



west virginia department of environmental protection

Division of Air Quality
601 57th Street SE
Charleston, WV 25304
Phone (304) 926-0475 • FAX: (304) 926-0479

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.wvden.org

Response to Public Comment And Final Determination

R13-2958

**Chesapeake Appalachia, LLC
John Harwatt Pad**

Date: January 2, 2013

Table of Contents

BACKGROUND INFORMATION	3
OVERVIEW OF COMMENTS RECEIVED	3
ORGANIZATION OF RESPONSE DOCUMENT	3
GENERAL RESPONSE TO COMMENTS	4
<i>Statutory Authority of DAQ</i>	4
<i>Statutory Basis for Permit Denial</i>	4
<i>DAQ Permitting Process in Context</i>	5
<i>Ambient Air Quality of Brooke County</i>	5
<i>General Response Conclusion</i>	6
SPECIFIC COMMENT RESPONSES	6
FINAL DETERMINATION	7

BACKGROUND INFORMATION

On September 21, 2012, pursuant to §45-13-8, the West Virginia Division of Air Quality (DAQ) provided notice to the public of a preliminary determination to issue Permit Number R13-2958 to Chesapeake Appalachia, LLC (Chesapeake) for the construction of a natural gas production facility proposed to be located near West Liberty, Brooke County, WV. At that time, the draft permit and Engineering Evaluation/Fact Sheet were made available to the public for review. The permit application had previously been available for public review and remained so during the public comment period.

The public notice was followed by a public comment period (required to be a minimum of 30 days under §45-13-8) scheduled to end at 5:00 P.M. on October 22, 2012. During the public comment period, the DAQ accepted comments on our preliminary determination to issue permit R13-2958 to Chesapeake and on all documents related thereto. To provide information on the permitting action and to facilitate the submission of comments, the DAQ held, on December 13, 2012, and pursuant to §45-13-9, a public meeting concerning R13-2958 at the West Liberty Christian Church located in Brooke County, WV. Due to the public meeting, the public comment period was extended until 8:30 p.m., Thursday, December 13, 2011.

OVERVIEW OF COMMENTS RECEIVED

The DAQ received one (1) written comment during the public comment period. Additional oral comments were made during the public meeting. Some comments were general in nature (and non-technical) either in support of issuance of the permit or against it. However, technical questions/comments were also submitted. Pursuant to §45-13-8.8, all submitted comments received during the public comment period have been reviewed and are appropriately addressed in this document.

ORGANIZATION OF COMMENT RESPONSE

The DAQ's response to the submitted comments will include both a general and specific response section. The general response will define issues over which the DAQ has authority and by contrast, identify those issues that are beyond the purview of the DAQ. The general response will also describe the statutory basis for the issuance/denial of a permit, discuss the role of the pre-construction permitting process in the larger divisional goal of maintaining air quality in WV, and detail the current status of the ambient air quality of Brooke County.

The specific response will summarize each relevant non-general comment that falls within the purview of the DAQ and provide a response to it. This document will not reproduce all the comments here (they are available for review in the R13-2958 file). Instead, each comment will be summarized and key points will be listed. The DAQ makes no claim that the summaries are complete; they are provided only to place the responses in a proper context. For a complete understanding of submitted comments, please see the original documents in the file. The DAQ responses, however, are directed to the entire comments and not just to what is summarized. Comments that are not directly identified and responded to in the specific response section of this document are assumed to be answered under the general response section (or not relevant to the Chesapeake application or an air quality-related issue).

GENERAL RESPONSE TO COMMENTS

Statutory Authority of the DAQ

The statutory authority of the DAQ is given under the Air Pollution Control Act (APCA) - West Virginia Code §22-5-1, *et. seq.* - which states, under §22-5-1 (“Declaration of policy and purpose”), that:

It is hereby declared the public policy of this state and the purpose of this article to achieve and maintain such levels of air quality as will [underlining and emphasis added] protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

Therefore, while the code states that the intent of the rule includes the criteria outlined in the latter part of the above sentence, it is clear by the underlined and bolded section of the above sentence that the scope of the delegated authority does not extend beyond the impact of air quality on these criteria. Based on the language under §22-5-1, *et. seq.*, the DAQ, in making determinations on issuance or denial of permits under 45CSR13, does not take into consideration substantive non-air quality issues such as job creation, economic viability of proposed product, energy independence, nuisance potential (noise, sight line obstruction, traffic), non-air quality environmental impacts, grant eligibility, etc. Beyond the DAQ’s position that the code does not grant us the authority to take into consideration such issues, it is also self-evident that these issues are beyond the expertise of the Division of Air Quality and that most are regulated by other Bodies with the mandates and expertise to do so.

