



**west virginia** department of environmental protection

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Austin Caperton, Cabinet Secretary  
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# **Response to Public Comments**

*concerning*

## **Bardon, Inc. Millville Quarry**

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**Permit Application No. G40-C003H  
Facility ID No. 037-00015**

**Date: November 9, 2018**

**Promoting a healthy environment.**

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## **BACKGROUND INFORMATION**

On September 19, 2018, pursuant to §45-13-8.3, Bardon, Inc. provided notice to the public of an application to modify Permit Number G40-C003G for the installation of three (3) new conveyors at the Millville Quarry located at 57 Blair Road, Harpers Ferry, Jefferson County, West Virginia.

The public notice was followed by a public comment period (required to be a minimum of 30 days under §45-13-8.3) scheduled to end at 5:00 P.M. on October 19, 2018. At that time, the permit application was made available for public review and remained so during the public comment period. During the public comment period, the DAQ received three (3) written comments requesting a public meeting regarding the project prior to issuing the permit.

As a result of the interest expressed in the permitting action and the Director's determination that a public meeting was warranted, a public notice was run on September 26, 2018 (Spirit of Jefferson) and September 28, 2018 (Shepherdstown Chronicle). This public notice included the date, time and location of the public meeting. Both public advertisements were Class I Legal Advertisements that ran in newspapers of general circulation in Jefferson County.

During the public comment period, the DAQ accepted comments on the permitting action regarding permit G40-C003H to Bardon, Inc. and on all documents related thereto. To provide information on the permitting action and to facilitate the submission of comments, on October 4, 2018 the DAQ held, pursuant to §45-13-9, a public meeting concerning Permit G40-C003H at the Ranson Civic Center.

## **OVERVIEW OF COMMENTS RECEIVED**

The DAQ received three (3) written (including e-mail and U.S. mail) during the public comment period and at the public meeting. An additional ten (10) oral comments were made during the public meeting. There was also much overlap in the written (emailed and USPS) comments and oral comments provided by several individuals. Additionally, some were "form letters" submitted by multiple commenters. Pursuant to §45-13-8.8, all submitted comments (relevant to applicable air quality issues) received during the public comment period have been reviewed and addressed in this document. All comments received have been made part of the official file for G40-C003H and can be viewed by the public as part of that file.

## **ORGANIZATION OF COMMENT RESPONSE**

The DAQ's response to comments includes 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 preconstruction permitting process in the larger divisional goal of maintaining air quality in WV, and detail the current status of the ambient air quality of Jefferson County.

The specific response will summarize each comment that falls within the purview of the DAQ and provide a response to it. This document will not reproduce the comments here (they are available for review in the G40-C003H file). Instead comments will be summarized (and sometimes consolidated) 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. Comments (or portions of 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 Bardon, Inc. 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 (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***

The basis for issuance or denial of an air quality permit is given 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 the APCA and 45CSR13 is to restrict 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 Bardon, Inc.'s application to modify an aggregate processing facility at the Millville Quarry are outlined in the DAQ's Engineering Evaluation/Fact Sheet made public on November 9, 2018. The issues covered under that document represents 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 Bardon, Inc.'s permit application G40-C003H.

### ***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, an Air Monitoring Section, a Planning Section, *etc.* to effect this. Most pertinent to the permitting process, the C/E Section inspects permitted sources to determine the compliance status of the facility including compliance with all testing, parametric monitoring, record-keeping, and reporting requirements.

### ***Other Permitted Facilities***

The subject of this permitting action is Bardon, Inc.'s application to modify a non-metallic mineral processing facility. Comments regarding other facilities are not addressed herein.

### ***Ambient Air Quality Status of Jefferson County***

The regulatory air quality of a defined local area - in this case Jefferson 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 <https://www.epa.gov/criteria-air-pollutants>.

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. Jefferson County, is designated by EPA, as in attainment with all the NAAQS. WVDAQ does not expect that status to change as a result of this permit nor any other recently issued permits.

### ***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 inspections to determine compliance with the requirements as outlined in the applicable permit. Finally, with respect to the quality of the ambient air of Jefferson County, the EPA has designated the county as in attainment with the NAAQS.

## **SPECIFIC RESPONSE TO COMMENTS**

### **Comment #1**

Commenters requested a public meeting in writing.

### **DAQ Response**

A public meeting was held on October 4, 2018 at the Ranson Civic Center, in Ranson, Jefferson County. The meeting was attended by the Director of the Division of Air Quality, William F. Durham, the New Source Review Program Manger Beverly McKeone, the permit writer Thornton Martin, Environmental Resources Specialist Stephanie Hammonds; and was moderated by the WVDEP Chief Communications Officer Jake Glance.

### **Comment #2**

What is in the air that EPA does not measure? What pollutant would the DAQ like to see included within a standard?

