



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2017-0555; FRL- 9975-64-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia;
Removal of Source-Specific Requirements for Permanently Shutdown Facilities**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of West Virginia. This revision pertains to the removal of source-specific SIP requirements for the following five facilities in West Virginia that have permanently shutdown: Mountaineer Carbon Company; Standard Lafarge; Follansbee Steel Corporation; International Mill Service, Inc.; and Columbian Chemicals Company. These sources have permanently ceased operation; therefore, SIP requirements for these sources are obsolete and no longer necessary for attaining and maintaining the national ambient air quality standards (NAAQS). EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2017-0555. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g.,

confidential business information (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 through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814-2166, or by e-mail at shandruk.irene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The West Virginia SIP at 40 Code of Federal Regulations (CFR) part 52, subpart XX, section 52.2520(d) contains source-specific requirements, which were incorporated into the West Virginia SIP over the course of many years to allow the State to demonstrate attainment with various NAAQS. Subsequently, several of these sources have permanently ceased operation rendering source-specific requirements for these facilities obsolete.

SIP revisions pertaining to the removal of obsolete SIP requirements for sources that have permanently shutdown are considered administrative, non-substantive changes. If a source has permanently shutdown, the emissions are permanently reduced to zero, so removing source-specific SIP requirements for that source will not interfere with attainment and maintenance of any NAAQS, reasonable further progress or any other applicable CAA requirement. *See* CAA section 110(l).

II. Summary of SIP Revision and EPA Analysis

On August 25, 2017, West Virginia submitted a SIP revision requesting that the consent orders for the sources listed in Table 1 be removed from the West Virginia SIP located at 40 CFR part 52, subpart XX, section 52.2520(d). On December 5, 2017, EPA published a notice of proposed rulemaking (NPR) proposing to approve West Virginia’s August 25, 2017 (82 FR 57418) SIP revision.

Table 1. Source-Specific Requirements Proposed for Removal from the West Virginia SIP

Source Name	Order	State Effective Date	EPA Approval Date/Federal Register (FR) Citation
Mountaineer Carbon Company	Consent Order	7/2/82	9/1/82 47 FR 38532
Standard Lafarge	Consent Order CO-SIP-91-30	11/14/91	7/25/94 59 FR 37696
Follansbee Steel Corporation	Consent Order CO-SIP-91-31	11/14/91	7/25/94 59 FR 37696
International Mill Service, Inc.	Consent Order CO-SIP-91-33	11/14/91	7/25/94 59 FR 37696
Columbian Chemicals Company	Consent Order CO-SIP-2000-3	1/31/00	8/2/00 65 FR 47339

III. Public Comments and EPA’s Responses

EPA received six public comments on the NPR to approve West Virginia’s SIP revision.

Comment 1: The commenter expressed concern over whether the facilities’ emissions would be regulated through monitoring and guidelines if they were to re-open.

Response 1: CAA section 110(a)(2)(c) and Title I, Parts C and D, as well as CAA sections 172, 173, and 161 require states to implement permit programs consistent with the requirements of the CAA which regulate construction and modification of stationary sources to assure the NAAQS are achieved. These include nonattainment new source review (NSR) and prevention of significant deterioration (PSD) permit programs. West Virginia has federally enforceable NSR

and PSD permit programs incorporated in the West Virginia SIP. *See* 45CSR19 (NSR program approved 80 FR 29973(May 26, 2015)), 45CSR14 (PSD program approved 81 FR 53009 (August 11, 2016)), and 45CSR13 (minor source NSR program approved 79 FR 42213 (July 21, 2014)). All of the facilities listed in the NPR were permanently shut down, but if any were to re-open, or if any new sources were to start operating in West Virginia in the same location, they would need to comply with the requirements of West Virginia’s permit programs, as applicable including NSR, PSD or minor NSR. Specifically, West Virginia’s rule 45CSR14, “Permits for the Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration,” was approved into the West Virginia SIP in 1984 and subsequently revised several times with the latest revision to the SIP in 2015 (81 FR 53009). West Virginia’s rule 45CSR13, “Permits for Construction, Modification, or Relocation of Stationary Sources of Air Pollutants, and Procedures for Registration and Evaluation,” requiring construction or modification permits for all regulated stationary emission sources was approved into the West Virginia SIP in 1972 and last updated in 2014 (79 FR 42213). West Virginia’s rule 45CSR19, “Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Bubble Concept for Intra-Source Pollutants,” for permitting of major sources and modifications in designated nonattainment areas was approved into the West Virginia SIP in 1985 (50 FR 27247) with recent revisions to the rule included in the SIP in 2015 (80 FR 29973). These federally enforceable rules approved into the West Virginia SIP ensure that pollutant-emitting sources are regulated with appropriate and required emission limitations and monitoring requirements as necessary, and that their operation will not prevent West Virginia from attaining or maintaining the NAAQS.

