

(4) The Secretary concerned may use in-kind consideration received from an LRA at any location under control of the Secretary concerned.

(i) The LRA and the Secretary concerned may agree on a schedule for sale of parcels and payment participation.

(j) Additional provisions shall be incorporated in the conveyance documents to protect the Department's interest in obtaining the agreed upon consideration, which may include such items as predetermined release prices, accounting standards or other appropriate clauses designed to ensure payment and protect against fraudulent transactions. Every agreement for an EDC shall contain provisions allowing the Secretary concerned to recoup from the LRA such portion of the proceeds from its sale or lease as the Secretary concerned determines appropriate if the LRA does not use the proceeds to support economic redevelopment of or related to the installation for the period specified in paragraph (d)(8) of this section. The Secretary concerned and an LRA may enter into a mutually agreed participation agreement which may include input by the Secretary concerned on the LRA's disposal of EDC parcels.

(k) The Secretary concerned may take account of property value but is not required to formally determine the estimated fair market value of the property for any EDC. The consideration negotiated should be based on a business plan and development proforma that assumes the uses in the redevelopment plan. The Secretary concerned may determine the nature and extent of any additional information needed for purposes of negotiation. To the extent not prohibited by law, information used should be shared with the LRA.

(l) After evaluating the application based upon the criteria specified in paragraph (f) of this section, and negotiating terms and conditions, the Secretary concerned shall present the proposed EDC to the Deputy Under Secretary of Defense (Installations and Environment) for formal coordination before announcing approval of the application.

§ 174.10 [Removed and Reserved]

3. § 174.10 is removed and reserved:

Dated: December 10, 2010.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2009-0876; FRL-9240-4]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the West Virginia Department of Environmental Protection on July 20, 2009. This revision will establish nitrogen oxides (NO_x) as a precursor to ozone, add the Federally equivalent provisions to the rules for the Prevention of Significant Deterioration (PSD) as they pertain to "reasonable possibility" and delete certain references to pollution control projects (PCPs) and clean units (CUs) to make the West Virginia PSD program consistent with the Federal PSD regulations. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before January 18, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2009-0876 by one of the following methods:

A. <http://www.regulations.gov>. Follow the online instructions for submitting comments.

B. *E-mail:* mccauley.sharon@epa.gov.

C. *Mail:* EPA-R03-OAR-2009-0876, Kathleen Cox, Associate Director, Office of Permits & Air Toxics, 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-2009-0876. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://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 <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site 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 <http://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 <http://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 <http://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 submittal 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: Sharon McCauley, (215) 814-3376, or by e-mail at mccauley.sharon@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On July 20, 2009, the State of West Virginia submitted a revision to its State Implementation Plan (SIP) to replace the current SIP-approved version of 45CSR14, entitled, Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration.

I. Background

This SIP revision proposes to replace, in its entirety, the SIP version of 45CSR14, as approved by EPA on December 4, 2006 (71 FR 64470), with West Virginia's current version of this rule. West Virginia 45 CSR14 governs the permitting for the construction of new major stationary sources and the significant modification of existing major stationary sources of air pollutants in areas designated attainment or non-classifiable for the National Ambient Air Quality Standards (NAAQS). This regulatory revision was made effective as a legislative rule by the State of West Virginia on June 1, 2009.

II. Summary of SIP Revision

West Virginia's rule 45CSR14 establishes a pre-construction permit program consistent with Title I of the CAA and the implementing regulations at 40 CFR 51.166 "Prevention of Significant Deterioration of Air Quality." West Virginia rule 45CSR14 also ensures that the West Virginia SIP provides for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) in accordance with Section 110(a)(2)(C) of the CAA which requires States to have a permitting program for regulation of the construction and modification of sources as required by Part C of Title I of the CAA to assure NAAQS are achieved.

On November 29, 2005, NO_x were established as precursors to the criteria pollutant ozone and became regulated under 40 CFR 51.166 and 40 CFR 52.21 (70 FR 71612). The new version of 45CSR14 establishes NO_x as a precursor to ozone to satisfy these requirements.

The new version of 45CSR14 also deletes references to pollution control projects (PCPs) and clean units (CUs) to make the West Virginia's regulation consistent with the Federal PSD regulations.

The provisions of the State's rule at 45CSR14.19.8 now include the recordkeeping and reporting requirements for sources that elect to use the actual-to-projected actual emission test and where there is a "reasonable possibility" that a project may result in a significant net emissions increase. In our previous approval of 45CSR14, dated December 4, 2006 (71 FR 64470), at the request of West Virginia, we took no action on the provisions of 45CSR14.19.8 pertaining to the recordkeeping and reporting requirements for sources that elect to use the actual-to-projected actual emission test and where there is a

"reasonable possibility" that a project may result in a significant net emissions increase. We are now proposing to approve 45CSR14.19.8 as a revision to the West Virginia SIP because the necessary regulatory corrections have been made.

We are proposing approval of West Virginia's July 20, 2009 SIP revision because we believe that the amendments to West Virginia's PSD permit program at 45CSR14 as described herein meet the minimum requirements of 40 CFR 51.166 and the CAA. Aside from the changes described herein, no other changes to the West Virginia SIP's PSD program as approved by EPA on December 4, 2006 (71 FR 64470) would result from this revision to replace the version of 45CSR14 in the West Virginia SIP.

III. Proposed Action

We are proposing to approve the West Virginia SIP's July 20, 2009 SIP revision to replace 45CSR14 in its entirety. We are soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. 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 proposes to approve 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 (Pub. L. 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 to approve replacing the current SIP-approved version of West Virginia rule 45CSR14 in its entirety with an updated version to satisfy the CAA's requirements for the Prevention of Significant Deterioration 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, Carbon monoxide, Incorporation by reference, 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 7, 2010.

Shawn M. Garvin,

Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2010-0285; FRL-9239-9]

Availability of Additional Information for the Proposed Rulemaking for Colorado's Attainment Demonstration for the 1997 8-Hour Ozone Standard and Related Revisions

AGENCY: Environmental Protection Agency (EPA).