Statutory Basis for Permit Denial

Pursuant to §22-5-4 (“Powers and duties of director; and legal services; rules”), the DAQ is authorized to:

To promulgate legislative rules . . . providing for . . . [p]rocedures and requirements for permit applications, transfers and modifications and the review thereof;

This authorization is effected under WV Legislative Rule 45CSR13 - “Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation.” Pursuant to §45-13-5.7, the DAQ shall issue a permit unless:

a determination is made that the proposed construction, modification, registration or relocation will violate applicable emission standards, will interfere with attainment or maintenance of an applicable ambient air quality standard, cause or contribute to a violation of an applicable air quality increment, or be inconsistent with the intent and purpose of this rule or W. Va. Code §22-5-1 *et seq.*, in which case an order denying such construction, modification, relocation and operation shall be issued. The Secretary shall, to the extent possible, give priority to the issuance of any such permit so as to avoid undue delay and hardship.

It is clear under 45CSR13 that denial of a permit must be based on one of the above explicitly stated criteria or, as noted, is inconsistent with the intent of 45CSR13 or §22-5-1, *et. seq.* As is stated above, it is the DAQ's position that the intent of both of the APCA and 45CSR13 is to limit the authority of the DAQ to air quality issues as outlined in the APCA and in West Virginia's State Implementation Plan (SIP).

The air quality issues evaluated relating to Chesapeake's application to construct a natural gas production facility are outlined in the DAQ's Engineering Evaluation/Fact Sheet made public on September 21, 2012. The issues covered under that document represent the extent of the substantive air quality issues over which the DAQ believes it has authority to evaluate under 45CSR13 and the APCA as relating to Chesapeake's permit application R13-2958.

DAQ Permitting Process in Context

It is important to note that the DAQ permitting process is but one part of a system that works to meet the intent of the APCA in WV. The DAQ maintains a Compliance/Enforcement (C/E) Section, a Monitoring Section, a Planning Section, *etc.* to effect this. Most pertinent to the permitting process, the C/E Section regularly inspects permitted sources to determine the compliance status of the facility including compliance with all testing, monitoring, record-keeping, and reporting requirements.

Ambient Air Quality Status of Brooke County

The quality of the air of a defined local area - in this case Brooke County, WV - is determined by its status with respect to the National Ambient Air Quality Standards (NAAQS). The Clean Air Act, which was last amended in 1990, requires the Environmental Protection Agency (EPA) to set NAAQS for pollutants considered harmful to public health and the environment. The Clean Air Act established two types of national air quality standards. Primary standards set limits to protect public health, including the health of "sensitive" populations such as asthmatics, children, and the elderly. Secondary standards set limits to protect public welfare, including protection against decreased visibility, damage to animals, crops, vegetation, and buildings.

The EPA Office of Air Quality Planning and Standards (OAQPS) has set National Ambient Air Quality Standards for six principal pollutants, which are called "criteria" pollutants. They are listed at <http://www.epa.gov/air/criteria.html>.

Counties that are known to be violating these standards are, for specific pollutants, designated by the EPA as in "non-attainment" with the NAAQS. Counties that are not known to be violating these standards are, for specific pollutants, designated by the EPA as in "attainment" with the NAAQS. Brooke County is designated by EPA as being in attainment with the NAAQS for all pollutants except PM_{2.5}.

