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west virginia department of environmental protection

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Harold D. Ward, Cabinet Secretary  
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# Response to Comments

Optima Belle, LLC

Belle, Kanawha County, WV

Permit Application Number: R13-2093I

Facility Identification Number: 039-00663

Date: August 23, 2023

The following is the Division of Air Quality's (WV DAQ) response to comments regarding Permit Modification Application R13-2093I for Optima Belle, LLC - Belle Plant (Optima) that were received between June 8, 2023 and August 11, 2023 including oral comments made during the public meeting held on August 3, 2023 at the WV DEP building in Kanawha City.

Pursuant to §45-13-8.8, all submitted comments received during the public comment period have been reviewed and are addressed in this document.

### **Organization of Comment Response**

The DAQ's response to the submitted comments includes both a general and specific response section. The general response defines issues over which the DAQ has authority and by contrast, identifies those issues that are beyond the purview of the DAQ. The general response also describes the statutory basis for the issuance/denial of a permit, DAQ Compliance/Enforcement Procedures, details the current status of the ambient air quality of Kanawha County and how that is determined, and discusses the minor source determination. The specific response summarizes each relevant non-general comment/question that falls within the purview of the DAQ and provides a response to it (if it requires a response). Due to the size and number of the comments, this document may not reproduce all the comments here verbatim and instead each comment may, where appropriate, be summarized. 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. Both the written comments and a recording of the public meeting are available on the DAQ (AX) database at a link (with instructions) located on the following page:

<https://dep.wv.gov/daq/permitting/Pages/NSR-Permit-Applications.aspx>

The DAQ responses, however, are directed to the entire comments and not just to what is summarized. 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 Optima permit modification application or an air quality-related issue).

### **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 WV Legislative Rule 45CSR13 (Rule 13), does not take into consideration substantive non-air quality issues such as job creation, economic viability of proposed projects, strategic energy issues, non-air quality environmental impacts, nuisance issues, etc.

## **Statutory Basis for Permit Denial**

The basis for issuance or denial of an air quality permit is given under 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 circumscribe 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 Optima’s proposed modification are outlined in the DAQ’s Engineering Evaluation made public on June 8, 2023. 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 Optima’s Permit Modification Application R13-2093I.

## **DAQ Compliance/Enforcement Procedures**

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 and Enforcement (C/E) Section, an Air Monitoring Section, a Planning Section, etc. to accomplish 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. These inspections are scheduled by the C/E Section taking into consideration such issues as the size and compliance history of the source, resource management and inspector workloads, and program applicability.

When inspecting a facility, the inspectors will, in addition to visually inspecting the facility, generally review all required certified record-keeping to determine compliance with required monitoring. When violations are discovered, the C/E Section has the authority to issue a Notice of Violation (NOV) and a Cease and Desist Order (C&D) to compel facilities to stop operating the equipment/process responsible for the violation. Finally, a negotiated Consent Order (CO) may be entered into between the DAQ and the violator that lays out a finding of facts, a path back into compliance for the violator, and often includes a monetary penalty as determined on a case-by-case basis.

Additionally, the C/E Section investigates citizen complaints directed against a facility (including odor complaints), reviews monitoring reports submitted to the DAQ (again with the authority to issue violations based on the submitted reports), reviews performance test protocols submitted to the DAQ, and will often observe performance tests at the facility site. All records and documents submitted to the DAQ for compliance purposes must be certified as accurate (and subject to criminal penalties if knowingly inaccurate) by a properly designated “responsible official.”

All of these documents - including C/E documents such as NOVs, C&Ds, and COs - when in final form, and minus any confidential information, are available to the public via a Freedom of Information Act (FOIA) request (for older documents) or (for new facilities since 2015) are available on the DAQ (AX) database at the link given above.

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

The quality of the air of a defined local area - in this case for Kanawha 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/naaqs-table>.

