



west virginia department of environmental protection

Executive Office
601 57th Street
Charleston, WV 25304
Office: 304-926-0440

Austin Caperton, Cabinet Secretary
dep.wv.gov

May 14, 2019

Michael Cook, Director
WV State Budget Office
Department of Revenue
Building 1, Room W-310
State Capitol Complex
Charleston, WV 25305-0171

Dear Mr. Cook:

The agency's Division of Air Quality (DAQ) Legislative Rule 30 provides for the establishment of a comprehensive air quality permitting system consistent with the requirements of Title V of the Federal Clean Air Act. This program oversees permitting of facilities responsible for the lion's share of emissions in our state. As part of that program, permittees are required to pay into the DAQ's Title V program fees based on their actual emissions for the previous calendar year. All fees collected pursuant to Rule 30 shall be expended solely to cover all reasonable direct and indirect costs required to administer the Title V operating permit program and accounted for in accordance with this rule.

The federal government places restrictions on how those funds may be used. The applicable federal law states:

§70.9 Fee determination and certification.

(a) Fee requirement. The State program shall require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and *shall ensure that any fee required by this section will be used solely for permit program costs.*

(d) Use of Required Fee Revenue. The Administrator will not approve a demonstration as meeting the requirements of this section, unless it contains an initial accounting (and periodic updates as required by the Administrator) of how required fee revenues are *used solely to cover the costs of meeting the various functions of the permitting program.*

40 CFR Part 70.9(a) and (d) (emphasis added).

Promoting a healthy environment.

Michael Cook, Director

May 14, 2019

Page 2

In 2017, the West Virginia Legislature "swept" the Title V account (Account Number 3336-9310) and took control of some of the funds deposited there ostensibly pursuant to West Virginia Code § 12-2-2(c).

DEP is currently undergoing a Title V program audit by the United States Environmental Protection Agency (USEPA). The preliminary audit concluded, in part, that the use of funds from the Title V account violates 40 CFR Part 70.9. That violation could result in revocation of federal approval of our Title V program.

In order to avoid this result, I hereby request that your office replace the \$1,000,000.00 in the Title V program account (3336-9310). Thank you in advance for your assistance and cooperation in this matter.

Sincerely,


Austin Caperton
Cabinet Secretary

cc: Laura M. Crowder, Director, WV DAQ

2019
MAY 14 10:51 AM
05/14/19