

**WEST VIRGINIA AIR QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

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AIR QUALITY BOARD

**TUCKER UNITED,
WEST VIRGINIA HIGHLANDS
CONSERVANCY, and
SIERRA CLUB,**

Appellants

Appeal No. 25-AQB-02

v.

**DIRECTOR, DIVISION OF AIR
QUALITY, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,**

Appellee.

**APPELLEE WVDEP'S
MOTION FOR PARTIAL DISMISSAL**

The Appellee, Laura M. Crowder, Director, Division of Air Quality, West Virginia Department of Environmental Protection ("WVDEP") hereby tenders its Appellee WVDEP's Motion for Partial Dismissal in the above-styled matter. WVDEP moves the Board for entry of an order dismissing the counts of the appeal predicated on specific objections ¶¶ 8, 12, and 16 in this matter, barring them from further consideration by the Board. WVDEP so moves pursuant to Rule 12(b)(6) of the West Virginia Rules of Procedure, the Appellants having failed to state claims on which relief can be granted as to those assignments of error.

In support of its motion, WVDEP states as follows:

AUTHORITY OF THE BOARD

The West Virginia Legislature has authorized this Board to hear appeals of orders, permits, or official actions of WVDEP. *See* W. Va. Code § 22B-1-7. Parties to an appeal before this Board may move for dismissal or make other such motions as necessary and appropriate.

See W. Va. Code R. § 46-4-5.3. This Board has the authority to rule on such motions which tend to regulate the course of the hearing, simplify the issues, and dispose of procedural requests or similar matters. See W. Va. Code R. § 52-1-5.2 (“The board may, in its administrative discretion, and in the interests of fairness and justice, rule on motions which tend to regulate the course of hearing, simplify the issues, and dispose of stay requests, procedural motions, discovery motions, and any other request which tends to regulate the course of the hearing.”). This includes motions to dismiss. *Id.* at 5.3. The Board does so with the guidance of the West Virginia Rules of Civil Procedure. See W. Va. Code R. § 52-1-6.13 (“[T]he appropriate Rules of Civil Procedure will guide the appeals process before this Board.”). Accordingly, the Board may properly rule on and grant a motion for dismissal under Rule 12(b)(6).

ARGUMENT

1. WVDEP is strictly limited to the exercise of that authority expressly provided by law.

WVDEP’s authority to issue permits in this case is strictly prescribed in W. Va. C.S.R. § 45-13-5.1 *et seq.* Specifically, W. Va. C.S.R. § 45-13-5.7 states:

The Secretary *shall* issue such permit or registration 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 West Virginia Code § 22-5-1 *et seq.* (Emphasis added.)

The Board has previously ruled as to the authority of WVDEP to consider matters outside the specifically delineated purview of the and rules promulgated under its authority. In *People Concerned About Chemical Safety, Inc. v. Director, Division of Air Quality, Department of Environmental Protection and US Methanol LLC*, Appeal No. 17-02-AQB (“*US Methanol*”,

attached as Exhibit A), the Board ruled in its Order Granting the Director, Division of Air Quality, Department of Environmental Protection's Motion to Dismiss ("Board Order") that WVDEP lacks authority to make determinations or impose permit terms and conditions outside of the explicit provisions of its regulatory framework. The Board stated:

In the context of [*US Methanol*], the permitting program is the sole source of the WVDEP DAQ's authority to regulate air pollution and delineates the way it may do so. The WVDEP DAQ is not allowed to do more, or less, than the rules allow.¹

The Board further states, in relevant part:

[The Appellant] insists that WVDEP DAQ is tasked with more broadly protecting health and safety, but ignores the plain language of West Virginia Code § 22-5-1. The WVDEP is authorized to "achieve and maintain such levels of air quality as will protecting health and human safety. *Id.* The means to accomplish those levels of air quality are provided for in West Virginia Code § 22-5-1[.]

...