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/unclassifiable” with the NAAQS. It is important to note that while some counties have no on-site air monitoring, EPA will still designate these areas as in “attainment/unclassifiable” based on a variety of submitted data. These areas are still properly called “attainment areas.” However, this designation is not the same as a designation of just “unclassifiable.” As stated on EPA’s website: “[i]n some cases, EPA is not able to determine an area’s status after evaluating the available information. Those areas are designated “unclassifiable.”

(<https://www.epa.gov/criteria-air-pollutants/naaqs-designations-process>)

Optima’s Facility is located in Kanawha County, WV. Kanawha County has not been designated as “non-attainment” or as “unclassifiable” and is, therefore, designated as an attainment area.

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 DAQ operates two air monitors located directly in Kanawha County. For a full list of air monitors in WV, see the table at:

<https://dep.wv.gov/daq/air-monitoring/Pages/default.aspx>.

The location of air monitors are chosen to provide the most efficient means of assessing the ambient air quality in WV with limited resources and are based on such metrics as a location’s population exposure, local emission sources, existing pollutant background levels, and other considerations. There is currently no evidence, based on available data and standard analysis procedures, to indicate that Kanawha County is not in attainment of the NAAQS or that the impacts from the potential air emissions at the Optima facility would cause or contribute to a violation of the NAAQS. The location and data from air monitoring sites may be accessed at the following EPA web address:

<https://www.epa.gov/outdoor-air-quality-data/interactive-map-air-quality-monitors>

As noted above, the Optima facility was reviewed pursuant to the requirements of 45CSR13 - the permitting rule that contains the requirements for the review of minor sources. This rule does not require a cumulative air impact analysis that includes other sources in the determination to issue or deny the permit in question. Further, the DAQ does not believe that if such modeling was conducted, it would show that the proposed source would cause or contribute to a NAAQS violation.

### **General Points**

This permit modification will allow Optima to add to the site proposed equipment and a new proposed chemical process. Additionally, the application identifies equipment that needs to be removed from the permit as it is no longer operable and has been removed from the site. With the new equipment, Optima will return to full operational status and will be able to process the list of materials from which the potential to emit of the site is based. There is also a requested increase in the potential to emit for the new chemical process which adds new hazardous air pollutants to the permit. The permit will limit the amount and type of material processed.

- In response to all comments that 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 whether to issue or deny the permit;
- The requirements of 45CSR13 require the DAQ to, when denying a permit, explicitly state the reason pursuant to §45-13-5.7.;
- An issued permit is but the beginning of the involvement of the DAQ with a source. After issuance, a facility will receive inspections to determine compliance with the requirements as outlined in the applicable permit;
- With respect to the quality of the ambient air of Kanawha County, the EPA has designated the county as in attainment with all the NAAQS;
- DAQ's rules allow applicants to perform some pre-construction activities without a permit at the applicant's risk (e.g., construct a building, store equipment);
- The WV DAQ does not take into consideration the economic impact or lack of due to a particular facility when making a final decision on any permit application;
- The DAQ has determined that the proposed Optima modification is properly defined as a minor stationary source;
- As a proposed minor source, there is no requirement for Optima to conduct a multi-source air impact analysis nor does the DAQ believe that such modeling, if conducted, would show that the proposed source would cause or contribute to a NAAQS violation.

## **Public Comments**

### **Comment 1**

*When the explosion happened in 2020 there was no warning, alarm or information for hours. How can families in the surrounding communities live safely or feel good about this permit? Even if they are in compliance, how can another situation like this be avoided in the future? It seems unfair to the communities to grant this permit without improving the safety standards and community emergency plans.*

### **DAQ Response 1:**

WV DAQ is required to issue permits by rule:

- 5CSR13-5.7 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.

When issuing a permit, the WV DAQ may not consider any other important, non-air quality related issues including emergency warning systems, alarm systems, safety standards, and community emergency plans.

