

Via Email

March 30, 2013

Jerry Williams, P.E.
West Virginia Department of Environmental Protection
Division of Air Quality
601 57th Street, SE
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Re: Comments Regarding Draft Class II General Permit G80-A for Natural Gas Production, Compressor and/or Dehydration Facilities

Dear Mr. Williams,

Please accept the enclosed comments regarding Draft Class II General Permit G80-A for Natural Gas Production, Compressor and/or Dehydration Facilities on behalf of the Group Against Smog and Pollution, the West Virginia Surface Owner's Rights Organization, the West Virginia Highlands Conservancy, the West Virginia Chapter of the Sierra Club, the West Virginia Environmental Council, the Mon Valley Clean Air Coalition, the Wetzel County Action Group, and the Ohio Valley Environmental Coalition.

We thank the Department for providing this opportunity to comment. If you have any questions or require any additional information, please feel free to contact us.

Sincerely,

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General permits establish standardized permit terms and conditions for categories of sources that are numerous and similar in nature.¹ General permits can reduce burdens on air-permitting-programs by eliminating the need to develop separate air permits tailored to each individual facility application the agency receives. Further, air-permitting-authorities generally need not provide opportunity for public comment prior to authorizing construction or modification of an individual source pursuant to a general permit. However, in its present form, G80-A fails to satisfy several requirements of the Clean Air Act and federal and state regulations implementing the act. These shortcomings are described in more detail in the following sections.

1. WVDAQ must either alter G80-A to provide uniform terms and conditions, or provide a 30-day public comment period prior to authorizing construction or modification of individual sources under G80-A.

1.1 Typically, public participation is not required prior to issuing a general permit registration to an individual source based on the presumption that all facilities authorized under the same general permit will be subject to uniform terms and conditions.

While EPA requires state and local air permitting authorities to provide a 30-day opportunity for public comment prior to issuing a standard permit,² EPA does not require a similar public comment period prior to issuing a general permit registration to an individual source. EPA's logic is that (1) the public has an opportunity to comment on the general permit when the air permitting authority initially developed the general permit, and (2) no additional public comment period is necessary because general permits are standardized documents that will not be tailored on a case-by-case basis to individual sources:

In cases where standardized permits have been adopted, EPA and the public need not be involved in their application to individual sources as long as the standard permits themselves have been subject to notice and opportunity to comment. . . . A general permit is a single permit that establishes terms and conditions that must

¹ See e.g. W. Va. Code §22-5-11(g)(2), 45 CSR 13-5.12.

² 40 C.F.R. § 51.161(a).

*be complied with by all sources subject to that permit. The establishment of a general permit provides for conditions limiting potential to emit in a one-time permitting process, and thus avoids the need to issue separate permits for each source within the covered source type or category.*³

1.2 By incorporating facility-specific emission limits and operating parameter requirements by reference, G80-A defies the presumption that all facilities authorized under the same general permit will be subject to uniform terms and conditions.

G80-A contains virtually no specific numeric limits on emissions from G80-A-eligible emission units, nor does it specify pollution control device efficiencies, limits on equipment capacities, operational or production limitations, or operating parameters necessary to ensure sources achieve and maintain any required control efficiencies or emission limits. Instead, G80-A would incorporate by reference emission limits and other operating parameters contained in facility-specific G80-A registration forms. It appears that the information in the registration forms would be copied directly from applicants' G80-A registration applications.

Thus, while G80-A nominally provides uniform, standardized permit terms and conditions, the G80-A terms and conditions themselves contain very few substantive requirements; instead, the G80-A language largely incorporates by reference whatever facility-specific numeric emission limits and operating parameters the applicant provided in its initial G80-A registration application. As a result, the actual applicable numeric emission limits and operating parameters may vary as wildly from one G80-A facility to the next as they would between G80-A-eligible sources permitted under the standard individualized minor NSR permitting process. Yet, unlike individual minor NSR permits, neither individual G80-A authorizations, nor the facility-specific G80-A registration forms are subject to public comment prior to issuance.

³ 71 FR 5979, 5981; Memo from Kathie Stein, USEPA, Guidance on Enforceability Requirements for Limiting Potential to Emit (Jan. 25, 1995), available at: <http://www.epa.gov/region7/air/nsr/nsrmemos/potoem.pdf>.