Those aims are pursued through the promulgation of rules pursuant to the West Virginia Air Pollution Control Act, as contained in [W. Va. C.S.R. § 45-13-1 *et seq.*]. The WVDEP is expressly limited to the measures provided for in those rules in its pursuit of achieving and maintaining such levels of air quality as will protect human health and safety.² The Board in *US Methanol* expressly rejects the proposition that the general purposes of

W. Va. Code § 22-5-1 create "any specific authority" for WVDEP to require information regarding effects on human health and safety beyond that which it is given express authority to require:

The WVDEP is only allowed to exercise the authority that it is given by express rule; no such rule exists that allows the agency to deny an application for a permit because it allegedly fails to protect human health and safety, as alleged in [*US Methanol*] that, "the permitted operations may leak, catch on fire or blow up and kill thousands of people." (Citation omitted.)

The WVDEP's authority and permissible considerations for issuing air permits is strictly circumscribed in this instance by [W. Va. C.S.R. § 45-13-1 *et seq.*]. This legislative rule,

¹ *US Methanol*, p. 3.

² *Id.*, p. 6.

which carries the force of law, expressly enumerates the specific factors which the agency may examine to determine whether a permit may be issued or denied.

The WVDEP does not have the legal authority to broadly reject applications for permits based upon generalized allegations about concerns about human health and safety.³

This precedent set by the Board is analogous and clear, and is reflected throughout the Board Order in disposing of similar assignments of error predicated on WVDEP's authority outside of its regulatory framework: "[t]he WVDEP is not permitted by law to manufacture new requirements for permit applications."⁴ WVDEP has only that authority granted to it by the Legislature. The imposition of requirements outside of that authority is forbidden.

2. WVDEP lacks authority to impose requirements related to mobile source emissions pursuant to W. Va. C.S.R. § 45-13-1 *et seq.*

In ¶ 8 of their Specific Objections, the Appellants allege that WVDEP erred by failing to consider fugitive emissions from a variety of sources. To the extent that this objection alleges that WVDEP erred in failing to consider mobile source emissions, WVDEP lacks authority under W. Va. C.S.R. § 45-13-1 *et seq.* to do so. W. Va. C.S.R. § 45-13-1.1 expressly states:

This rule does not apply to nonroad engines, nonroad vehicles, motor vehicles, or other emission sources regulated under Subchapter II of the federal Clean Air Act; however, the Secretary may regulate such sources pursuant to another rule promulgated for that purpose.

The Board Order in *US Methanol* states that the appropriate rule, in this case W. Va. C.S.R. § 45-13-1 *et seq.*, provides WVDEP with its only authority in issuing or denying the permit at issue. Accordingly, this count of the appeal must be dismissed.

3. WVDEP lacks authority to impose requirements related to the facility's potential use as a data center.

³ Id., p. 7.

⁴ Id., p. 10.

In ¶ 12 of their Specific Objections, the Appellants allege that WVDEP erred by failing to “adequately consider” the potential use of the facility at issue as a data center. The precedent set in *US Methanol* applies here. Denial of a permit based on speculation that the facility at issue may potentially be used as a data center is outside of WVDEP’s authority. No statute or rule confers on WVDEP the unilateral authority to demand justification based on whether the facility is “a large data center or data centers which are ill-suited to rely on power generated by a synthetically limited source of energy.”

WVDEP cannot deny permits based on factors outside of its specific authority. Accordingly, this count of the appeal must be dismissed.

4. WVDEP must, and may only, adhere to the purpose of the West Virginia Air Pollution Control Act in the manner prescribed by law.

In ¶ 16 of their Specific Objections, the Appellants allege that WVDEP erred by failing to adhere to the purpose of W. Va. Code § 22-5-1. Again, *US Methanol* explicitly states that “[t]hose aims are pursued through the promulgation of rules pursuant to the West Virginia Air Pollution Control Act, as contained in [W. Va. C.S.R. § 45-13-1 *et seq.*].”⁵ Under this precedent, WVDEP “is not allowed to do more, or less, than the rules allow.”⁶ Accordingly, this count of the appeal must be dismissed.

