



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2015-0539; FRL- 9940-85-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Prevention of Significant Deterioration and Approval of Infrastructure State Implementation Plans for Specific National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the West Virginia Department of Environmental Protection (WVDEP) for the State of West Virginia on June 3, 2015.

This revision pertains to West Virginia's Prevention of Significant Deterioration (PSD) permit program regulations for preconstruction permitting requirements for major sources. The revision includes a change in West Virginia's PSD regulations related to emissions of fine particulate matter (PM_{2.5}). The State's June 3, 2015 submittal satisfies its obligations pursuant to an earlier rulemaking in which EPA granted final conditional approval of West Virginia's PSD implementing regulations. This action also addresses specific infrastructure program elements specified in Clean Air Act (CAA) section 110(a)(2) necessary to implement, maintain, and enforce the national ambient air quality standards (NAAQS). This action is being taken under the CAA.

DATES: Written comments must be received on or before **[insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2015-

0539 by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: campbell.dave@epa.gov.
- C. Mail: EPA-R03-OAR-2015-0539, Amy Johansen, Acting Associate Director, Office of Permits and State Programs, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2015-0539. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittals are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Wentworth, (215) 814-2183, or by e-mail at Wentworth.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The WVDEP submitted a SIP revision to EPA on June 3, 2015. This SIP revision request, if approved, would revise West Virginia's currently-approved PSD program by amending Series 14 under Title 45 of West Virginia Code of State Rules (45CSR14). West Virginia is amending 45CSR14 in response to changes EPA made to the NAAQS for PM_{2.5} that affect certain aspects of the PSD program requirements.

On May 16, 2008, EPA promulgated a rule to implement the 1997 PM_{2.5} NAAQS, including

changes to the New Source Review (NSR) program (the 2008 NSR PM_{2.5} Rule). *See* 73 FR 28321. The 2008 NSR PM_{2.5} Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the PM_{2.5} NAAQS in both attainment and nonattainment areas.¹ The 2008 NSR PM_{2.5} rule: 1) required NSR permits to address directly emitted PM_{2.5} and precursor pollutants; 2) established significant emission rates for direct PM_{2.5} and precursor pollutants (sulfur dioxide (SO₂) and oxides of nitrogen (NO_x)); 3) required states to account for gases that condense to form particles (condensables) in PM_{2.5} emission limits; and 4) established certain PSD program requirements. EPA's NSR requirements specific to PM_{2.5} have been subject to litigation in the United States Court of Appeal for the D.C. Circuit and to some subsequent revisions by EPA. For a detailed discussion of the NSR requirements for PM_{2.5} as relevant to this rulemaking for West Virginia's PSD provisions, see EPA's analysis and discussion in *Technical Support Document; State of West Virginia, West Virginia Department of Environmental Protection; Division of Air Quality; Prevention of Significant Deterioration (PSD) SIP Revision Request* (the WV PSD TSD) which is included in the docket for this proposed action (**EPA-R03-OAR-2015-0539**) and is available online at www.regulations.gov.

In an earlier rulemaking action, EPA granted final condition approval of revisions to 45CSR14 made by West Virginia to address requirements of the CAA, 40 CFR 51.166 and the 2008 NSR PM_{2.5} Rule. *See* 80 FR 36483 (June 25, 2015). EPA's conditional approval was based upon West Virginia's commitment to include in its PSD regulations at 45CSR14 a significant monitoring concentration (SMC) of zero micrograms per cubic meter for PM_{2.5} to be consistent with federal PSD requirements. *Id.* EPA provided a detailed discussion of the changes West

¹ The PSD permitting program is the NSR permit program in areas attaining a particular NAAQS.

Virginia made to its PSD regulations in 45CSR14 to be consistent with the federal PSD program at 40 CFR 51.166 and the 2008 NSR PM_{2.5} Rule in our proposed conditional approval of West Virginia's June 6, 2012 and July 1, 2014 SIP submissions (the 2012 and 2014 submissions) which contained several revisions to 45 CSR14. *See* 80 FR 16612 (March 30, 2015). West Virginia's June 3, 2015 SIP submittal that is the subject of this action includes an amended 45CSR14 for West Virginia's PSD program that was revised to include the PM_{2.5} SMC at zero micrograms per cubic meter and to address the deficiency noted in EPA's proposed conditional approval of 45CSR14. *Id.* With its June 3, 2015 submittal, West Virginia has made all of the changes to its PSD implementing regulations necessary to address PM_{2.5} as prescribed by the CAA, 40 CFR 51.166, and the 2008 NSR PM_{2.5} Rule.

