



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA-R03-OAR-2023-0026; FRL-11859-02-R3]

Air Plan Approval; West Virginia; Revision to the State Operating Permits Program

Under Title V of the Clean Air Act to Revise 45 Code of State Rules 33; Acid Rain

Provisions and Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a Title V Operating Permits Program revision submitted by the West Virginia Department of Environmental Protection (WVDEP) on behalf of the State of West Virginia. The revision incorporated by reference final rules promulgated by the EPA, effective June 1, 2020, into West Virginia's Title V Operating Permits Program. The EPA is approving these revisions to the West Virginia Title V Operating Permits Program in accordance with the requirements of the Clean Air Act (CAA). The approval will serve to maintain consistency between the State and Federal counterpart regulations.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2023-0026. All documents in the docket are listed on the 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 www.regulations.gov, or please contact the person identified in the **For Further Information Contact** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Paul Entwistle, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2343. Mr. Entwistle can also be reached via electronic mail at Entwistle.Paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 2024 (89 FR 66662), the EPA published a notice of proposed rulemaking (NPRM) for the State of West Virginia. In the August 2024 NPRM, the EPA proposed approval of amendments that West Virginia made to 45 Code of State Rules (CSR) 33, Acid Rain Provisions and Permits. The formal Title V Operating Permits Program revision was submitted by West Virginia on May 10, 2021. Specifically, WVDEP amended 45 CSR 33-1.3, 45 CSR 33-1.4, 45 CSR 33-1.5, 45 CSR 33-1.6, 45 CSR 33-2.2, and 45 CSR 33-4.1. The amendment to 45 CSR 33-4.1 incorporated by reference final regulations promulgated by the EPA and codified in 40 Code of Federal Regulations (CFR) parts 72, 74, 75, 76, and 77 under the CAA's Title IV Acid Rain program. West Virginia has requested that the EPA approve the submitted amendments to revise the West Virginia Title V Operating Permits Program approved at 40 CFR part 70, appendix A. West Virginia indicates that this revision to its approved 40 CFR part 70 program is necessary to ensure that 45 CSR 33 stays up to date with its Federal counterpart regulations, consistent with section 22-1-3(c) of the West Virginia Code.

The CAA requires all state and local permitting authorities to develop Operating Permits Programs that meet the requirements of Title V of the CAA, 42 U.S.C. 7661-7661f, and its implementing regulations, 40 CFR part 70. The West Virginia State Operating Permits Program under Title V of the CAA is codified in 45 CSR 30 of the West Virginia Code of State Rules.

II. Summary of Title V Operating Permits Program Revision and EPA Analysis

The EPA is approving into West Virginia's EPA-approved Title V program the amendments that the state made to 45 CSR 33, referenced above. Most notably, the amendment to 45 CSR 33-4.1 adopted and incorporated by reference the following Federal regulations: 40 CFR part 72, "Permits Regulation;" 40 CFR part 74, "Sulfur Dioxide Opt-Ins;" 40 CFR part 75, "Continuous Emission Monitoring;" 40 CFR part 76, "Acid Rain Nitrogen Oxides Emission Reduction Program;" and 40 CFR part 77, "Excess Emissions," as they existed on June 1, 2020. These Federal regulations included time-limited changes to the emissions reporting regulations applicable to sources that monitor and report emissions under the Acid Rain Program, the Cross-State Air Pollution Rule (CSAPR), and/or the nitrogen oxides (NOx) state implementation plan (SIP) Call. These time limited changes were necessary during the COVID-19 national emergency to protect on-site power plant operators and other essential personnel from unnecessary risk of exposure to the coronavirus. These changes have since expired.

West Virginia's revisions to 45 CSR 33-1.3, 45 CSR 33-1.4, 45 CSR 33-1.5, 45 CSR 33-1.6, and 45 CSR 33-2.2 are described in detail in the August 2024 NPRM.

West Virginia's submittal requested that the EPA approve the state's amended regulations to its Acid Rain Provisions and to its Title V program. The EPA finds that the May 10, 2021 submittal has met the requirements of CAA section 502, and is consistent with applicable EPA requirements in the Title V Operating Permits Program of the CAA and 40 CFR part 70. This rule approves the amendments to 45 CSR 33 contained in the West Virginia submittal as a revision to the EPA's approved Title V program for West Virginia by adding a paragraph (i) into 40 CFR part 70 appendix A under West Virginia. This new paragraph will indicate the EPA's approval of the revision. It should be noted that while the August 2024 NPRM proposed the addition of a paragraph (h) into 40 CFR part 70 appendix A under West Virginia, another paragraph (h) has since been added under this section as the result of an unrelated rulemaking, necessitating the addition of a paragraph (i).

Additional information regarding West Virginia's submittal and the rationale for the EPA's action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

III. Final Action

Pursuant to 40 CFR 70.4(i)(2), the EPA is approving the revision to the West Virginia Title V Operating Permits Program. The revision meets the relevant requirements of section 502 of the CAA and the implementing regulations.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act 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 Clean Air Act. 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 Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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 Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

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 **[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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Operating Permits, Intergovernmental relations, Reporting and recordkeeping requirements.

Amy Van Blarcom-Lackey,
Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 70 as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by adding paragraph (i) under “West Virginia” to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

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West Virginia

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(i) The West Virginia Department of Environmental Protection submitted a program revision on May 10, 2021 for amendments that West Virginia made to 45 Code of State Rules 33, Acid Rain Provisions and Permits. The State revision included the incorporation by reference of Federal regulations with time-limited changes to the emissions reporting regulations applicable to sources that monitor and report emissions, as well as other minor changes; approval effective on **INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

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[FR Doc. 2025-17064 Filed: 9/4/2025 8:45 am; Publication Date: 9/5/2025]