response 11.

COMMENT 17: Document "20-1530_N758.pdf" was provided with the request it be added to the public record. The document was a link to the *West Virginia et al. v. Environmental Protection Agency et al* Supreme Court of the United States Syllabus October Term, 2021. The case was mentioned in the verbal comments.

RESPONSE 17: The document will be filed with public comments received in the rulemaking record.

COMMENT 18: Document "HW-25-005 Peoples Cartage, Inc Signed Order" was provided with the request it be added to the public record. The document was a link to a Consent Order Issued under the Hazardous Waste Management Act under Chapter 22-18-1 et seq of the W.Va. Code (DWWM). The consent order was mentioned in the verbal comments.

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

COMMENT 19: 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 19: 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 20: Document "W. Va. industrial fire: another capitalist-made disaster – Liberation News" was provided with the request it be added to the public record. The document was a link to the November 1, 2017, article. The former Ames tool plant fire was mentioned in the verbal comments.

RESPONSE 20: The document will be filed with public comments received in the rulemaking record.

COMMENT 21: 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 21: The document will be filed with public comments received in the rulemaking record.



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



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.



0.pdf



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://www.supremecourt.gov/opinions/21pdf/20-1530_n758.pdf

<https://dep.wv.gov/pio/Documents/HW-25-005%20Peoples%20Cartage,%20Inc.%20Signed%20Order.pdf>

<https://liberationnews.org/parkersburg-wv-industrial-fire-yet-another-capitalist-environmental-disaster/>

<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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WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY
PUBLIC HEARING
PROPOSED 2027 LEGISLATIVE RULES
45CSR34

Taken On
July 7, 2026

at

6:47 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.

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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 6:21 p.m)

MS. JENNINGS: The virtual public hearing for the proposed legislative rule 45CSR34 (Emission Standards for Hazardous Air Pollutants) 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 45CSR34. This rule, last promulgated in 2026, incorporates and adopts national emission standards for hazardous air pollutants and other regulatory requirements promulgated by the U.S. Environmental Protection Agency pursuant to the federal Clean Air Act. Promulgation of this rule is necessary for the State to fulfill its responsibilities under the Clean Air Act and will enable the WV Department of

1 Environmental Protection to continue to be the
2 primary enforcement authority for such national
3 emission standards promulgated by the U.S. EPA.

4 Revisions to the rule include the
5 annual incorporation by reference amendments as of
6 June 1, 2026, by revising the IBR dates in
7 subsections 1.6 and 4.1.

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

11 Nicole, has anyone pre-registered to
12 provide comments on proposed rule 45CSR34? If so,
13 please call on them now.

14 MS. ERNEST: Thank you, Laura. We
15 have one person pre-registered to provide comment
16 tonight. I invite Phil Tucker to go ahead and
17 speak now.

18 Phil, please unmute your microphone,
19 state your first and last name, and any
20 organization you represent, and proceed with your
21 remarks.

22 Please specify when your comment is
23 finished and mute your mic.

24 MR. TUCKER: My name is Phil Tucker.

1 I am not representing anybody, just as a
2 constituent.

3 For Series 34, there is a very
4 consistent problem with all of it that relates to
5 the rest of the previous series. It's Section
6 4.12. It explicitly abdicates state oversight over
7 catastrophic chemical accident prevention.

8 Section 4.13 explicitly excludes 18
9 separate area source toxic categories lifting state
10 tracking from neighborhoods of which they operate
11 in toxic chemical production.

12 Section 4.14 blinds the State to
13 radioactive gas and Radon emissions that happen
14 when you are, you know, giving -- creating energy -
15 coal, natural gas, stuff like that. It happens.

16 It -- what else happens is facilities
17 like the Peoples Cartage warehouse that has been on
18 fire for two or three days now, that's what
19 happens.

20 Because according to the West Virginia
21 Department of Environmental Protection, their own
22 consent order issued on December 15th, 2025, the
23 Consent Order No. HW-25-005 caught them mismanaging
24 calcium hypochlorite, which is flammable. It

1 caused several fires over multiple years, and the
2 only thing they got hit with is a fine of just a
3 little bit more than \$46,000. And that's not even
4 the only one.

5 It's in the same place that IEI
6 Plastics' fire burned out of control for eight
7 straight days in 2017. And that doesn't even
8 include the reported fires that started before then
9 around 2012, 2006, I think 2002.

10 And if you just look at the rest of
11 it, just over two months ago, April 20 -- or April
12 22nd, 2026, violent chemical reaction and toxic gas
13 releases at the Ames Goldsmith Plant in Institute.
14 It killed two workers - I think one was an EMS -
15 hospitalized dozens.

16 For decades, heavy industrial
17 smokestacks along the Kanawha River Corridor has
18 permitted the release of concentrated atmospheric
19 pollution that rains back down straight into our
20 water columns and it turns the Kanawha River, for
21 one, into a place of chemical conduit that locals
22 know that they probably shouldn't even swim in.

23 Further south, it just gets worse.
24 Logan County, Boone County, it just rains down and

1 poisons their critical headwater streams that feed
2 their rural natural ground water systems.

3 Nature does not operate in a
4 regulatory silo. West Virginia's water systems are
5 the worst in the country, 29.2 violate the federal
6 Safe Drinking Water Act.

7 Right now in court, they are arguing
8 that -- what is the case -- it is, oh, the West
9 Virginia Surface Owners Rights Organization v.
10 Zeldin. They're aggressively demanding regulatory
11 primacy, swearing under oath that local and state
12 agencies possess the absolute competence and
13 oversight to police heavy industrial hazards
14 without federal interference.

15 West Virginia, back in 2022, went to
16 the Supreme Court versus the EPA to weaponize the
17 Major Questions Doctrine, arguing that federal
18 bureaucrats have no right to dictate local
19 environmental policy.

20 So why -- you know, we can't be
21 sitting here doing both of these, because at that
22 point, the only -- the only reasonable solution to
23 that is that there is nobody for West Virginians to
24 turn to when they are being polluted and poisoned.

1 Because the State says they can do whatever they
2 want to and the federal government, well, they've
3 already kind of won several cases.

4 So if we can't regulate our public
5 water, our air - I mean, 79.1 percent of West
6 Virginia systems face violations as our utility
7 costs continue to increase. 130 public water
8 systems are contaminated with detectable PFAS,
9 "forever chemicals".

10 So what are we doing here? Because
11 essentially what it is is a corporate pollution
12 protection program. And for no reason should we be
13 rubber-stamping the poisoning of the good people of
14 West Virginia, especially in the dark. There is no
15 reason to capture local control and implement
16 blackouts, not provide information, data, all just
17 to increase the maximum profitability and minimal
18 liability of this entire system, especially at the
19 structural cost of West Virginia's public health.

20 And I'll leave it there.

21 MS. ERNEST: Thank you for your
22 comment, Phil.

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

1 MS. JENNINGS: Okay. Thank you,
2 Nicole. There being nothing further, the public
3 hearing for proposed rule 45CSR34 is concluded.

4 There are no further public hearings
5 this evening. Thank you very much for your
6 interest and participation in the public hearings
7 for the 2027 DAQ Proposed Rules.

8 Responses to the oral comments
9 presented this evening, along with written comments
10 received during the public comment period, will be
11 addressed in the Response to Comments document
12 filed with the respective rule as part of the
13 official rulemaking record, and will be made
14 available on the Secretary of State's website.

15 Have a good night, everybody, and
16 thank you for your participation.

17 (Hearing concluded at 6:56 p.m.)

18 --oOo--

19

20

21

22

23

24

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