



west virginia department of environmental protection

Division of Air Quality

601 57 Street SE

Charleston, WV 25304

Phone (304) 926-0475 • FAX: (304) 926-0479

Harold Ward, Cabinet Secretary

www.dep.wv.gov

Response to Public Comments

**TeMa North America, LLC
Jefferson County Facility**

**Permit Modification Application No. R13-3414A
Facility ID No. 037-00110**

Date: June 25, 2024

Table of Contents

BACKGROUND INFORMATION	3
OVERVIEW OF COMMENTS RECEIVED	3
ORGANIZATION OF COMMENT RESPONSE	3
GENERAL RESPONSE TO COMMENTS	4
<i>Statutory Authority of DAQ</i>	4
<i>Statutory Basis for Permit Denial</i>	5
<i>DAQ Permitting Process in Context</i>	5
<i>Other Permitted Facilities</i>	5
<i>Ambient Air Quality Status of Jefferson County</i>	6
<i>General Response Conclusion</i>	6
SPECIFIC RESPONSE TO COMMENTS	7
<i>Written Comments</i>	7
<i>Oral Comments</i>	15

BACKGROUND INFORMATION

On April 24, 2024 (*Spirit of Jefferson*), pursuant to §45-13-8, the West Virginia Division of Air Quality (DAQ) provided notice to the public of an open comment period for Permit Application Number R13-3414A for TeMa North America, LLC (TeMa) for the modification of a plastics extrusion facility, located in the Burr Business Park, approximately 2.25 miles southeast of Kearneysville, Jefferson County, WV. At that time, the DRAFT modification permit and Engineering Evaluation/Fact Sheet were made available to the public for review. The permit application has been available for public review from the date of receipt by the Division of Air Quality.

As a result of the interest expressed in the permitting action and the Director's determination that a public meeting was warranted, a second public notice was run on May 29, 2024 (*Spirit of Jefferson*). This second advertisement included the date, time, and location of the public meeting, and extended the time to submit comments until 5pm on June 7, 2024. The public advertisement was a Class I Legal Advertisement that ran in a newspaper of general circulation in Jefferson County.

During the public comment period, the DAQ accepted comments on its preliminary determination for permit application R13-3414A and on all documents related thereto. To provide information on the permitting action and to facilitate the submission of comments, on June 5th, 2024 the DAQ held, pursuant to §45-13-9, a virtual public meeting concerning R13-3414A.

OVERVIEW OF COMMENTS RECEIVED

The DAQ received written comments during the public comment period and at the public meeting. Oral comments were made during the public meeting. Additional written versions of some of these comments were also submitted at that time. There was much overlap in the individuals providing written(emails) comments and oral comments. Additionally, many of the written comments 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 are addressed in this document. All comments received have been made part of the official file for R13-3414A and can be viewed by the public as part of that file.

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 Jefferson County.

The specific response will summarize each comment that falls within the purview of the DAQ and provide a response. This document will not reproduce the comments here (they are available for review in the R13-3414A 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 TeMa 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, strategic energy issues, non-air quality environmental impacts, *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 TeMa's application to modify a plastics extrusion facility are outlined in the DAQ's Engineering Evaluation/Fact Sheet made public on April 24, 2024. 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 TeMa's Permit Application R13-3414A.

DAQ Permitting Process in Context

It is important to note here 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 TeMa's application to modify the permit for a plastics extrusion 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 for Jefferson County - 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 of the NAAQS. WVDAQ does not expect that status to change because of this permit modification 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 RESPONSES TO COMMENTS

Comments #1

The following two documents referenced to support emission calculations contained in the application and repeated in the engineering evaluation which are missing from the record.

(A) "Sampling and Analysis of Fumes Evolved During thermal Processing of Polystyrene Resins", Dow Chemical, et al. obtained from Indiana DEM air permit for Primex Plastics Corp. (cited on pdf pages 251, 253, and 255 of the Application)

(B) "Flying W Plastics Permit Application, Plant I.D. 021-00007, Dated May 2017" (cited on pdf pages 252 and 254 of the Application)

DAQ Response

A copy of the Primex Plastics Corp. Permit calculations have been added to the record. Also, a copy of the AP-42, CH 6.6.2, which was used to calculate the material handling emissions. It is DAQ's understanding this was also used for the Flying W Plastics permit (available on AX). The Flying W Plastics Permit Application was not used nor referenced by the permit writer in the permit evaluation.