### **Comment 2**

*On December 8, 2020, an explosion at this Optima facility in Belle killed one worker and caused \$33 million in damage. In the final report issued by federal safety regulators on this fatal explosion, it was found that Optima utilized a chemical compound drying process that was incorrect resulting in a dangerous reaction when overheated and recommended improved safety management processes and systems. Moreover, reports suggest that the contractor, Clearon, responsible for performing the drying process, did not properly communicate industry guidance to Optima and that regulations were insufficient to address the hazardous reaction potential.*

*WV Rivers is concerned by this facility's request to increase their potential to emit new hazardous air pollutants. Optima must prove over time that safety management processes have consistently and considerably been improved. Additionally, new regulations need to be established to sufficiently address the potential for reactive hazards, as recommended by federal safety regulators and experts, before any related permit is considered. These concerns suggest that Optima should not be permitted to increase their potential to emit nor return to full operational status within the current permit proposal.*

### **DAQ Response 2:**

WV DAQ is required to issue permits by rule:

- 5CSR13-5.7 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.

When issuing a permit, the WV DAQ may not consider any other important, non-air quality related issues including reports from outside agencies such as the one mentioned in the comment.

### **Comment 3**

*Quoting an article from the WV Gazette Andrew Brown Jan 30, 2016 Updated Nov 21, 2017 Doug Cochran, Optima's vice president of business development, "But unlike other companies DEP has worked with in the past, Cochran said Optima may present different challenges for the environmental regulators".*

*With Optima's business model requiring the manufacturer to switch from one chemical to another more often than a company like DuPont or Chemours, he said it may require DEP to speed up its approval processes for the various chemical compounds that will need to be permitted. "They are used to companies that move slower, that produce one type of chemical for years or decades," he said. "We're a little different animal than what they are used to." My question is can the WVDEP keep up with the demands of Optima? Also is Optima trying to get to market too soon and putting peoples lives in danger?*

### **DAQ Response 3:**

While it may be possible and it is the goal of WV DAQ to take final action on permits in a timely fashion the rate at which WV DAQ takes final action on permits is governed by the following rules.

WV DAQ is required by rule to take final action on administrative updates not to exceed sixty calendar days after receipt of a complete application.

WV DAQ is required by rule to take final action on construction permits and modification permits within 90 calendar days after the date the application is determined to be complete. This can be extended 30 calendar days to allow for public comment.

The speed at which Optima gets to market is not considered by WV DAQ. When issuing a permit, the WV DAQ may not consider any other important, non-air quality related issues.

### **Comment 4**

*After thorough examination and consideration of the potential consequences, I am compelled to express my strong disapproval of the permit modification. The release of cancerous pollutants into the air could have severe and lasting health implications for the residents of our town. As a responsible member of the DEP's Division of Air Quality, it is crucial to prioritize the well-being and safety of communities above all else.*

*I urge you to take into account the adverse effects this modification may have on the health of our town's inhabitants and reconsider the approval of this permit. It is our shared responsibility to safeguard the environment and protect the health of those who call the town of Belle their home.*

*Please consider the potential long-term repercussions and explore alternative solutions that promote cleaner and safer practices for Optima Belle, LLC. I am confident that with your expertise and dedication, we can find a more sustainable path forward.*

#### **DAQ Response 4:**

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 permitting process, which includes the subject permit modification, is one of the means by which these standards are met through confirmation and enforcement of compliance with state and federal rules and regulations and facility requirements.

#### **Comment 5**

*The proposal for Optima to be able to release more chemicals into the air should be denied. I'm sure we are all aware of the way these plants used to run and the amount of chemicals that were released into the air and water. The DEP has done a good job at mitigating that from happening today. Optima was so poorly run that they blew up their last plant on the Belle site and killed a worker in the process.*

*The gentleman that lost his life was a fine man and everyone liked him. I work on the Belle site for a different company and the release of even more chemicals into the air could greatly affect myself and my coworkers. So for the good of the community and the workers I would ask that their permit be denied.*

#### **DAQ Response 5:**

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 permitting process, which includes the subject permit modification, is one of the means by which these standards are met.

WV DAQ is required to issue permits by rule:

- 5CSR13-5.7 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.