CONCLUSION AND PRAYER FOR RELIEF

The Appellants have failed to state claims upon which relief can be granted in their specific objections ¶¶ 8, 12, and 16. WVDEP simply has no authority to impose requirements on

⁵ Id., p. 6.

⁶ Id.

permit applicants insofar as that authority is not specifically granted by law. As a creation of statute and rule, WVDEP cannot operate by fiat.

WVDEP therefore moves the Board for entry of an order dismissing the counts of the appeal predicated on specific objections ¶¶ 8, 12, and 16 in this matter, barring them from further consideration by the Board, along with such other relief as may be deemed appropriate.

Respectfully Submitted,
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WEST VIRGINIA AIR QUALITY BOARD

**PEOPLE CONCERNED ABOUT
CHEMICAL SAFETY, INC.,**

Appellant,

v.

Appeal No. 17-02-AQB

**DIRECTOR, DIVISION OF AIR QUALITY,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,**

Appellee,

and

US METHANOL LLC,

Intervenor.

**ORDER GRANTING THE DIRECTOR, DIVISION OF AIR QUALITY, DEPARTMENT
OF ENVIRONMENTAL PROTECTION'S MOTION TO DISMISS**

On September 18, 2017, the parties, by counsel, came before this Board for a hearing on the Director, Division of Air Quality, Department of Environmental Protection's Motion to Dismiss and to hold an evidentiary hearing in this matter. After reviewing the written Motion to Dismiss, the Appellant's written Response, the Intervenor's written Response, hearing oral argument from counsel for the parties, and holding deliberations among the Board members afterward, the Board hereby **GRANTS** the Motion to Dismiss and removes this Appeal from its docket for the following reasons.

PROCEDURAL HISTORY

On 9 March 2017, the WVDEP issued Permit R13-3351 ("the Permit") to US Methanol, LLC ("USM") for construction and operation of a methanol plant at Institute, West Virginia, at the site of former Union Carbide chemical plant operations.

In its appeal, People Concerned About Chemical Safety, Inc. ("PCACS") assert six objections to the USM Permit. First, it claims USM did not clearly and accurately disclose its ownership in its application. Appeal at p. 2. Second, PCACS claims the WVDEP failed to sufficiently account for the health and safety of West Virginians during its review of the Permit application. Appeal at p. 9. Third, PCACS alleges that USM was required to complete Best Available Control Technology analysis. Appeal at p. 12. Fourth, PCACS alleges that "the need for robust regulation will increase, not decrease, as the potential for substantial increased natural gas supplies becomes a reality," thus voiding the Permit. Appeal at p. 15. Fifth, PCACS alleges that an unrelated "natural gas pipeline authorized by FERC underscores the likely increase in future gas supplies and infrastructure for the chemical industry." Appeal at p. 16. Lastly, PCACS alleges "additional deficiencies in the USM application and DAQ review" that include failure to require a risk management plan/offsite consequences analysis, an evacuation plan, collection of baseline health data, "process description," failure to identify hazardous air pollutants, and failure to require a monitoring and reporting procedure for certain emission units. Appeal at p. 19.

CONCLUSIONS OF LAW

The WVDEP DAQ's Motion is made pursuant to West Virginia Rule of Civil Procedure 12(b)(6) which provides for the dismissal of actions for "failure to state a claim upon which relief can be granted." W.V.R.C.P. 12(b)(6). The West Virginia Supreme Court of Appeals has explained that "[t]he purpose of a motion under Rule 12(b)(6) is to test the formal sufficiency of the complaint." *Collia v. McJunkin*, 178 W.Va. 158, 159, 358 S.E.2d 242, 243 (1987) (citations omitted). "The trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no

set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)." Syl. Pt. 3, *Chapman v. Kane Transfer Co. Inc.*, 160 W.Va. 530, 236 S.E.2d 207 (1977).