AP-42, Compilation of Air Pollutant Emissions Factors from Stationary Sources, has been published since 1972 as the primary compilation of EPA's emissions factor information. It contains emissions factors and process information for more than 200 air pollution source categories. A source category is a specific industry sector or group of similar emitting sources. The emissions factors have been developed and compiled from source test data, material balance studies, and engineering estimates.

Comments #2

The applicant claims no fugitive emissions from truck unloading or storage. This is hard to accept because this includes cement delivered in bulk sacks and "placed in storage or blown into a silo" and grinding of trimmings with transfer of grindings to a silo. Please require the applicant to accurately estimate and control the fugitive emissions associated with truck unloading and materials storage. Ideally, emissions should decrease, not increase.

DAQ Response

This facility does not process cement.

TeMa does not have "fugitive" emission from unloading, storage or handling of the raw materials. These emissions are controlled and emitted via a "point source". All such handling operations are controlled with Air Pollution Control Devices (Baghouses). These emissions and

Response to Comments: R13-3414
TeMa North America, LLC

required control devices are accounted for in the Evaluation and permit.

The following Permit requirements deal with the facility's emissions:

4.1.1. The TeMa North America, LLC facility shall consist of only the pollutant-emitting equipment and processes identified under Section 1.0 of this permit and any other processes/units defined as De Minimis per 45CSR13. In accordance with the information filed in Permit Application R13-3414A, the equipment shall be installed, maintained, and operated so as to minimize any fugitive escape of pollutants and the equipment/processes shall use the specified control devices.

4.1.11. No person shall cause, suffer, allow or permit any manufacturing process or storage structure generating fugitive particulate matter to operate that is not equipped with a system, which may include, but not be limited to, process equipment design, control equipment design or operation and maintenance procedures, to minimize the emissions of fugitive particulate matter. To minimize means such a system shall be installed, maintained and operated to ensure the lowest fugitive particulate matter emissions reasonably achievable.

[§45-7-5.1]

Comments #3

For the Baghouse X2DC for the XPS silo only "Other, specify: visual checks" is marked under "how is filter monitored for indications of deterioration (e.g., broken bags)?" However, under the "Proposed Monitoring, Recordkeeping, Reporting, and Testing" section "Differential pressure" is listed under monitoring and recordkeeping. Please ensure that differential pressure is being monitored and that alarms are required that indicate when the device is out of specification.

DAQ Response

Section 4.2.3 and 4.2.4 have been added to the permit for additional monitoring requirements.

Comments #4

The efficiency of Baghouse X2DC for XPS silo is listed as 100% with 95% control. Is this realistic? This is apparently supported by manufacturers information. However, the same is assumed for Baghouse X3DC for the future silo even though no manufacturer has been selected for that baghouse yet. What is the basis for this assumption?

DAQ Response

The EPA's Air Emissions Monitoring Knowledge Base says the following concerning baghouses:

"In general, fabric filters are capable of collection efficiencies greater than 99 percent". In the case of baghouses, they are a common air pollution control device that, when properly

maintained and operated, easily attain very high control efficiencies.

Comments #5

Baghouse X3DC has no monitoring or recoding suggested. Please require stringent monitoring and recording for Baghouse X3DC.

DAQ Response

The emission point for baghouse X3DC is X3CE. The PM limit for X3CE under Section 4.1.7. is 0.6 PPH and 0.22 TPY.

Section 4 of the permit contains all the requirements for monitoring and recording for emission point X3CE. Please note the DAQ has added permit conditions Section 4.2.3. to require visible emission checks to show compliance with the Rule 7 Opacity Standard.

Comments #6

In the permit there are only very general operating and maintenance requirements for baghouses but no certification of this or other types of monitoring. Please require visual checks and pressure differentials monitoring with alarms for both baghouses. Please also require monthly maintenance checks of the bag houses with required documentation and reporting.

DAQ Response

Section 4.1.19 has been added to the permit to increase maintenance requirements. Section 4.2.3 and 4.2.4 have been added for additional monitoring requirements. Section 4.4.3 has been added for additional record keeping requirements.

Comments #7

Please hold a public hearing on this air permit.

DAQ Response

A virtual public meeting was held at 6:00pm on June 5, 2024.

Comments #8

In a county with booming residential growth, large annual tourism industry, agriculture and a casino to boot, it seems idiotic that county officials would put all this in jeopardy by bringing in heavy polluters unless someones pockets are being lined. We shouldnt be a sacrifice zone for corrupt Charleston. Please end this stupidity.