General Response Conclusion

In conclusion, in response to all commenters who referenced substantive non-air quality issues, the APCA and 45CSR13 does not grant the DAQ the authority to take into consideration such issues in determining to issue or deny the permit. Further, the requirements of 45CSR13 require the DAQ to, when denying a permit, explicitly state the reason pursuant to §45-13-5.7. Additionally, the permit is but the beginning of the involvement of the DAQ with a source. After issuance, the facility will receive regular inspections to determine compliance with the requirements as outlined in the applicable permit.

SPECIFIC RESPONSES TO COMMENTS

Comment

The public expressed interest in setting up air quality monitors in the area that would record real time data for this facility.

DAQ Response

The DAQ Air Monitoring Section, with ambient air quality sampling sites located throughout West Virginia, monitors air pollutants on either a continuous or periodic basis. The sampling sites are located to assess air quality levels based on population exposure, industry emissions, determine compliance with the National Ambient Air Quality Standards (NAAQS), background levels and other special purposes.

The monitoring network is reviewed annually and revised as necessary to accommodate changing Federal requirements. The data collected is used by the DAQ to implement programs to insure attainment of NAAQS for criteria pollutants. The closest air monitoring sites are in Brooke County (PM₁₀, PM_{2.5}, CO, SO₂), Ohio County (PM₁₀, PM_{2.5}, ozone), Hancock County (PM₁₀, PM_{2.5}, CO, SO₂, ozone), Marion County (PM_{2.5}), Marshall County (PM_{2.5}, PM_{2.5} speciation, and SO₂), and Monongalia County (PM_{2.5}, SO₂).

Brooke County is currently a non-attainment county for PM_{2.5}. However, based on the most recent 2009-2011 data, this area now monitors attainment for the annual standard. Therefore, the DAQ is moving forward with efforts to have this area re-designated to attainment status.

The 2011 State of West Virginia Air Quality Annual Report which includes information on National Ambient Air Quality Standards in regards to all regulated air pollutants, the air quality index from around the state, and detailed technical information on how the monitoring program works in making these determinations can be downloaded from the following website:

<http://www.dep.wv.gov/daq/General/Documents/2011%20Final%20Report%205-31.pdf>

The types of air quality monitors that were proposed during the public meeting are not of the same caliber as used for DAQ's long term air monitoring network used to determine compliance with the NAAQS. These types of short term monitors consist of photo ionization detectors for total hydrocarbons and monitors for dust collection. This type of equipment can, at best, be indicative that there may be issues to follow up on, but not conclusive of any long term issues.

As stated above, the DAQ does have several monitors in this area of the state and PM_{2.5} concentrations in this area have declined significantly, as shown in the most recent State of West Virginia Air Quality Annual Report.

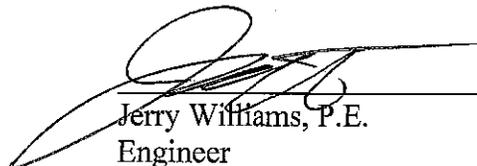
The DAQ is aware of the recent increased activity in the oil and gas industry as it pertains to the horizontal drilling in the Marcellus Shale. The increase in drilling activity has created new challenges with maintaining healthy air, water, and land usage. Air quality issues associated with the oil and gas sector are an expanding aspect of the DAQ'S regulatory responsibilities. In December 2011, the West Virginia Legislature directed the DEP to conduct several site studies regarding impacts from horizontal well drilling activities on air quality. The DEP is working with West Virginia University to design a study on the air impacts from horizontal well drilling operations. The results of the study may determine if more stringent regulations are required for these operations. The field component of monitoring light, noise, dust, and volatile organic compounds near several horizontal drilling sites in the state was completed in the fall of 2012. The data are currently being compiled and analyzed.

DAQ Action

None.

FINAL DETERMINATION

Pursuant to §45-13-8.8, all submitted relevant comments received during the R13-2958 public comment period have been reviewed and are appropriately addressed in this document. It is the view of the DAQ that, after consideration of all comments received and revisions to the draft permit as noted above, the available information indicates Chesapeake's proposed construction of a natural gas production facility proposed to be located near West Liberty, Brooke County, WV will meet the emission limitations and conditions set forth in the permit and should comply with all currently applicable state and federal air quality management rules and standards.



Jerry Williams, P.E.
Engineer

Apr 2, 2013

Date