In this context, the construction of the USM plant is governed entirely by the West Virginia Air Pollution Control Act and the rules promulgated pursuant to the Act. The Act states:

It is hereby declared to be the public policy of this state and the purpose of this article to achieve and maintain such levels of air quality as will 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.

To these ends it is the purpose of this article to provide for a coordinated statewide program of air pollution prevention, abatement and control; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; to assure the economic competitiveness of the state by providing for the timely processing of permit applications and other authorizations under this article; and to provide a framework within which all values may be balanced in the public interest.

W. Va. Code § 22-5-1.

The Act establishes a permitting program pursuant to which the WVDEP regulates air pollution in West Virginia:

It is unlawful for any person to cause a statutory air pollution, to violate the provisions of this article, to violate any rules promulgated pursuant to this article to operate any facility subject to the permit requirements of the director without a valid permit, or to knowingly misrepresent to any person in the state of West Virginia that the sale of air pollution control equipment will meet the standards of this article or any rules promulgated pursuant to this article.

W. Va. Code § 22-5-3. In the context of this appeal, the permitting program is the sole source of the WVDEP DAQ's authority to regulate air pollution and delineates the way it may do so. The WVDEP DAQ is not allowed to do more, or less, than the rules allow.

The Division of Air Quality ("DAQ") administers the permit program by issuing permits:

(a) Unless otherwise specifically provided in this article, no person shall construct, modify or relocate any stationary source of air pollutants without first obtaining a construction, modification or relocation permit as provided in this article.

(b) The secretary shall by rule specify the class or categories of stationary sources to which this section applies. Application for permits shall be made upon such form, in such manner, and within such time as the rule prescribes and shall include such information, as in the judgment of the secretary, will enable him or her to determine whether such source will be so designed as to operate in conformance with the provisions of this article or any rules of the secretary.

...
(e) A permit application will be denied if the secretary determines that the proposed construction, modification or relocation will not be in accordance with this article or rules promulgated thereunder.

W. Va. Code § 22-5-11.

In this case, the USM plant obtained the Permit pursuant to West Virginia Code of State

Rules § 45-13-1, et seq. The rule states:

The purpose of this rule is to set forth the procedures for stationary source reporting, and the criteria for obtaining a permit to construct and operate a new stationary source which is not a major stationary source, to modify a non-major stationary source, to make modifications which are not major modifications to an existing major stationary source, to relocate non-major stationary sources within the state of West Virginia, and to set forth procedures to allow facilities to commence construction in advance of permit issuance. Such construction, modification, relocation and operation without a required permit is a violation of this rule.

W. Va. Code R. § 45-13-1.

Furthermore, West Virginia Code of State Rules § 45-13-5.7. expressly states:

The Secretary shall issue such permit or registration 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.

W. Va. Code R. § 45-13-5.7 (emphasis added).

The Board makes the following specific findings on each of PCACS's claims.

Count One: WVDEP has no legal authority or responsibility to delve into USM's corporate structure.

PCACS's first basis for appeal is the claim that "USM ownership is not clearly and accurately disclosed in the USM application." Appeal at p. 2. PCACS's claim fails for two reasons.

First, the WVDEP is not legally authorized to independently investigate USM's corporate structure. Further, the WVDEP is not legally responsible for discerning USM's corporate structure. The Appellant cites no statute or rule that allows the WVDEP to investigate USM's identity or that creates a responsibility to do so. The only instance in which the WVDEP DAQ investigates corporate ownership are cases in which an applicant may have a corporate association with a facility physically adjacent to the applicant's site, in order to ascertain whether the facilities' emissions should be aggregated. Once there is a reasonable certainty that a corporate association does not exist, the WVDEP DAQ has no authority to go further in an investigation of the business organization that the West Virginia Secretary of State has authorized to do business in West Virginia.