DAQ Response

The Air Pollution Control Act (APCA) and 45CSR13 do not grant the DAQ the authority to take into consideration such issues in determining whether to issue or deny the permit.

Comments #9

This is important to me and my family (as well as the general public) to reduce the particle content of the air we breathe. Asthma and Diabetes are much worse as these particles are added to the air.

DAQ Response

The quality of the air of a defined local area - in this case for Jefferson County - 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.

TeMa's Facility is located in Jefferson County, WV. Jefferson County has not been designated as "nonattainment" or as "unclassifiable" and is, therefore, designated as an attainment area.

Comments #10

Our land, Roxley Farms, is located within a few miles down Wiltshire Rd, and we would be among the first to be exposed to these higher emissions. PLEASE do not permit the requested increases!

DAQ Response

45CSR13-5.7 states: "The Secretary shall issue such permit or registration unless he or she determines that the proposed construction, modification 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 the Secretary shall issue an order denying such construction, modification, relocation and operation. The Secretary shall, to the extent possible, give priority to the issuance of any such permit so as to avoid undue delay and hardship."

Comments #11

Commenter is concerned about the lack of information in the application regarding Baghouse X3DC and its Potential Emissions.

DAQ Response

WVDAQ is generally concerned with the performance of air pollution control devices rather than the specific manufacturer. Dust collectors typically have a minimum control efficiency guaranteed.

Response to Comments: R13-3414
TeMa North America, LLC

Condition 4.1.6 of the draft permit limits the emissions from the control devices. These limits reflect a 95% control efficiency. TeMa will be required to install control devices that have a minimum 95% control efficiency.

Comments #12

The commenter is concerned about Additional Maintenance, Monitoring and Recordkeeping requirements for the Baghouses.

DAQ Response

Section 4.1.19 has been added to the permit to increase maintenance requirements. Section 4.2.3 and 4.2.4 have been added for additional monitoring requirements. Section 4.4.3 has been added for additional record keeping requirements.

Comments #13

commenter says it's impossible to determine the exact baghouse requirements of the general prohibitions contained in Permit sections 4.1.8, 4.1.9, and 4.1.10 as they simply copy underlying statutory provisions and thus contain unclear references. For example, section 4.1.8 prohibits opacity greater than 20% "except as noted in subsections 3.2, 3.3, 3.4, 3.5, 3.6, and 3.7.". However, the Permit does not include sections 3.6 or 3.7...

DAQ Response

The commenter misunderstood the citations from the state Rule, which are referenced at the end of each Section. These subsections with the cited respective Rule references are in the WV State Rule 7. The state rules are available online at the following web address: <https://dep.wv.gov/daq/rulesummary/Pages/default.aspx>

Comments #14

The commenter says The Permit Must Address Fugitive Emissions from Truck Unloading.

DAQ Response

Truck unloading is to be either pneumatically loaded from the truck or by supersacks into Octabins which are fully contained. No fugitive emissions are permitted from truck unloading. Please see Response to Comment #2.

Comments #15

The commenter states The Permit Should Include Reporting of All Required Records. Given the various state and federal requirements addressed above and public concerns about additional pollution in this area, random, infrequent inspections are not enough for the Department

– as well the public and the U.S. EPA – to determine whether TeMa is operating the Facility in compliance with the Permit.

DAQ Response

During the review process of the permit modification application, DAQ reviewed the facilities past compliance. The facility had no violations since the issuance of the original permit. Also, the full inspection conducted by Chris Scanlon (DAQ inspector) on March 21, 2023, showed all of the facility’s paperwork and records in order. DAQ believes the current reporting requirements are adequate to determine that TeMa is operating the facility in compliance with the permit.

Comments #16

What other chemicals will the TEMA facility be using at the facility?
And what else will TEMA be emitting?

DAQ Response

All regulated pollutants to be emitted under current operations or proposed with R13-3414A have been identified and listed in the Permit.

Comments #17

How will emissions be monitored? In the latest permit available online for R13- 3414A, under Monitoring Requirements, we simply read the word, “Reserved.”

DAQ Response

Section 4.2.1. The permittee shall monitor and maintain a certified record of the total amount of resins processed by the extrusion lines on a monthly basis. These records shall be properly maintained on site for a period not less than five (5) years and be made available to the Director, or the Director's designated representative, upon request. Also, Sections 4.4.19(additional equipment inspections), 4.2.3(additional emission monitoring) and 4.4.3(additional record keeping) have been added to ensure compliance with the permit.