Comment 2: The commenter expressed concern that wildfires are negatively impacting both public health and the environment, and that more should be done to prevent wildfires.

Response 2: This comment is irrelevant to this rulemaking. This rulemaking is concerned with removing source-specific requirements from the SIP for permanently shut down facilities in West Virginia. As the comment is neither supportive of, critical of, nor specific to this action, no further response is provided.

Comment 3: The commenter questioned why the United States is importing gas from Nigeria at Cove Point hurting the American middle class and the working poor.

Response 3: This comment is irrelevant to this rulemaking. This rulemaking is concerned with removing source-specific requirements from the SIP for permanently shut down facilities in West Virginia. As the comment is neither supportive of, critical of, nor specific to this action, no further response is provided.

Comment 4: The commenter expressed concern over unnecessary and burdensome regulations, and the regulatory process.

Response 4: As the comment is neither supportive of, critical of, nor specific to this action, no response is provided. This rulemaking is concerned with removing source-specific requirements from the SIP for permanently shut down facilities in West Virginia.

Comment 5: The commenter expresses concern over potentially harmful health effects from low frequency electro-magnetic fields and discusses how their use in automobiles amongst other things could be harmful to human health.

Response 5: This comment is irrelevant to this rulemaking. This rulemaking is concerned with removing source-specific requirements from the SIP for permanently shut down facilities in West Virginia. As the comment is neither supportive of, critical of, nor specific to this action, no further response is provided.

Comment 6: The commenter asserts that EPA relied on assumptions and false evidence to lead attacks on hydraulic fracturing, and utilized the film industry to create anti-fracking films, all to justify regulating the industry.

Response 6: This comment is irrelevant to this rulemaking. This rulemaking is concerned with removing source-specific requirements from the SIP for permanently shut down facilities in West Virginia. As the comment is neither supportive of, critical of, nor specific to this action, no further response is provided.

IV. Final Action

EPA has reviewed West Virginia's SIP revision seeking removal of obsolete source-specific SIP requirements from the West Virginia SIP. These five sources have permanently ceased operation, rendering source-specific SIP requirements for these sources obsolete. EPA has confirmed that all permits have been surrendered and are inactive. Therefore, EPA is approving the West Virginia August 25, 2017 SIP revision, which sought removal of source-specific revisions related to five now closed facilities, in accordance with section 110 of the CAA. As the five sources permanently shutdown, their emissions are permanently eliminated, so removing the source-specific SIP requirements for these sources will not interfere with attainment and maintenance of any NAAQS, reasonable further progress or any other applicable CAA requirement in accordance with CAA section 110(1).

V. Statutory and Executive Order Reviews A. General Requirements

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 action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- 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 rule 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.

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, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and 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). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 pertaining to removal of source-specific requirements from the West Virginia SIP 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, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 6, 2018.

Cosmo Servidio,
Regional Administrator,
Region III.

40 CFR Part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart XX--West Virginia

§ 52,2520 [Amended]

2. In § 52.2520, the table in paragraph (d) is amended by removing the entries for “Mountaineer Carbon Co,” “Standard Lafarge,” “Follansbee Steel Corp,” “International Mill Service, Inc,” and “Columbian Chemicals Company.”

[FR Doc. 2018-05404 Filed: 3/16/2018 8:45 am; Publication Date: 3/19/2018]