

Dated: April 20, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV064-6033a; FRL-7652-6]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Revision to the State Implementation Plan Addressing Sulfur Dioxide in Marshall County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The revision consists of a Consent Order for PPG Industries, Inc., which will continue to achieve and maintain the national ambient air quality standards (NAAQS) for sulfur dioxide (SO₂) in Marshall County, West Virginia. EPA is approving this revision to incorporate the Consent Order into the federally approved SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on June 28, 2004 without further notice, unless EPA receives adverse written comment by May 28, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by WV064-6033 by one of the following methods:

A. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:* morris.makeba@epa.gov

C. *Mail:* Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, 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. WV064-6033. EPA's policy is that all comments received will be included in the public docket

without change, 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 regulations.gov or e-mail. The federal 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 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.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW, Room B108, Washington, DC 20460; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, West Virginia 25304-2943.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814-2034, or Denis Lohman, (215) 814-2192, or by e-mail at wentworth.ellen@epa.gov or lohman.denny@epa.gov

SUPPLEMENTARY INFORMATION:

I. Background

On August 2, 2000 (65 FR 47339), EPA approved and promulgated a revision to the West Virginia SIP addressing SO₂ in Marshall County, West Virginia. This SIP revision consisted of Consent Orders prescribing new SO₂ emission limits and operating practices for three facilities in Marshall County, West Virginia. The facilities were PPG Industries (CO-SIP-2000-1),

Bayer Corporation (CO-SIP-2000-2), and Columbian Chemicals Company (CO-SIP-2000-3). The changes to the emission limits were approved into the West Virginia SIP and are federally enforceable. These changes in emission rates were necessary as a result of these sources being modeled as "nearby background sources" in the preliminary modeling of the Kammer power plant in Marshall County. The preliminary modeling indicated that these sources, at their existing allowable emission rates, were substantial contributors to modeled predicted violations of the NAAQS for SO₂. The West Virginia Department of Environmental Protection (WVDEP) initiated action to complete a refined modeling analysis and determine appropriate emission limits for these sources and others in and near to Marshall County. With the emission limits and work practice requirements being approved for these three facilities, and the existing SIP-approved emission rates for the other sources modeled, the refined modeling results predict worst-case concentrations for the 3-hour, 24-hour, and annual averaging periods of 1294 micrograms per cubic meter of air (µg/m³) for the secondary 3-hour, 352 µg/m³ for the primary 24-hour standard, and 62 µg/m³ for the primary annual standard, respectively. Approval of the August 2, 2000 SIP revision, incorporating the provisions of CO-SIP-2000-1, (65 FR 47339) ensured that all ambient concentrations were below the applicable SO₂ NAAQS of 1300 µg/m³, 365 µg/m³, and 80 µg/m³, respectively. For more detailed information on the modeling for the SIP revision of August 2, 2000, please see the technical support document (TSD) prepared for that rulemaking.

In September 2001, PPG requested an extension of the compliance date (June 1, 2002) contained in CO-SIP-2000-1 for raising the height of three (3) emissions points. These emission points included Process #036, the Sulfur Recovery Unit; Process #016, the CS₂ Flare; and Process #004, the Inorganics Flare. The request for an extension of the compliance date for these emission points was incorporated into a Consent Order, CO-SIP-C-2001-35A (2000), which amended CO-SIP-2000-1, and provided for an extension until September 1, 2003 for raising the heights of Process #004, the Inorganics Flare; Process #036, the CS₂ Sulfur Recovery Unit; and Process #016, the CS₂ Flare to heights of sixty-five (65) meters above grade. All other provisions and requirements of CO-SIP-2000-1 remained in effect. This Consent Order was approved by the WVDEP on

November 21, 2001. A SIP revision was drafted and a public hearing was held on June 13, 2002. However, before the WVDEP submitted this revised Consent Order to EPA as a formal SIP revision, PPG notified the WVDEP that due to a process change at the facility, certain stack extensions would no longer be necessary in order to demonstrate modeled attainment of the SO₂ NAAQS.

In September 2002, PPG Industries requested the approval of a plan for demonstrating attainment of the NAAQS for SO₂ whereby the height of Process #004, the Inorganics Flare, would remain at its existing height with an allowable emission rate of 91.3 lbs/hr of SO₂, Process #036, the CS₂ Sulfur Recovery Unit, would remain at its existing height and would have an allowable emission rate of 300 lbs/hr of SO₂, and Process #016, the CS₂ Flare would remain at its existing height and would have an allowable emission rate of 6.0 lbs/hr. Previously, the emission rate of the CS₂ Flare used for modeling had been 1011.6 lbs/hr SO₂. This plan was able to demonstrate attainment of the NAAQS for SO₂ because of a process change made in the CS₂ Department during the second quarter of 2002, whereby emissions of SO₂ that were originally sent to the CS₂ Flare (with an emission rate of 1011.6 lbs/hr) would now be recovered in the CS₂ Sulfur Recovery Unit.

The WVDEP advised PPG Industries that acceptable modeling, (using the same model input files used in the original attainment demonstration approved by EPA as a SIP revisions in August, 2000), incorporating the changes noted in the plan request of September 2002, would have to be submitted to the WVDEP for review. In December 2002, PPG submitted an air dispersion modeling demonstration to WVDEP with the proposed requested changes. The WVDEP reviewed PPG's submittal, and found that with the requested changes to the Consent Order, the modeling continued to demonstrate attainment of all of the NAAQS for SO₂.