Comments #18

Please elaborate on any plans for stack testing. 3.3.1 addresses stack testing but the text is extremely vague. 1.Precisely what pollutants will be tested for? 2.How will they be measured? 3.Is this continuous monitoring or only periodic – and if the latter, then with what frequency? 4.Will TEMA receive prior notice when testing will take place? 5.What equipment will be used and what is the sensitivity level of those measurements i.e., the lowest level that the devices are able to detect?

DAQ Response

Section 3 of the permit is provided to make the authority of the DAQ to require testing at any time clear to the permittee. Any specific testing, of any kind, that is to be performed is identified directly in Section 4 of the permit.

Comments #19

Will there be any monitoring at the fenceline or only at the stack? Fenceline monitoring -- with exceedances linked to prompt analysis, corrective action, and enforcement -- is an important way to protect the community.

DAQ Response

The permit does not contain any requirement for fence line monitors or for continuous emission monitoring of point sources.

Comments #20

What air pollution control equipment (4.4.3) will be used, if any, and what happens when it breaks down -- does the extrusion process continue to operate? Is there backup monitoring? Is there a time limit? Will the public be notified concerning equipment malfunctions?

DAQ Response

All air pollution control equipment is identified in the permit. Section 4.1.15 (which is a direct citation of state rule 7, Section 9.1) specifies what a permittee must do in the case of malfunction, emission exceedances, or equipment failure.

Comments #21

Will the public have access to the records described in 3.4.1? 2. Is information on the chemicals present and air pollutants emitted exempted from the confidentiality provisions of 3.5.2 -- or might that information be withheld from the public as well?

DAQ Response

Any records, including those for any testing performed, submitted to the DAQ are available to the public and will be added to the publicly available file in the ApplicationXtender database. By State Rule (Rule 31) and Federal Regulation (CAA) the type and quantity of pollutants discharged CANNOT be held as confidential.

Comments #22

Will the public have access to the emissions inventory if the WV DEP chooses to request such inventory under 3.5.5?

DAQ Response

All emission inventory information submitted to the DAQ is publicly available.

Comments #23

What are the testing requirements? We see only “Reserved” at 4.3.

DAQ Response

Section 4.2.3 has been added to increase opacity monitoring requirements. If the facility does not maintain compliance, the Secretary of DAQ has the option under Section 3.3 to have the facility do stack testing.

Comments #24

What are the emergency procedures? In the Permit Modification application, we only read the word, “reserved.” (2.12)

DAQ Response

The emergency section has been changed to Reserved. The emergency affirmative defense sections of the permit were derived from state regulations (45CSR30) as reasonable conditions in the New Source Review permit. Since the emergency affirmative defense sections of 45CSR30 have been removed from 45CSR30 to align with changes in federal regulations, the language in Section 2.12 has been removed.

Comments #25

Under 3.1.2, **Open Burning Exemptions**, we read that “no person shall cause, suffer, allow or permit any form of open burning during existing or predicted periods of atmospheric stagnation.” Please explain. Does this mean that open burning *will* be permitted at other times that are not considered atmospheric stagnation?

DAQ Response

Yes, Open burning can be permitted at other times. Under WV 45 CSR 6.3., exceptions to prohibited open burning are listed with conditions.

Comments #26

Why didn't DAQ requirements include inspections by operator? Why weren't specific inspections required?

DAQ Response

Section 4.1.19 has been added to the permit, which includes additional inspection requirements by the permittee.

Comments #27

How will DAQ ensure that the facility is inspecting their pollution control equipment?

DAQ Response

Section 4.1.19, which includes requirements for maintaining records for periodic inspections has been added to the permit. These records will be available for DAQ inspections.

Comments #28

Does enforcement maintain a list to check when they do inspections on baghouses? Is it up to each inspector to know what to check? How is DAQ going to check opacity?

DAQ Response

Baghouses are a common form of pollution control. Therefore, DAQ enforcement is very familiar with baghouses, and they know how to inspect them. Opacity is one of the best ways to check and see if a baghouse is operating properly. DAQ inspectors are trained on how to use Method 9 to do these inspections.

Comments #29

How often does DAQ inspect the facility?

DAQ Response

The facility is scheduled for inspection every three years.

Comments #30

Is Polyethylene used at the facility?

DAQ Response

Yes