## **DAQ Response**

The [Clean Air Act](#), which was last amended in 1990, requires EPA to set National Ambient Air Quality Standards (40 CFR part 50) for pollutants considered harmful to public health and the environment. The Clean Air Act identifies two types of national ambient air quality standards. **Primary standards** provide public health protection, including protecting the health of "sensitive" populations such as asthmatics, children, and the elderly. **Secondary standards** provide public welfare protection, including protection against decreased visibility and 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 Ground-level Ozone, Particulate Matter, Carbon Monoxide, Lead, Sulfur Dioxide and Nitrogen Dioxide.

The DAQ operates a Federally approved State-wide air quality monitoring network. 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. 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. Jefferson County, WV is in compliance (attainment) with these standards.

The DAQ focuses its' air monitoring resources on the criteria pollutants for which human health standards are established by the EPA.

## **Comment #3**

Why are there public meetings going on now?

## **DAQ Response**

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, Permission to Commence Construction, and Procedures for Evaluation", Section 9 defines when and why public meetings are conducted:

### **§45-13-9. Public Meetings.**

9.1. A public meeting(s) to provide information and receive comments on permit applications may be held when the Secretary deems it appropriate or when substantial interest is expressed, in writing, by persons who might reasonably be expected to be affected by the stationary source.

9.2. The Secretary shall preside over such meeting and assure that all interested parties have ample opportunity to present comments. Such meeting shall be held at a convenient place as near as practicable to the location or proposed location of the stationary source.

9.3. At a reasonable time prior to such meeting, the Secretary shall provide appropriate information to news media in the area where the stationary source or proposed stationary source is located or to be located or otherwise provide notice of the meeting.

To provide information on the pending permitting actions and to facilitate the submission of additional comments, the DAQ held, on October 4, 2018, pursuant to §45-13-9, a public meeting concerning Permit G40-C003H at the Ranson Civic Center located at 431 W. 2<sup>nd</sup> Avenue, Ranson, West Virginia.

#### **Comment #4**

Is Bardon upgrading for something (i.e., new Customer) or just making normal replacements?

#### **DAQ Response**

Bardon, Inc. applied for a General Permit G40-C modification on September 6, 2018 to include:

- Replacement of an existing Conveyor Belt
  - Due to age / damage / both
- Add two additional Conveyor Belts
  - For flexibility in stockpile placement

The total facility production remains the same with a feed rate of 1,200 tons per hour and 6.0 million tons per year.

#### **Comment #5**

Why are we having a public meeting for 0.48 tons per year? Seems too small of an increase to be holding a public meeting.

#### **DAQ Response**

The DAQ received several requests to hold a public meeting on the Bardon Air Quality Application.

#### **Comment #6**

What defines whether it's an Administrative Update, Modification, etc?



## **DAQ Response**

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, Permission to Commence Construction, and Procedures for Evaluation.” A copy of portions of the Rule are listed below to explain the differences:

### **§45-13-1. General.**

- 1.1. Scope. -- 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. This rule also establishes the requirements for obtaining an administrative update to an existing permit, a temporary permit or a general permit registration, and for filing notifications and maintaining records of changes not otherwise subject to the permit requirements of this rule. 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.

### **§45-13-2. Definitions.**

- 2.2. “Administrative update” means any revision of a current and valid permit or general permit registration which meets the provisions of Section 4 of this Rule.
- 2.5. "Construction" means any physical change or change in the method of operation (including onsite fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in an increase in the potential to emit or an increase in actual emissions of regulated air pollutants unless otherwise specifically provided within this rule.
- 2.17. "Modification" for the purpose of this rule means any physical change in or change in the method of operation of any existing stationary source, excluding any emissions unit which meets or falls below the criteria delineated in Table 45-13B, which:
  - 2.17.a. Results in an emissions increase of six (6) pounds per hour and ten (10) tons per year or more, or more than 144 pounds per calendar day, of any regulated air pollutant, other than emissions of any one or the aggregate of all Greenhouse Gases (GHG's), the air pollutant defined in 40 C.F.R. § 86.1818-12(a) as the

aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride;

2.17.b. Results in an emission increase of two (2) pounds per hour or five (5) tons per year of hazardous air pollutants considered on an aggregated basis;

2.17.c. Results in an increase in emissions of an air pollutant listed in Table 45-13A below of ten percent (10%) or more of the amount set forth in Table 45-13A at a facility which, prior to the physical change or change in method of operation, has the potential to emit the air pollutant at or above the amount set forth in Table 45-13A; provided that nothing in this subdivision shall affect the facility's obligation to comply with 45 C.S.R. 27;

2.17.d. Results in an increase in emissions of any air pollutant listed in Table 45-13A that would in turn result in total emissions of the air pollutant at the stationary source equal to or greater than the amounts in Table 45-13A; or

2.17.e. Results in any regulated air pollutant emissions increase for which the owner or operator of a source voluntarily chooses to obtain a modification permit pursuant to this rule, even though the owner or operator is not otherwise required to do so.