As proposed, G80-A would afford applicants virtually the same freedom to customize their proposed facilities the standard minor NSR permitting process would provide while eliminating the opportunity for public participation afforded under the standard minor NSR permitting process. As discussed above, the rationale for not requiring a 30-day public comment period prior to issuing a general permit registration to an individual source is premised on the assumption that applicable terms and conditions will not vary from one general permit facility to the next. In its present form, G80-A defies that assumption. Thus WVDAQ must either alter G80-A to provide uniform terms and conditions, or provide a 30-day public comment period prior to issuing a general permit registration to an individual source.

2. G80-A fails to provide specific, technically accurate limits on potential to emit and fails to establish specific operating parameters to ensure those limits are achieved and maintained in practice.

As discussed in the previous section, G80-A itself contains virtually no specific limits on emissions or operating parameter requirements to ensure sources achieve and maintain limits on potential to emit. In a memo titled "Guidance on Enforceability Requirements for Limiting Potential to Emit" USEPA states:

[A permit-by-]rule or general permit . . . must specify technically accurate limits on the potential to emit. . . must clearly specify the limits that apply, and include the specific associated compliance monitoring. . . . The standards or limits must be technically specific and accurate to limit potential to emit, identifying any allowed deviations. . . . Further, for potential to emit limitations, the standards set must be technically sufficient to provide assurance to EPA and the public that they actually represent a limitation on the potential to emit for the category of sources identified. Any presumption for control efficiency must be technically accurate and the rule must provide the specific parameters as enforceable limits to assure that the control efficiency will be met. For example, rules setting presumptive efficiencies for incineration controls applied to a specific or broad category must state the operating temperature limits or range, the air flow, or any

*other parameters that may affect the efficiency on which the presumptive efficiency is based.*⁴

EPA goes on to directly address problems with proposals, like G80-A, which would allow general permit applicants to establish source-specific operating parameters and emission limits:

*A rule that allows sources to submit the specific parameters and associated limits to be monitored may not be enforceable because the rule itself does not set specific technical limits. The submission of these voluntarily accepted limits on parameters or monitoring requirements would need to be federally enforceable. Absent a source-specific permit and appropriate review and public participation of the limits, such a rule is not consistent with the EPA's enforceability principles.*⁵

3. G80-A fails to establish federally enforceable limits on potential to emit because underlying emission limits and operating parameter requirements are not subject to public participation requirements.

Major sources are not eligible for G80-A.⁶ Major source status is based on a facility's "potential to emit" applicable pollutants.⁷ Limitations must be "enforceable by the [WVDEP] Secretary and U. S. EPA" in order to constitute limits on potential to emit.⁸ In order to be federally enforceable, limits must be subject to an opportunity for public review.⁹ As stated in the sections above, individual facility authorizations under G80-A are not subject to public review, and the standard terms and conditions of G80-A fail to provide specific limits on emissions or establish operating parameter requirements to ensure sources achieve and maintain limits on potential to emit.

⁴ Memo from Kathie Stein, USEPA, Guidance on Enforceability Requirements for Limiting Potential to Emit (Jan. 25, 1995) at 8, available at: <http://www.epa.gov/region7/air/nsr/nsrmemos/potoem.pdf>.

⁵ *Id.*

⁶ WVDEP, Draft General Permit G80-A, conditions 2.3.1.a at 5.

⁷ Definition of "major stationary source" 45 CSR 13-2.16, 45 CSR 14-2.43, 45 CSR 19-2.35, and 45 CSR 30-2.26.

⁸ Definition of "potential to emit" 45 CSR 13-2.19.

⁹ 40 CFR 51.161; 71 FR 5979, 5981; USEPA, Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits (Jan. 25, 1995) at 8, available at: <http://www.epa.gov/region7/air/nsr/nsrmemos/potoem.pdf>.

The public notice required at the time of G80-A application submission¹⁰ is not sufficient to satisfy the public participation requirement. The application itself would not provide any indication to the public of which limits and operating parameters listed in the application WVDAQ would ultimately include in the G80-A registration form and incorporate by reference as facility-specific G80-A emission unit level terms and conditions. Further, if the initial G80-A application was later revised to include new or modified limits on emissions or operating parameter requirements, a new 45 CSR 13-8.3 notice, and new 30-day comment window would be necessary to satisfy the public participation requirements of 40 CFR 51.161.