Second, PCACS admits in its appeal that "It is legally correct that USM, like all limited liability companies, is not technically a 'subsidiary corporation.'" Appeal at p. 2. Accordingly, this Board dismisses the first count of PCACS's Appeal.

Count Two: WVDEP fulfills its mission to protect the health and safety of West Virginians by promulgating and enforcing the rules provided for the administration of the Air Pollution Control Act.

PCACS's second count alleges that the WVDEP DAQ employs a "minimalist reading of the language in its enabling statute." Appeal at p. 9. That statute, West Virginia Code § 22-5-1, states in material part:

It is hereby declared to be the public policy of this state and the purpose of this article to achieve and maintain such levels of air quality as will 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.

W. Va. Code § 22-5-1.

PCACS insists that WVDEP DAQ is tasked with more broadly protecting health and safety, but ignores the plain language of West Virginia Code § 22-5-1. The WVDEP is authorized to "achieve and maintain such levels of air quality as will protect human health and safety." *Id.* The means to accomplish those levels of air quality are provided for in West Virginia Code § 22-5-1:

To these ends it is the purpose of this article to provide for a coordinated statewide program of air pollution prevention, abatement and control; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; to assure the economic competitiveness of the state by providing for the timely processing of permit applications and other authorizations under this article; and to provide a framework within which all values may be balanced in the public interest.

Id. Those aims are pursued through the promulgation of rules pursuant to the West Virginia Air Pollution Control Act, as contained in West Virginia Code of State Rules § 45-13-1, *et seq.* The WVDEP is expressly limited to the measures provided for in those rules in its pursuit of achieving and maintaining such levels of air quality as will protect human health and safety.

PCACS also relies on the WVDEP's general enabling statute at West Virginia Code § 22-1-1(a)(5), which PCACS argued supplies the WVDEP DAQ's purpose to include the duty "to protect human health and safety." W.Va. Code § 22-1-1(a)(5). In support of its Response in

Opposition, PCACS relies on this and other provisions of the WVDEP DAQ's enabling statute in support of the Appellant's proposition that protection of human health and safety is not only a *permissible* consideration in the issuance of permits, whether by the DAQ or any other division of WVDEP, but a *mandatory* condition. PCACS offered in support of its allegations regarding human health and safety, the affidavit of William James Rogers, a Regents Professor and Director of the West Texas A&M University's Environmental Science Program.

This Board finds that the provisions cited by PCACS do not create any specific authority for the DAQ to require the information requested by PCACS. The WVDEP is only allowed to exercise the authority that it is given by express rule; no such rule exists that allows the agency to deny an application for a permit because it allegedly fails to protect human health and safety, as alleged in this appeal that, "the permitted operations may leak, catch on fire or blow up and kill thousands of people." Appeal at p. 12.

The WVDEP's authority and permissible considerations for issuing air permits is strictly circumscribed in this instance by 45 CSR 13. This legislative rule, which carries the force of law, expressly enumerates the specific factors which the agency may examine to determine whether a permit may be issued or denied.

The WVDEP DAQ does not have the legal authority to broadly reject applications for permits based upon generalized allegations about concerns about human health and safety; accordingly, this Board dismisses the second count of PCACS's Appeal.

Count Three: BACT analysis is not required in this instance because the Permit is issued pursuant to 45CSR13.

PCACS alleges that the WVDEP should have required USM conduct a BACT analysis as part of its application for the Permit. This Board finds there is no legal requirement in 45 CSR 13 that WVDEP require such analysis.

All permit applications can be primarily reviewed under one of three rules: 45 CSR 13 (minor source review), 45 CSR 14 (review of major sources in attainment areas), and 45 CSR 19 (review of major sources in non-attainment areas). There is no dispute that the permitting action takes place in an area which is not designated as a non-attainment area and therefore exempt from any requirement of 45 CSR 19. The applicable rule in this case is 45 CSR 13 because USM's proposed facility is defined as a minor source, rather than a major source. The threshold for a major source is a PTE of 100 tons per year of any single pollutant. In this case, the WVDEP reviewed the application and all of the proposed PTE figures were below 100 tons per year, which requires analysis pursuant to 45 CSR 13.

