



June 12, 2023

Mr. Joseph Jakuta  
District of Columbia Department of Energy & Environment  
Air Quality Division  
1200 First Street, NE  
Floor 5  
Washington, D.C. 20002

**Re: Public Comments: Revisions to Air Quality Opacity Requirements**

Dear Mr. Jakuta:

The District of Columbia Water and Sewer Authority (“D.C. Water”) appreciates the opportunity to provide comments on the District of Columbia Department of Energy & Environment’s (“DOEE”) proposed revisions to the District’s air quality opacity requirements, as published in Volume 70/19 of the D.C. Register on May 12, 2023 (“Proposed Rule”). D.C. Water owns and/or operates certain stationary sources and nonroad engines that would be impacted by the requirements in the Proposed Rule, if finalized.

D.C. Water understands that DOEE is amending its opacity regulations in response to a lawsuit<sup>1</sup> and subsequent EPA request<sup>2</sup> that the District amend its State Implementation Plan (“SIP”) (“SIP call”). D.C. Water supports DOEE in its goals of improving air quality in Washington, D.C. and complying with the SIP call while maintaining clarity for the regulated community. However, as described below, D.C. Water respectfully requests that DOEE revise the proposal to ensure that the amended requirements are practical, clear, and feasible for the regulated community.

Specifically, D.C. Water requests that DOEE:

1. Remove nonroad engines from coverage of the Proposed Rule;
2. In the alternative, DOEE should, at the very least, clearly define the scope of regulated nonroad engines;
3. Choose a 40% opacity for allowable visible emissions during startup;
4. Remove requirements that owners/operators of stationary sources provide emissions-related maintenance training plans to DOEE for review and approval;
5. Confirm that licensed equipment operators meet the proposed training requirements;
6. Amend its proposed language to allow coverage by the exception for equipment that is in the permitting process;

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<sup>1</sup> *Sierra Club et al. v. Jackson*, No. 3:10-cv-04060-CRB (N.D. Cal.).

<sup>2</sup> *Findings of Failure to Submit State Implementation Plan Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction*, 87 Fed. Reg. 1680 (January 12, 2022).

7. Revise its logbook requirement to be consistent with industry-wide practices; and
8. Remove the requirement to investigate the causes of equipment failure for equipment that is rented and used on-site.

**A. DOEE is Preempted from Regulating NonRoad Engines [proposed 606.1, 2, 4, and 5]**

DOEE is preempted from regulating nonroad engines under Section 209(e) of the Clean Air Act. Indeed, the very Federal Register notice that DOEE cites to support its theory that it is not preempted states the exact opposite conclusion:

Section 209(e)(1) of the Act permanently preempts any state, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain *new* nonroad engines or vehicles. For all other nonroad engines (including “non-new” engines), states generally are preempted from adopting and enforcing standards and other requirements relating to the control of emissions, except [for if a state chooses to adopt California’s standards].

80 Fed. Reg. 26250 (May 7, 2015). Therefore, this rulemaking stands for the proposition that DOEE can only adopt standards for nonroad engines if it is adopting standards set by California and authorized by EPA, which is not the case with DOEE’s proposed opacity standards.

Moreover, DOEE’s rationale that it is not setting new emissions standards but is instead clarifying the test methods to measure emissions is false. These proposed revisions to Section 606 are emission limits, exceptions from those limits, operational and maintenance requirements, and recordkeeping requirements – not just clarification of “a best available test...”

**B. DOEE Should Revise Its Proposed Standards for Nonroad Engines**

If DOEE rejects DC Water’s argument regarding the District’s authority to regulate nonroad engines here, D.C. Water requests that DOEE clarify the definition of nonroad engine so that we can understand the sources to which the regulation will apply. The Proposed Rule does not define nonroad engines. It is unclear whether DOEE will develop a separate definition of nonroad engines, or use analogous definitions contained in other sections of the District’s regulations. DOEE should clarify the scope of the proposed regulations for nonroad engines and re-propose its opacity regulations to ensure meaningful public comment opportunities for the regulated community. Regardless of what definition DOEE adopts for non-road engines, this definition should exclude small engines used for property maintenance, mobile cranes, fork trucks, utility vehicles and equipment utilized for emergency dewatering.

**C. DOEE Should Choose 40% for Allowable Visible Emissions During Startup [proposed 606.2]**

In the Proposed Rule, DOEE requests comment on ranges of allowable alternative visible emissions during startup, cleaning, adjustment of combustion controls, or regeneration of emission control equipment (“Startup”). DOEE lists ranges from federal and state regulations and state permit conditions from 27 to 40%. D.C. Water respectfully requests that DOEE choose a 40% opacity standard across all regulated sources. As an initial matter, a standard of 40% is reasonable based on DOEE’s own findings that visible emissions during start-up are often 40% or higher.<sup>3</sup> Regulated entities must be able to comply with any opacity standard during Startup 100% of the time, so imposing anything less than 40% creates an unnecessary risk of noncompliance. Imposing a standard of 40 percent for all regulated sources provides certainty to the regulated community while still achieving DOEE’s goals of limiting air pollution and complying with EPA’s requirement that the District amend its SIP.