4. 45 CSR 13-5.11 prohibits incorporation of emission limits and operating parameters by reference.

45 CSR 13-5.11 states that, "any portions of the permit application, other than plans and specifications, that are to be made permit conditions must be specifically identified in the permit itself." WVDAQ's proposal to incorporate emission limits and operating parameter requirements by reference, rather than stating them directly in G80-A itself is clearly and expressly prohibited by 45 CSR 13-5.11.

5. G80-A should be revised to include specific emission limits and operating parameter requirements in the general permit itself, rather than incorporating such requirements by reference from facility-specific registration forms.

The problems described in sections 1-4 above are due in large part to the fact that proposed General Permit G80-A incorporates emission limits and operating parameter requirements by reference to facility-specific information and could be addressed by instead providing specific, uniform emission limits and operating parameter requirements directly in the G80-A terms and conditions themselves. For example, Pennsylvania Air Quality General Permit 5 for natural gas compression and/or processing facilities includes specific numeric emission

¹⁰ 45 CSR 13-8.3.

limits for stationary engines¹¹ and turbines,¹² a numeric control efficiency for the dehydrator still vent,¹³ and provides specific parametric requirements to ensure dehydrator control device efficiency.¹⁴

6. G80-A should be revised to include conditions establishing reciprocating engine control device efficiencies and engine emission limits.

Reciprocating engine emissions are generally among the largest permanent sources of NO_x, CO, VOC, and formaldehyde emissions from natural gas facilities. Consistent with the policy and purpose of W. Va. Code Chapter 22, Article 5,¹⁵ and pursuant to its authority under W. Va. Code §22-5-4(a)(1) and 45 CSR 13-5.11, DAQ should include specific numeric limits on emissions from reciprocating engines in G80-A.

7. Absent a permit condition requiring trucks to meet a specific collection efficiency, PTE from truck loadout must be based on maximum uncontrolled emissions from truck loadout.

The G80-A fact sheet directs applicants to estimate facility potential to emit¹⁶ and goes on to provide presumptive control efficiencies and emission limits for various G80-A emission sources. For truck loadout emissions, DAQ lists 3 separate presumptive capture efficiencies, ranging from 70% to 99.2% depending on the leak certification status of individual trucks and states that “compliance with this requirement shall be demonstrated by keeping records of the applicable MACT or NSPS Annual Leak Test certification for every truck loaded/unloaded.”¹⁷

¹¹ PADEP, Air Quality General Permit 5, conditions B.1 & 2 at 10, *available at*: <http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-105881/2700-PM-BAQ0205%20GP-5%20Permit%20SAMPLE.pdf>.

¹² *Id.* condition C.1 at 12.

¹³ *Id.*, conditions F.2(a) & F.3 at 14-15.

¹⁴ *Id.* conditions F.2(b)-(j) at 14-15.

¹⁵ W. Va. Code §22-5-1.

¹⁶ WVDEP, G80-A Fact sheet at 6.

¹⁷ WVDEP, G80-A Fact sheet at 7.

However, DAQ does not indicate how applicants should estimate potential to emit from truck loadout.

Potential to emit is defined as:

*the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of fuel combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.*¹⁸

Numerical limits on potential to emit are not enforceable per se. In order to be federally enforceable, a PTE limit must either: reflect maximum emissions of the source operating at full capacity, or be based on production limits or operational limits (e.g., hours of operation, fuel restrictions, pollution control requirements) sufficient to ensure the source will not exceed the numerical emission limit.¹⁹

Thus, absent a permit condition requiring trucks to meet a specific collection efficiency, PTE from truck loadout must be based on maximum uncontrolled emissions from truck loadout.

8. Several G80-A terms and conditions are not enforceable as a practical matter and must be revised.

Several G80-A terms and conditions including the qualifying language “as soon as practicable.”²⁰ In some instances, the “as soon as practicable” language is rendered enforceable because it is followed by language establishing a specific deadline (e.g., “but within ten (10)

¹⁸ 40 C.F.R. §§ 52.21(b)(4), 51.165(a)(1)(iii), 51.166(b)(4) (emphasis added), *see also*, substantially similar definition of potential to emit at 45 CSR 13-2.19.