II. Summary of SIP Revision

On November 17, 2003, the WVDEP submitted a formal revision to its SIP to EPA. The SIP revision consists of a Consent Order CO-SIP-2003-27, for prescribing SO₂ emission limits and operating practices for PPG Industries, Inc., located in Marshall County, West Virginia. This SIP revision provides for the attainment of the three (3) hour, twenty-four (24) hour and annual SO₂ NAAQS in, and around Marshall County, West Virginia. The purpose of this revision is to approve and incorporate CO-SIP-2003-27, entered

into between the WVDEP and PPG Industries, Inc., located in Marshall County, West Virginia into the SIP.

A. Description of the Consent Order for PPG

Listed below are the essential compliance provisions of CO-SIP-2003-27. The Consent Order also contains generic provisions requiring compliance with 45CSR10, as well as good air pollution control practices.

CO-SIP-2003-27—PPG Industries, Inc.

Effective July 29, 2003

a. Emissions of SO₂ from Process #004, the Inorganics Flare, shall not exceed 91.3 lbs SO₂/hour as averaged over a three-hour period.

b. Process #014, the CS₂ Vaporizer A, Process #015, the CS₂ Vaporizer B, Process #018, the Molten Salt Furnace, and Process #019, Chlorine Recovery shall be fired only with natural gas.

c. Emissions of SO₂ from Process #016, the CS₂ Flare, shall not exceed 6.0lbs/hr when averaged over a three-hour period. Emissions during the start-up and shutdown of the CS₂ production unit will not be sent to Process #016, the CS₂ Flare. The operating department will direct these emissions during start-ups and shutdowns to the CS₂ Sulfur Recovery Unit via piping and valves and the CS₂ Sulfur Recovery Unit will be operated during this period of time in compliance with the emission limitation specified in paragraph (e) below.

d. Emissions of sulfur dioxide from Process #017, the Raw Brine Flare, shall not exceed 11.65 lbs. SO₂/hour as averaged over a three-hour period.

e. Emissions of SO₂ from Process #036, the CS₂ Sulfur Recovery Unit, shall not exceed 300 lbs. SO₂/hour as averaged over a three-hour period.

Gases exhausted from Process #004, the Inorganics Flare, Process #036, the CS₂ Sulfur Recovery Unit, and Process #016, the CS₂ Flare, shall be exhausted from stacks having heights of thirty and four tenths (30.4) meters above grade, and all exhaust gases from Process #017, the Raw Brine Flare, shall be exhausted from a stack having a height of forty (40) meters above grade. Any modifications to the stacks in existence on the date of this CO or replacement of those stacks shall comply with the provisions of 45 CSR20 "Good Engineering Practice as Applicable to Stack Heights."

The modeling demonstration for this SIP revision request is derived from the demonstration for the Marshall County SIP revision approved on August 2, 2000 (65 FR 47339). The Marshall County demonstration used the

CALPUFF¹ dispersion model and included source specifications for the PPG Industries facility. This request is to modify the approved demonstration by changing the configuration of the PPG Industries facility. The PPG contribution to the original demonstration was removed and replaced with modified contributions from the new source specifications. The modified results also demonstrate attainment of the NAAQS for SO₂.

B. Maximum Predicted SO₂ Impacts From the Modified Compliance Demonstration

Period	Model prediction	NAAQS
3-Hour	1271	1300
24-Hour	353	365
Annual	73	80

The modeling demonstration adequately shows that the NAAQS for SO₂ are attained in the Marshall County area of West Virginia.

III. Final Action

EPA is approving a revision to the West Virginia SIP submitted by the WVDEP on November 17, 2003. The revision consists of a Consent Order, CO-SIP-2003-27, for PPG Industries, Inc., located in Marshall County, West Virginia. The SIP revision is supported by a modeled demonstration that the NAAQS for SO₂ in Marshall County shall continue to be attained and maintained.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment [as appropriate, insert language explaining why we anticipate no adverse comment]. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on June 28, 2004 without further notice unless EPA receives adverse comment by May 28, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a

¹ At the time, CALPUFF was not listed as a preferred model in 40 CFR part 51 Appendix W (Guideline on Air Quality Models). West Virginia obtained permission from EPA to use CALPUFF for the demonstration. Subsequently, on April 15, 2003 (68 FR 18440) Appendix W was revised to include CALPUFF as a preferred model.

second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997),

because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for PPG Industries, Inc., in Marshall County, West Virginia.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 28, 2004. Filing a petition for reconsideration by the Administrator of this final rule approving a Consent Order for PPG Industries, Inc., in Marshall County, West Virginia does not affect the finality of this rule for the purposes of judicial

review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 13, 2004.

Richard J. Kampf,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart XX—West Virginia

■ 2. Section 52.2520 is amended by adding paragraph(c)(58) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(58) Revision to the West Virginia Regulations to achieve and maintain the sulfur dioxide national ambient air quality standards (NAAQS) in Marshall County consisting of Consent Order, CO-SIP-C-2003-27 for PPG Industries, Inc., submitted on November 17, 2003, by the West Virginia Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of November 17, 2003, from the West Virginia Department of Environmental Protection transmitting a revision to the State Implementation Plan (SIP) to achieve and maintain the NAAQS for sulfur dioxide in Marshall County, West Virginia.

(B) Consent Order, CO-SIP-C-2003-27, entered into by and between the West Virginia Department of Environmental Protection, Division of Air Quality, and PPG Industries, Inc., on July 29, 2003. The consent order was effective on July 29, 2003.

(ii) Additional Material.—Remainder of the State submittal pertaining to the revision listed in paragraph (c)(58)(i) of this section.

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