Contrary to PCACS's allegations, the PTE was documented in the Engineering Evaluation / Fact Sheet, was available as part of the record, and was available online for review during the public comment period. The online link provided in *response* to comment sent at the conclusion of the 30 day public comment period was incorrect, but the document was previously available online and at the WVDEP, in accordance with rules governing public review. Further, the public notice published in the Charleston Gazette-Mail contained a correct link to the WVDEP webpage with links to the Permit Application, Engineering Evaluation/Fact Sheet, Draft Permit, and filed documents and with contact information to request the same information. See CR 93. Lastly, no one from PCACS requested a copy of the Evaluation, either during the public comment period or after receiving the agency's response to PCACS comments.

Best Available Control Technology analysis is required under Prevention of Significant Deterioration (PSD) review, pursuant to 45 CSR 14, which is *not* the rule applicable to this Permit. In fact, the Director would have to act outside his statutory authority to impose BACT on USM. Accordingly, this Board dismisses the third count of PCACS's Appeal.

Count Four: PCACS's claim that "the need for robust regulation will increase, not decrease, as the potential for substantial increased natural gas supplies becomes a reality" is not a valid ground for the WVDEP to consider during the permitting process and is not allowed or required by West Virginia law.

The WVDEP is simply not allowed by West Virginia law to make the kind of inquiry stated by PCACS's fourth count. The group claims that, thanks to increased natural gas production, more companies like USM will possibly open facilities in Kanawha County, West Virginia.

The group cites no proposition of law or rule that requires or allows the WVDEP to make any such inquiry. Accordingly, this Board dismisses the fourth count of PCACS's Appeal.

Count Five: PCACS's claim regarding the Federal Energy Regulatory Commission's permit of a natural gas pipeline which will allow for a new gas compressor station in Kanawha County is not a valid ground for the WVDEP to consider during the permitting process and is not allowed or required by West Virginia law.

For its fifth claim, PCACS alleges that the Federal Energy Regulatory Commission has approved a permit for a natural gas pipeline that could possibly result in a gas compression station in Kanawha County. PCACS does not allege that the pipeline has any relationship to the WVDEP, that it is part of the USM permit application, or has any relationship to USM. PCACS did not demonstrate how or why the FERC order or the pipeline provide this Board with a legal basis for remanding the USM permit on this basis. Accordingly, this Board dismisses the fifth count of PCACS's Appeal.

Count Six: PCACS's assorted claims do not provide a basis to remand the USM permit.

PCACS's sixth count includes an assortment of alleged "additional deficiencies" in the USM Permit application; however, none of them legally serve as the basis for a reversal of the USM Permit.

First, PCACS alleges that the WVDEP failed to require a "Risk Management Plan / Offsite Consequences Analysis." A Risk Management Plan is required of some facilities under Section 112(r) of the Clean Air Act. When reviewing a permit application pursuant to 45 CSR 13, the Director does not rely on a Risk Management Plan, and the absence of such a plan is not grounds for appeal of the Permit. Furthermore, USEPA has not delegated to the WVDEP an enforceable responsibility over the program. The Permit application mentions the Plan as a reminder to applicants to fulfill independent federal obligations.

Second, PCACS alleges that the USM Permit fails to adequately address evacuation possibilities at its site. That is simply beyond the reach of the WVDEP's authority. It should also be noted that the USM Permit is for construction and work on a site occupied by chemical companies for almost 100 years. PCACS admits there is no statutory or rule-based authority for such a requirement and notes that such a plan "should be" part of the USM Permit. The WVDEP is not permitted by law to manufacture new requirements for permit applications.