#### **Comment 6**

*As someone who resides in the Belle area, the idea of hazardous gasses polluting the air is extremely concerning.*



## **DAQ Response 6:**

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 permitting process, which includes the subject permit modification, is one of the means by which these standards are met through confirmation and enforcement of compliance with state and federal rules and regulations and facility requirements.

## **Comment 7**

*I am writing to express my strong opposition to the proposed expansion of Optima Belle LLC's chemical facility in our community. We are deeply concerned about the potential impact this expansion could have on our health, our environment, and our quality of life.*

*According to Optima's own reports, this expansion would result in a significant increase in emissions, including 22.38 tons of nitrogen oxides, 21.88 tons of volatile organic compounds, 10.7 tons of hazardous air pollutants, and 6.49 tons of PM2.5. These emissions pose a serious threat to the health and well-being of our community, particularly for vulnerable populations such as children, the elderly, and those with pre-existing health conditions.*

*We are also concerned about the potential environmental impact of this expansion. Optima's facility is located near the Kanawha River, a vital resource for our community and the surrounding area. Any increase in emissions could harm the river's ecosystem, as well as the wildlife and plant life that depend on it.*

*We strongly urge the West Virginia Department of Environmental Protection to carefully consider the potential impact of this expansion on our community and to deny Optima's permit application.*

*We believe that the health and well-being of our community should be paramount in any decision regarding this facility, and we urge you to prioritize the health and safety of our community over corporate interests.*

## **DAQ Response 7:**

Much of the pollutants listed by the commenter are already permitted. The proposed increases in emissions from this facility with this permit modification are 0.41 tons volatile organic compounds per year, 0.00096 tons (1.92 pounds) ethylbenzene per year, and 0.00002 tons (0.04 pounds) styrene per year. These increases are well below the statutory permit required thresholds of 6 pounds per hour and 10 tons per year of regulated pollutants or 2 pounds per hour or 5 tons per year of hazardous air pollutants.

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 permitting process, which includes the subject permit modification, is one of the means by which these standards are met through confirmation and enforcement of compliance with state and federal rules and regulations and facility requirements.

### **Comment 8**

*Yes, my comments just consist of a lot of the questions that I've asked tonight is that, it's concerning to me that there's no consideration of possibility and there's no consideration of children and school there. We've expressed this because it's not gotten out to the public as well. A lot of people probably feel the same way we did, but we're able to come here. I feel like if you could have taken place in our own community so people would have the opportunity to go there. As Jonathan said, there's a lot of people that don't have the avenue to make it here. So I personally very concerned about the air quality and, yeah, some people might say, "Why do you live in an area that you have [air pollution]?" But I love my community, I wasn't raised there. I moved there and I love it. And as I said, we're a wide spot in the road, but it's our wide spot in the road and I think we all strive to make it the best community so we can raise our families there. And you stated that's not considered in those permitting considerations so that really bothers me and disturbs me that that's not part or relevant to the decision that you have to make. So I'm telling you thank you.*

### **DAQ Response 8:**

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 permitting process, which includes the subject permit modification, is one of the means by which these standards are met through confirmation and enforcement of compliance with state and federal rules and regulations and facility requirements.

### **Comment 9**

*I really didn't know what I was going to say here last a lot more questions. I thought I figure that my comment will be thrown out because I just want to take a moment to pray.*

*So, Jesus, I know that you would not release poisonous gases and things that would make it harmful to your creation, the environment, children, elderly people that live in our community. Lord, please help God, the people making decisions. It is very apparent that we live in a broken system and there's no one there to correct it. It's not the air quality fault. When we go to Joe Manchin it won't be his fault. It will be Governor Justice's fault. But there's got to be somewhere, someone that wants to make a change. That, we can protect the people and the things that we care about. So, Lord, just please be with the people making these decisions and the people that are going to face the consequences of living in these areas, their entire life because we have a lot of elderly and we have a lot of poverty in our area. So we're just please protect them,*

### **DAQ Response 9: No Response required**