



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2017-0503; FRL-9979-55-Region 3]

Approval and Promulgation of Air Quality Implementation Plans;

West Virginia; Minor New Source Review Permitting

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 State of West Virginia. This revision pertains to changes to West Virginia's minor New Source Review (NSR) permit program. This action is being taken under the Clean Air Act (CAA).

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2017-0503 at <http://www.regulations.gov>, or via email to duke.gerallyn@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will

generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Mr. David Talley, (215) 814-2117, or by e-mail at talley.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 6, 2017, the West Virginia Department of Environmental Protection (WVDEP) submitted on behalf of the State of West Virginia a formal revision, requesting EPA’s approval of its revised minor NSR regulations, “45CSR13 - Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, Permissions to Commence Construction, and Procedures for Evaluation,” as a revision to the West Virginia SIP. Section 110(a)(2)(C) of the CAA requires SIPs to include a preconstruction permit program for both major and minor sources. More specifically, SIPs must include the permit programs required under subpart C of title I and must have minor preconstruction programs that assure that the national ambient air quality standards (NAAQS) are maintained. Additionally, 40 CFR sections 51.160 through 51.163 outline the federal requirements which apply to minor permit issuance, including the required administrative and federally enforceable procedures, and the procedures for public participation. Under the minor source permitting rules under the Code of

State Rules (CSR) at 45CSR13, West Virginia implements minor preconstruction program requirements by issuing permits to: (1) construct and operate new stationary sources which are not major sources, (2) modify non-major stationary sources, (3) make non-major modifications to existing major stationary sources, and (4) relocate non-major stationary sources. These rules also establish requirements for obtaining a temporary permit and Class I and Class II general permit registration. EPA last approved a revision to 45CSR13 on July 21, 2014. *See* 79 FR 42211.

II. Summary of SIP Revision and EPA Analysis

A. Summary of SIP Revision

WVDEP's June 6, 2017 SIP submittal contains a number of revisions to 45CSR13, many of them administrative or clarifying in nature. The non-administrative changes include:

1) Revisions to the definitions of modification and stationary source; 2) Revisions to and clarifications of the provisions allowing applicants to store equipment onsite prior to receiving a permit; and 3) Revisions to the applicability criteria for Class I and Class II administrative updates.

B. EPA Analysis

1. "Modification" and "Stationary Source" Definition Changes

WVDEP added language excluding greenhouse gas (GHG) emissions under the definitions of "Modification" and "Stationary Source" at 45CSR13 sections 45-13-2.17.a and 45-13-2.24.b, respectively. The specific language added to both definitions is as follows, "...other than emissions of any one or the aggregate of all GHGs, the air pollutant defined in 40 C.F.R. section 86.1818-12(a) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride." The addition of this

language to both definitions clarifies that GHG emissions are not subject to the minor NSR permitting requirements of 45CSR13. In accordance with West Virginia’s Prevention of Significant Deterioration (PSD) regulations at 45CSR14, preconstruction permitting requirements for GHG sources are only triggered for major sources or major modifications, and only when such source/modification is already “major” for another pollutant (i.e. a source cannot be “major” for GHGs alone). This is consistent with the federal PSD regulations at 40 CFR 51.166 and 52.21. Additionally, these revisions are appropriate and meet the federal requirements of 40 CFR 51.160 and 51.161, and CAA section 110(a)(2)(C). Further, the revisions are in accordance with section 110(l) of the CAA because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.

2. “Store-on-site” Clarifications

WVDEP’s previously approved regulations allow sources to “(r)ceive or store on-site or off-site any equipment or supplies which make up in part or in whole an emission unit or any support equipment, facilities, building or structure,” prior to receiving a permit under 45CSR13.¹ *See* 45CSR13 section 45-13-5.1.i. WVDEP’s June 6, 2017 submittal included a revision to 45-13-5.1.i which clarifies that such supplies etc. may be stored on-site “...on its permanent pad or foundation or at any other location at the stationary source.” In addition, section 45-13-2 has been revised to add a definition of “store on-site” which clarifies that any equipment stored on-site must be kept in the same condition as it was received, and not “...modified, erected or installed.” *See* 45CSR13 section 45-13-2.26. While there are no corresponding federal regulations, EPA finds these revisions approvable because they are essentially adding conditions

¹ WVDEP’s “store on-site” provisions do not apply to major PSD or nonattainment NSR permits issued in accordance with 45CSR14 or 45CSR19.

to an already approved regulation, and because they meet the requirements of 40 CFR sections 51.160-51.163 and CAA section 110(a)(2)(C). Additionally, they are consistent with CAA section 110(l) because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.

3. Class I and Class II Administrative Updates

WVDEP's June 6, 2017 submittal also revised the applicability criteria for sources seeking Class I and Class II administrative updates to minor NSR permits issued under 45CSR13.

The primary difference between Class I and II updates is that, pursuant to 45-13-4.1.d, public notice is not required for Class I updates. For Class II updates, WVDEP provides a 30-day public notice period, in accordance with 45-13-8.3. Additionally, sources requesting Class I amendments may make the change upon submitting the request, prior to receiving a revised permit from WVDEP. In WVDEP's currently approved SIP, only changes to permit conditions which result in a *decrease* in emissions can be approved under a Class I update. Class II updates must be used for changes which result in an increase or no change in emissions. *See* 45CSR13 sections 45-13-4.2.a.8 and 45-13-4.2.b. WVDEP's June 6, 2017 submittal revised those provisions so that rather than applying only to permit revisions which result in an emissions decrease, a Class I update can be used for a permit revision resulting in no emissions increase. A Class II update now must be used in instances where the revision would result in an emissions increase. EPA believes this is a reasonable approach to streamlining WVDEP's administrative burden, and finds these revisions approvable because they meet the requirements of 40 CFR sections 51.160-51.163 and CAA section 110(a)(2)(C). Additionally, they are consistent with CAA section 110(l) because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.

4. Non-substantive Changes

In addition to the revisions previously discussed, WVDEP's June 6, 2017 submittal included a number of non-substantive, clarifying and/or administrative changes. Some examples include the deletion of 45CSR13 section 45-13-1.5 which referenced the former version of 45CSR13, re-codifications required by insertions or deletions, (e.g. 45CSR13 sections 45-13-2.26 through 45-13-28), and the deletion of 45CSR13 section 45-13-5.8, which was an antiquated reference to operating permits (permits issued under 45CSR13 include authorization to construct and operate). WVDEP's submittal included an underline/strikeout version of the submittal so that all revisions to 45CSR13 can be seen. This is included in the docket for this action and online at www.regulations.gov.

These changes to 45CSR13 have been made in order to clarify and streamline the minor NSR program, and are appropriate and meet the federal requirements of 40 CFR 51.160 through 51.163, and CAA section 110(a)(2)(C). Additionally, the revisions are in accordance with section 110(l) of the CAA because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.

III. Proposed Action

EPA's review of this material indicates that WVDEP's June 6, 2017 SIP submittal meets the requirements under section 110 of the CAA. EPA is proposing to approve the West Virginia SIP revision, adding the revised version of 45CSR13 to the West Virginia SIP, which will replace the current version of 45CSR13 last approved by EPA on July 21, 2014. *See* 79 FR 42212. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the West Virginia regulations at 45CSR13 regarding minor NSR permitting program requirements as discussed in Section II of this preamble. EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the “For Further Information Contact” 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 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 proposed rule, incorporating by reference the West Virginia regulations at 45CSR13 regarding minor NSR permitting program requirements, 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 6, 2018.

Cecil Rodrigues,
Acting Regional Administrator,
Region III.

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