During oral argument on the Motion, counsel for USM noted that, while worker and community safety is not within the purview of the DAQ's permitting process, many other agencies are responsible for and look after worker and community health. For example, the WVDEP regulates storage of potentially dangerous chemical substances in its Aboveground Storage Act program. The Kanawha County Commission employs an Emergency Planning Coordinator. The Department of Homeland Security provides for a State Emergency Response Commission and Local Emergency Planning Committees. The State Fire Marshall implements the National Fire Prevention Code that sets requirements for aboveground storage tanks that hold combustible liquids. The Occupational Safety and Health Administration has a Process Safety Management program. These agencies and others provide the applicable standards for safe plant

operation, equipment and tank design, evacuation and emergency planning, and community outreach. While DAQ recognizes the importance of both community and worker health, DAQ is not authorized to duplicate their efforts during the development of its permits.

Third, PCACS states that the WVDEP should have gathered baseline health data about the community, but cites no authority for such a requirement. There is no legal basis for this claim.

Fourth, PCACS believes the Permit should be revoked because it does not disclose the "modifications to be made to the Brazilian methanol plant." This analysis is not required by WVDEP DAQ to issue the Permit. The Permit will regulate the proposed facility as applied for in Permit Application R13-3351 (including the plant's emissions), regardless of its previous design.

Fifth, PCACS asserts that USM failed to identify hazardous air pollutants involved, but that is incorrect. USM identified methanol as a HAP and WVDEP DAQ conducted a proper analysis. Emissions of other potential HAPs were identified as part of USM's application and can be found at pages 358, 360, 362, 364, and 371 of the Certified Record.

Lastly, PCACS asserts, or seems to assert, that the Permit should have required reporting procedures for certain processes allowed by the Permit. Reporting requirements are contained in sections 4.2. and 4.5 of the Permit. PCACS's claim is not based in fact.

None of the various grounds stated in Count Six form a basis on which this Board can grant relief to the Appellant; accordingly, this Board dismisses the sixth count of PCACS's Appeal.

CONCLUSION

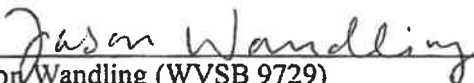
None of the factual claims advanced by PCACS in its appeal, if true, provide a legal basis for this Board to reverse the WVDEP DAQ's decision to approve USM's Permit application. Accordingly, it is **ORDERED** by this Board that the WVDEP DAQ's issuance of a permit to USM is **AFFIRMED**. The parties have a right of judicial review of this Order pursuant to West Virginia Code §§22B-3-3 and 29A-5-4. The party seeking judicial review must file its appeal within 30 days after the date the party receives notice of this Order.

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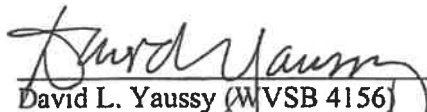


J. Michael Koon, Chairman


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AIR QUALITY BOARD

**PEOPLE CONCERNED ABOUT
CHEMICAL SAFETY, INC.,**

Appellant,

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Appeal No. 17-02-AQB

**DIRECTOR, DIVISION OF AIR QUALITY,
DEPARTMENT OF ENVIRONMENTAL
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US METHANOL, LLC,

Intervenor.

CERTIFICATE OF SERVICE

This is to certify that I, Jackie D. Shultz, Clerk for the Environmental Quality Board, have this day, the 16th day of November, 2017, served a true copy of the foregoing **Order Granting Appellant's Motion to Continue Evidentiary Hearing And Denying Intervenor's Motion For Reconsideration Of Continuance** to all parties in Appeal No. 17-02-AQB, by mailing the same via United States Mail, with sufficient postage, to the following address:

via certified first-class mail:

William V. DePaulo, Esquire
122 N. Court Street
Lewisburg, WV 24901

Certified Mail # 91 7199 9991 7037 0942 2073

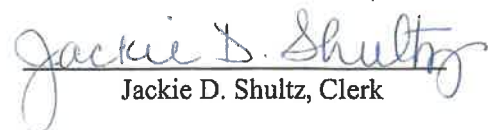
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