In this action, EPA is also proposing to approve several of West Virginia's infrastructure SIPs as meeting PSD elements of section 110(a)(2) of the CAA for the 1997 ozone and PM_{2.5} NAAQS, the 2006 PM_{2.5} NAAQS, the 2008 lead and ozone NAAQS, and the 2010 nitrogen dioxide (NO₂) and SO₂ NAAQS.

II. Summary of SIP Revision and EPA Analysis

A. Summary of SIP Revision

The SIP revision submitted by WVDEP on June 3, 2015 pertains to revisions to its PSD permit program regulations at 45CSR14-16.7.c that establish a SMC value of zero micrograms per cubic meter for PM_{2.5}.

B. EPA Analysis

EPA finds the revisions to 45CSR14 contained in the June 3, 2015 submittal are consistent with

the federal PSD program in the CAA and in 40 CFR 51.166(i)(5)(i)(c) pertaining specifically to the SMC for PM_{2.5}. The WV PSD TSD contains EPA's detailed discussion and analysis of the June 3, 2015 submittal and how it meets requirements for a PM_{2.5} SMC specifically and the requirements of 40 CFR 51.166 and the 2008 NSR PM_{2.5} Rule in general. The WV PSD TSD is included in the docket for this proposed action (**EPA-R03-OAR-2015-0539**) and is available online at www.regulations.gov.

Because this submission fulfills the commitment made by West Virginia in the final conditional approval of West Virginia's earlier submittals of revisions to 45CSR14 (i.e., the 2012 and 2014 submissions), EPA proposes full approval of West Virginia's PSD regulations at 45CSR14 in its entirety as 45CSR14 meets requirements in the CAA and its implementing regulations and proposes to remove the prior conditional approval. *See* 80 FR 36483 (final conditional approval of the 2012 and 2014 submissions of revisions to 45CSR14).

Similarly, because West Virginia's regulations at 45CSR14 fully meet the federal requirements for PSD in the CAA and in 40 CFR 51.166 as discussed in the WV PSD TSD, EPA also finds that West Virginia's PSD program addresses specific PSD-related portions of infrastructure program elements in section 110(a)(2) of the CAA for the 1997 ozone and PM_{2.5} NAAQS, the 2006 PM_{2.5} NAAQS, the 2008 lead and ozone NAAQS, and the 2010 NO₂ and SO₂ NAAQS. Thus, EPA proposes to approve several of West Virginia's SIP submissions as addressing PSD requirements in section 110(a)(2) of the CAA for these NAAQS. The WV PSD TSD contains a detailed discussion of the relevant West Virginia infrastructure SIP submissions, EPA's prior rulemaking action on those infrastructure SIPs, and EPA's rationale for finding those SIP submittals address PSD elements of section 110(a)(2) for the 1997 ozone and PM_{2.5} NAAQS, the

2006 PM_{2.5} NAAQS, the 2008 lead and ozone NAAQS, and the 2010 NO₂ and SO₂ NAAQS.²

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

III. Proposed Action

EPA is proposing to approve West Virginia's June 3, 2015 SIP submittal containing revised PSD permit program implementation regulations at 45CSR14. In a previous rulemaking action, EPA evaluated 45CSR14 and found the provisions are consistent with the federal PSD permit program requirements at 40 CFR 51.166 with the exception of West Virginia's omission of a PM_{2.5} SMC at zero micrograms per cubic meter. *See* 80 FR 36483. With the June 3, 2015 SIP submittal of the revised West Virginia PSD regulations at 45CSR14 which now contain the PM_{2.5} SMC, West Virginia's PSD regulations are consistent with federal PSD requirements. EPA proposes to remove the conditional approval of the 2012 and 2014 submissions and fully approve 45CSR14. EPA is also proposing to determine that West Virginia's infrastructure SIP submittals for the 1997 ozone and PM_{2.5} NAAQS, the 2006 PM_{2.5} NAAQS, the 2008 lead and ozone NAAQS, and the 2010 NO₂ and SO₂ NAAQS meet PSD related requirements in section 110(a)(2) of the CAA. Finally, EPA proposes to remove the prior narrow disapproval of the West Virginia infrastructure SIPs for the 1997 ozone and PM_{2.5} NAAQS, the 2006 PM_{2.5} NAAQS, and the 2008 lead and ozone NAAQS for not addressing fully all PSD requirements for section 110(a)(2) of the CAA.

IV. Incorporation by Reference

In this proposed action, the EPA is proposing to include in a final EPA rule, regulatory text that

² As mentioned previously, the WV PSD TSD is included in the docket for this proposed action (**EPA-R03-OAR-2015-0539**) and is available online at www.regulations.gov.

includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the West Virginia regulations at 45CSR14 regarding the PSD permitting requirements as discussed in section III of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.com and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, relating to West Virginia's PSD program and to several West Virginia infrastructure SIPs, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: December 21, 2015.

Shawn M. Garvin
Regional Administrator,
Region III.

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