¹⁹ U.S. EPA, Limiting Potential to Emit (PTE) in New Source Review (NSR) Permitting *available at* <http://www.epa.gov/reg3artd/permitting/limitPTEmmo.htm>; *see also U.S. v. Louisiana-Pacific Corp.*, 682 F. Supp. 1122 (D. Colo. Oct. 30, 1987) & 682 F. Supp. 1141 (D. Colo. Mar. 22, 1988).

²⁰ WVDEP, Draft G80-A, Conditions 3.2.7 at 12, 4.1.1 at 15, 5.1.3 at 17, 6.5.1 & 4 at 22, 8.1.1 at 23, 8.2.2.ii at 27, 8.2.3.ii at 28, 8.5.1-4 at 31-32, 9.5.1 at 33; for additional discussion of enforceable permit requirements, *see e.g.*, USEPA, Guidelines: Practical Enforceability *available at*: <http://www.epa.gov/region9/air/permit/titlev-guidelines/practical-enforceability.pdf>.

calendar days”).²¹ However, several conditions using the “as soon as practicable” language are not accompanied by language setting an absolute deadline.²² In the latter cases, an absolute deadline should be added or the permit condition should otherwise be altered to render it enforceable.

9. DEP should implement the additional measures recommended by Dr. McCawley of the WVU School of Public Health.

DEP has statutory authority to undertake additional rulemaking with regard to Marcellus Shale and other horizontal oil and gas well drilling, pursuant to the Horizontal Well Act, particular with regard to air quality. W.Va. Code §22-6A-22. “Air quality study and rule making” provides that,

The secretary shall, by July 1, 2013, report to the Legislature on the need, if any, for further regulation of air pollution occurring from well sites, including the possible health impacts, the need for air quality inspections during drilling, the need for inspections of compressors, pits and impoundments, and any other potential air quality impacts that could be generated from this type of drilling activity that could harm human health or the environment. If he or she finds that specialized permit conditions are necessary, the secretary shall promulgate legislative rules establishing these new requirements.

That report was done. The West Virginia Surface Owner's Rights Organization appeared at the public hearing on this general permit and spoke in more detail on this matter and submitted a copy of the report by Dr. McCawley of the WVU School of Public Health. His recommendation to the Legislature was that monitoring of parameters should be required at the boundary of natural gas operations or at a nearby residence chosen based on distance, topography and prevailing wind. If monitoring results exceeded acceptable levels, additional actions by the driller should be required. More particularly: The operator shall set up continuous real-time monitoring of air (and noise), and dust and particulates at the residence or

²¹ See e.g., *Id.* conditions 5.1.3 at 17, 6.5.1 & 4 at 22 8.5.1-4 at 31-32, 9.5.1 at 33.

²² See e.g., *Id.* conditions 3.2.7 at 12, 4.1.1 at 15, 8.1.1 at 23, 8.2.2.ii at 27 (leaks), 8.2.3.ii at 28.

other point of impact that is closest or most likely to be impacted by the well work, including traffic associated with the site. The operator shall continuously monitor those parameters in real time. If there is a 5% chance or greater that the monitored levels could exceed any of the required parameters as determined by continuous process control analysis during any running twenty four hour averaging period, the operator shall implement the best available control technology available to limit the levels. The monitored levels need to be continuously available by wireless or other transmission to those persons or entities within fifteen hundred feet of the limit of disturbance who request it. When levels exceed parameters, alerts shall be sent to those persons or entities. The data shall be available to the public for study. Unless altered by legislative rule, the parameters shall be:

(1) for noise during site construction, 70 dBA average an hour.

(2) for noise at all other times, 55 dBA at any time.

(3) for dust, the national ambient air quality standard level for a twenty-four hour period and no visible dust on residences or crops.

(4) for air, the Minimal Risk Levels for chronic (365 days or more) exposure to organic compounds set by the Agency for Toxic Substances and Disease Registry of the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

If, after completion of well work, production or production facilities cause a violation of the standards set out in subsection (b) at a residence, then the operator shall implement the best available control technology available to limit the levels that violate the standards.

The DEP, either as part of this general permit or as rule making, should carry out those recommendations.