As a practical matter, it is difficult for trained opacity observers to discern small degrees of difference in opacity utilizing Method 9, so, for example, the difference between 20% and 27% opacity is hard to distinguish. EPA’s Method 9 observation protocol requires opacity to be recorded at 5 percent increments, making it impossible to distinguish a 27% opacity reading from a 25% opacity reading. However, DOEE’s Proposed Rule would require exactly that. Therefore, DOEE should choose the 40% figure.

**D. DOEE Should Not Require That Equipment be Maintained in Accordance with Manufacturer’s Instructions or Under Alternate Plans That Must be Approved by the District [proposed 606.4(b)]**

Section 606.4(b) of the Proposed Rule would require owners and operators of regulated sources to operate equipment in accordance with the manufacturer’s emission-related written instructions, or to submit maintenance plans for those sources to DOEE for review and approval. This requirement is overly burdensome for entities such as D.C. Water that utilize a variety of regulated equipment, some of which does not need such maintenance plans. For example, the Proposed Rule could be read to regulate certain small non-road sources such as lawnmowers, even though these sources are so small that they do not have relevant emissions-related instructions from their manufacturer. In these instances, it is impossible for regulated entities to meet the requirements to comply with the manufacturer’s emission-related written instructions, because no such instructions exist. D.C. Water has a sophisticated Computerized Maintenance Management System (“CMMS”) which ensures that equipment, including air pollution control equipment, is maintained in a manner consistent with good air pollution control practices for minimizing emissions, and that should be sufficient to ensure compliance with the opacity regulations. DC Water’s CMMS reflects industry-wide maintenance best practices. Additionally, D.C. Water requests that DOEE clearly define the nature of equipment subject to this requirement so that the regulated community can ensure compliance.

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<sup>3</sup> Notice of Proposed Rulemaking at 3.

**E. The Proposed Rule Should Confirm That Licensed Equipment Operators Meet the Proposed Training Requirements in Section 606.4(c).**

D.C. Water requests that DOEE clarify its proposed amendment to Section 606.4(c), which would require owners and operators of stationary sources and nonroad engines to ensure that persons participating in the maintenance and operation of regulated sources are trained and supervised to minimize the production of emissions. D.C. Water asks DOEE to confirm that this provision does not require that boiler and turbine operators as well as operators of nonroad engines be Method 9 certified. Such operators should only be required to maintain the licenses and certifications they would ordinarily maintain. Of course, DC Water has several trained Method 9 opacity observers.

**F. The Proposed Amendments to Section 606.3 Should be Modified to Reflect Equipment That is in the Process of Being Permitted**

D.C. Water requests that the proposed amendments in Sections 606.3(e) be clarified to ensure consistency. Section 606.3(e) would allow an exception to the 10% opacity requirements for sources that have “had this limit approved in a permit pursuant to chapter 2 and when applicable chapter 3” of Title 20 of the D.C. Municipal Regulations. D.C. Water requests that DOEE modify this language to allow entities that are in the process of receiving a permit for their operations to take advantage of the exception by changing “has had” to “has had or will have...”

**G. DOEE Should Revise its Logbook Requirement [proposed 606.5(a)]**

D.C. Water requests that DOEE modify the language of proposed Section 606.5(a) to delete the proposed requirement for a log book, and instead require logs to be “signed by the person recording the information or maintained in a verifiable electronic system whose information can be certified as to its accuracy.”

**H. DOEE Should Remove its Requirement to Investigate Malfunctions of Regulated Equipment [proposed 606.5(b)]**

D.C. Water requests that DOEE remove the proposed amendments to Section 605(b), which would require investigation and recordkeeping of the cause of malfunctions for regulated equipment. Such records are burdensome and unreasonable for certain equipment utilized by D.C. Water. For example, D.C. Water rents some equipment that is used at the Blue Plains facility. If a malfunction of the rental equipment was to occur, D.C. Water would not conduct its own investigation but rather rent a replacement and rely on the equipment vendor to do its own investigation. D.C. Water respectfully requests that DOEE remove the requirement that owners and operators of stationary sources conduct such an investigation, or in the alternative, limit this requirement to equipment that the entity owns outright.

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D.C. Water appreciates the opportunity to comment on the Proposed Rule and looks forward to working with DOEE to develop meaningful opacity regulations that comply with the SIP call and are feasible for the regulated community. Please do not hesitate to contact Meena



Gowda, Vice President and Deputy General Counsel at D.C. Water with questions about the above comments at 202-787-2628 or [Meena.Gowda@dcwater.com](mailto:Meena.Gowda@dcwater.com)

Best,

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Marc Battle, Chief Legal Officer and Executive Vice President  
District of Columbia Water and Sewer Authority