

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2009-0110; FRL-8787-2]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Amendments to the Control of Air Pollution From Combustion of Refuse

**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 SIP revision amends a regulation to control air pollution from combustion of refuse. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on *May 26, 2009* without further notice, unless EPA receives adverse written comment by *April 24, 2009*. 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 Docket ID Number EPA-R03-OAR-2009-0110 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail*: [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. *Mail*: EPA-R03-OAR-2009-0110, Cristina Fernandez, 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. EPA-R03-OAR-2009-0110. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *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 *www.regulations.gov* or e-mail. The *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 *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 *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 *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, WV 25304.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On April 25, 2008, the West Virginia Department of Environmental Protection (WVDEP) submitted a revision to its State Implementation Plan (SIP) for the control of air pollution from combustion of refuse. This SIP revision replaces the current 45CSR6 approved by EPA on April 10, 2003 (68 FR 6627).

##### II. Summary of SIP Revision

This SIP revision consists of amendments to West Virginia's Rule 45CSR6, which establishes emission

standards for particulate matter and requirements for activities involving incineration of refuse, which are not subject to, or are exempted from, regulation under various Federal counterpart regulations for specific combustion source categories. This SIP revision prohibits, with limited exception, open burning and sets forth the registration, permitting, reporting, testing, emergency, natural disaster, and exemption provisions for activities involving the combustion of refuse and land clearing debris. This SIP revision does not prohibit bonfires, campfires or other forms of open burning for the purposes of personal enjoyment and comfort.

Definitions were revised in this SIP revision as follows: (1) Definitions for "Agency Administrator," "CFR," "Prescribed Burning," and "Secretary" were added; (2) Definitions for "Clean Lumber," "Director," "Wood Waste," and "Yard Waste" were removed; and (3) Definitions for "Incinerator," "Incinerator Capacity," "Opacity," "Open Burning," "Pathological Waste," and "Refuse" were amended.

This SIP revision has new provisions for open burning or incineration of animal or poultry carcasses during a declared state of emergency involving highly contagious animal or poultry disease, and a new provision for prescribed burning as approved by the West Virginia Division of Forestry. The SIP revision has also a revised language and a new definition for pathological waste incinerators burning at least 90 percent pathological waste, which are exempted from 45CSR18.

Other revisions to the rule include a revised title, addition of new language for posted incinerator operating instructions, a new exemption section, and general language clarification and correction.

##### III. Final Action

EPA is approving the amendments of Rule 45CSR6—Control of Air Pollution from Combustion of Refuse, as a revision to the West Virginia SIP. This SIP revision was submitted by WVDEP on April 25, 2008.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates 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 May 26, 2009 without further notice unless EPA receives

adverse comment by April 24, 2009. 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 second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### IV. 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 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 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. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

##### 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 May 26, 2009. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking.

This action pertaining to the amendments of West Virginia's regulation to control air pollution from combustion of refuse, 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, Particulate matter, Recordkeeping and reporting.

Dated: March 4, 2009.

**William T. Wisniewski**,  
Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

##### PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

##### Subpart XX—West Virginia

■ 2. In ( 52.2520, the table in paragraph (c) is amended by revising the entries for 45CSR6, Sections 45-6-1 through 45-6-11 and adding an entry for 45CSR6, Section 45-6-12. The amendments read as follows:

##### § 52.2520 Identification of plan.

\* \* \* \* \*  
(c) \* \* \*

#### EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [Chapter 16-20 or 45CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
*	*	*	*	*
<b>[45CSR] Series 6 Control of Air Pollution From Combustion of Refuse</b>				
Section 45–6–1 .....	General .....	6/1/08	3/25/09[Insert page number where the document begins].	Added subsection 1.1.a.
Section 45–6–2 .....	Definitions .....	6/1/08	3/25/09[Insert page number where the document begins].	Terms added: “Agency Administrator,” “CFR,” “Prescribed Burning,” and “Secretary.” Terms removed: “Clean Lumber,” “Director,” “Wood Waste,” and “Yard Waste.” Terms amended: “Incinerator,” “Incinerator Capacity,” “Opacity,” “Open Burning,” “Pathological Waste,” and “Refuse.”
Section 45–6–3 .....	Open Burning Prohibited.	6/1/08	3/25/09[Insert page number where the document begins].	Added subsection 3.1.e. (3.1.e.1 through 3.1.e.6). Revised subsections 3.1, 3.1.b, 3.1.c.3, and 3.2.a.
Section 45–6–4 .....	Emission Standards for Incinerators.	6/1/08	3/25/09[Insert page number where the document begins].	Deleted subsections 4.8, and 4.8.a through 4.8.d.  Revised subsections 4.1, 4.2, 4.3, 4.5, 4.7 and 4.8.e. Added subsections 4.9 and 4.10.
Section 45–6–5 .....	Registration .....	6/1/08	3/25/09[Insert page number where the document begins].	Revised subsection 5.1.
Section 45–6–6 .....	Permits .....	6/1/08	3/25/09[Insert page number where the document begins].	Revised subsections 6.1, 6.1.a.3, 6.1.a.4, 6.1.b.3, 6.1.b.5, 6.1.b.6, and 6.1.b.7. Added subsection 6.2.
Section 45–6–7 .....	Reports and Testing.	6/1/08	3/25/09[Insert page number where the document begins].	Revised subsections 7.1 and 7.2.
Section 45–6–8 .....	Variances .....	6/1/08	3/25/09[Insert page number where the document begins].	Revised subsections 8.1 and 8.2.
Section 45–6–9 .....	Emergencies and Natural Disasters.	6/1/08	3/25/09[Insert page number where the document begins].	Revised subsection 9.1.  Added subsections 9.1.c, 9.2, and 9.2.a through 9.2.c.
Section 45–6–10 .....	Exemptions .....	6/1/08	3/25/09[Insert page number where the document begins].	New Section.
Section 45–6–11 .....	Effect of the Rule.	6/1/08	3/25/09[Insert page number where the document begins].	Recodified—formerly section 45–6–10.
Section 45–6–12 .....	Inconsistency Between Rules.	6/1/08	3/25/09[Insert page number where the document begins].	Recodified—formerly section 45–6–11.  Revised subsection 12.1.
*	*	*	*	*

[FR Doc. E9–6615 Filed 3–24–09; 8:45 am]  
BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R01–OAR–2008–0796 ; A–1–FRL–8785–6]

**Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Carbon Monoxide Limited Maintenance Plan for Providence, RI**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision establishes a limited maintenance plan for the Providence Rhode Island carbon monoxide attainment area and addresses the remaining portion of the ten-year update to the carbon monoxide maintenance plan. This action is being taken in accordance with the Clean Air Act.

**DATES:** This direct final rule will be effective May 26, 2009, unless EPA receives adverse comments by April 24, 2009. If adverse comments are received, EPA will publish a timely withdrawal of

the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R01–OAR–2008–0796 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. *E-mail:* [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov).
3. *Mail:* “Docket Identification Number EPA–R01–OAR–2008–0796”, Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.