2.17.f. The following actions, however, shall not constitute a modification of a stationary source:

2.17.f.1. Installation or replacement of air pollution control equipment, provided that such new equipment is at least as effective in the control of air pollutant emissions as any equipment replaced and that no new air pollutant discharge results from its installation;

2.17.f.2. Routine maintenance, repair, and replacement (excluding such activities that are subject to new source performance standards under 45CSR16);

2.17.f.3. An increase in hours of operation, unless a limitation has been explicitly placed upon hours of operation in an applicable permit or order;

2.17.f.4. An increase in throughput or production rate, if such increase does not exceed the design capacity of the source or emissions unit, or increase emissions above the levels provided in this paragraph and there is no explicit limitation of production rate or throughput in an applicable permit or order; or

2.17.f.5. Use of an alternative fuel or raw material, provided that the source is designed to accommodate such alternative use without increasing emissions above the levels provided in this paragraph and such usage is not prohibited by an applicable permit or order.

2.17.f.6. An emissions reduction for each regulated pollutant from current actual emissions to new potential emissions from any replacement of a natural gas compressor engine not previously required to obtain a permit under this rule with another natural gas compressor engine: provided that the owner or operator of the source shall notify the Secretary of such replacement and the emissions reduction within ten (10) working days of the replacement.

**Comment #7**

Would Bardon have to apply for a permit modification to add another conveyor?

**DAQ Response**

Yes, if Bardon, Inc. wanted to add another conveyor in the future, it would have to apply for a modification permit and go through the same permitting process (with public notice) as the current application because the conveyor would be subject to new source performance standards under 45CSR16. See 2.17.f.2. in the previous response. A conveyor is considered an “affected source” under 40 CFR 60 Subpart OOO: Standards of Performance for Nonmetallic Mineral Processing Plants.

**Comment #8**

What is the breakdown of PM for Bardon? PM<sub>10</sub>? PM<sub>2.5</sub>?

**DAQ Response**

PM<sub>2.5</sub> is a subset of PM<sub>10</sub>. PM<sub>10</sub> is a subset of PM, so the Total PM emissions include both PM<sub>10</sub> and PM<sub>2.5</sub>. A breakdown is as follows:

Total Change in Emissions

<i>Bardon, Inc. Millville Quarry</i>	Controlled PM Emissions		Controlled PM <sub>10</sub> Emissions		Controlled PM <sub>2.5</sub> Emissions	
	lb/hr	TPY	lb/hr	TPY	lb/hr	TPY
<b>Total Change in Emissions</b>	<b>0.88</b>	<b>0.48</b>	<b>0.42</b>	<b>0.23</b>	<b>0.06</b>	<b>0.03</b>

**Comment #9**

Does the State look at the aggregate or cumulative effect from pollution sources?

**DAQ Response**

Yes, major sources are modeled and looked at closely to ensure they will not 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. Minor sources are typically included in the background level when the modeling is performed.

### **Comment #10**

What are the limits of PM based on? Have they ever been lowered?

### **DAQ Response**

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.

NAAQS Standards for Particulate Matter have become more stringent over time. The following is a link to the 2016 Annual Air Quality Report:

<https://dep.wv.gov/daq/air-monitoring/Documents/2016%20Annual%20Supplement%202.pdf>

### **Comment #11**

Who makes sure that pollutants from one source doesn't mix with those of another source?

### **DAQ Response**

EPA sets the National Ambient Air Quality Standards (NAAQS) for pollutants considered to be harmful to the public health and environment. The Clean Air Act requires these standards to be set to protect public health, including the health of "sensitive populations", such as asthmatics, children, and the elderly. There are two health based NAAQS for PM<sub>2.5</sub>, a 24 hr standard and an annual standard. The 24 hr. standard is 35 µg /m<sup>3</sup> ( 3 year average of the 98<sup>th</sup> percentile), and the annual standard is 12 µg /m<sup>3</sup> (based on a 3 year average of the annual mean).

The DAQ reviews all stationary sources of regulated pollutants for compliance with all applicable state rules and federal regulations. We then write permits that include these regulations, emission limits, production rates, throughput and/or stockpile limitations, recordkeeping, monitoring, use of controls, etc. Major sources are modeled and looked at closely to ensure they will not 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. Minor sources are typically included in the background level when the modeling is performed.

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, an Air

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.

The DAQ regularly inspects permitted facilities to ensure that the company is meeting all requirements of the permit. These are unannounced inspections. Further, our agency responds to all complaints related to air quality and can issue a “Cease and Desist Order” to halt facility operations if warranted.

The DAQ operates a Federally approved State-wide air quality monitoring network. 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. 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. Jefferson County, WV is in compliance (attainment) with these standards.

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 ensure attainment of NAAQS for criteria pollutants. The purpose of the network monitoring plan is to enhance ambient air quality monitoring to better serve current and future air quality management and research needs. USEPA reviews and approves the network monitoring plans annually. The general monitoring network design requires ambient air monitors to focus on populated areas with air quality problems and to reduce monitors in areas that have measured ambient air concentrations well below the applicable NAAQS.