

## I. Background

This SIP revision proposes to replace, in its entirety, the SIP version of 45CSR14, as approved by EPA on December 4, 2006 (71 FR 64470), with West Virginia's current version of this rule. West Virginia 45 CSR14 governs the permitting for the construction of new major stationary sources and the significant modification of existing major stationary sources of air pollutants in areas designated attainment or non-classifiable for the National Ambient Air Quality Standards (NAAQS). This regulatory revision was made effective as a legislative rule by the State of West Virginia on June 1, 2009.

## II. Summary of SIP Revision

West Virginia's rule 45CSR14 establishes a pre-construction permit program consistent with Title I of the CAA and the implementing regulations at 40 CFR 51.166 "Prevention of Significant Deterioration of Air Quality." West Virginia rule 45CSR14 also ensures that the West Virginia SIP provides for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) in accordance with Section 110(a)(2)(C) of the CAA which requires States to have a permitting program for regulation of the construction and modification of sources as required by Part C of Title I of the CAA to assure NAAQS are achieved.

On November 29, 2005, NO<sub>x</sub> were established as precursors to the criteria pollutant ozone and became regulated under 40 CFR 51.166 and 40 CFR 52.21 (70 FR 71612). The new version of 45CSR14 establishes NO<sub>x</sub> as a precursor to ozone to satisfy these requirements.

The new version of 45CSR14 also deletes references to pollution control projects (PCPs) and clean units (CUs) to make the West Virginia's regulation consistent with the Federal PSD regulations.

The provisions of the State's rule at 45CSR14.19.8 now include the recordkeeping and reporting requirements for sources that elect to use the actual-to-projected actual emission test and where there is a "reasonable possibility" that a project may result in a significant net emissions increase. In our previous approval of 45CSR14, dated December 4, 2006 (71 FR 64470), at the request of West Virginia, we took no action on the provisions of 45CSR14.19.8 pertaining to the recordkeeping and reporting requirements for sources that elect to use the actual-to-projected actual emission test and where there is a

"reasonable possibility" that a project may result in a significant net emissions increase. We are now proposing to approve 45CSR14.19.8 as a revision to the West Virginia SIP because the necessary regulatory corrections have been made.

We are proposing approval of West Virginia's July 20, 2009 SIP revision because we believe that the amendments to West Virginia's PSD permit program at 45CSR14 as described herein meet the minimum requirements of 40 CFR 51.166 and the CAA. Aside from the changes described herein, no other changes to the West Virginia SIP's PSD program as approved by EPA on December 4, 2006 (71 FR 64470) would result from this revision to replace the version of 45CSR14 in the West Virginia SIP.

## III. Proposed Action

We are proposing to approve the West Virginia SIP's July 20, 2009 SIP revision to replace 45CSR14 in its entirety. We are soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## IV. 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 proposes to approve 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 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 proposed rule to approve replacing the current SIP-approved version of West Virginia rule 45CSR14 in its entirety with an updated version to satisfy the CAA's requirements for the Prevention of Significant Deterioration 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: December 7, 2010.

**Shawn M. Garvin,**

*Regional Administrator, Region III.*

[FR Doc. 2010-31796 Filed 12-16-10; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2010-0285; FRL-9239-9]

### Availability of Additional Information for the Proposed Rulemaking for Colorado's Attainment Demonstration for the 1997 8-Hour Ozone Standard and Related Revisions

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

**ACTION:** Notice of data availability.

**SUMMARY:** This document announces the availability of revised modeling that relates to EPA's notice of proposed rulemaking for Colorado's Attainment Demonstration for the 1997 8-hour Ozone Standard for the Denver Metro Area/North Front Range (DMA/NFR) nonattainment area and Related Revisions. The results of the modeling and the modeling files have been placed in the docket for this rulemaking. EPA is providing an opportunity to comment on the revised modeling.

**DATES:** Comments must be received on or before January 18, 2011.

**ADDRESSES:** Submit your comments identified by Docket ID Regulation Number EPA-R08-OAR-2010-0285 by one of the following methods:

- *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.
- *E-mail:* [komp.mark@epa.gov](mailto:komp.mark@epa.gov).
- *Fax:* (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

*Instructions:* Direct your comments to Docket ID No. EPA-R08-OAR-2010-0285. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://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 <http://www.regulations.gov> or e-mail. The <http://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 <http://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. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mark Komp, Air Program, 1595 Wynkoop Street, Mailcode: 8P-AR, Denver, Colorado 80202-1129, (303) 312-6022, [komp.mark@epa.gov](mailto:komp.mark@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

#### **Table of Contents**

- I. General Information
- II. Notice of Data Availability

#### **Definitions**

For the purpose of this document, the following definitions apply:

- (i) *Act* or *CAA* means or refers to the Clean Air Act, unless the context indicates otherwise.
- (ii) *EPA*, *we*, *us* or *our* means or refers to the United States Environmental Protection Agency.
- (iii) *SIP* means or refers to State Implementation Plan.
- (iv) *ppb* means parts per billion of ozone in air.
- (v) *State* or *Colorado* means the State of Colorado, unless the context indicates otherwise.

(vi) *NAAQS* means or refers to National Ambient Air Quality Standards.

(vii) *NODA* means or refers to Notice of Data Availability.

#### **I. General Information**

*A. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

#### **II. Notice of Data Availability**

On June 18, 2009, Colorado submitted revisions to the Colorado SIP for the 1997 8-hour ozone NAAQS for the DMA/NFR nonattainment area. The revisions included a modeled attainment demonstration using

photochemical grid modeling that the State conducted in 2008. (Photochemical grid modeling is used to project future 8-hour ozone Design Values for comparison to the 85.0 ppb ozone NAAQS.) On July 21, 2010, we proposed to act on the State's revisions and as part of that action, proposed to approve Colorado's attainment demonstration and certain other aspects of the revisions, and proposed to disapprove other aspects of the revisions. For further information on Colorado's submittal and our proposed action, please consult the **Federal Register** (July 21, 2010; 75 FR 42346).

On October 7, 2010, Colorado submitted revised photochemical modeling results to us for the DMA/NFR ozone SIP. Colorado re-ran the photochemical model because in September 2010 the State discovered that errors had been made in specifying the location of certain point sources in the 2008 modeling. Latitude/longitude locations for some point sources in the original modeling effort were mistakenly derived using the degree-minute-second coordinate system rather than the correct decimal degree coordinate system. As a result, some point source locations were displaced in the grid-coordinate system used by the model. Thus, Colorado re-ran the model with the correct coordinates to determine whether the errors made in locating some point sources affected the reliability of the model results.

The projected Design Values for 2010 resulting from the revised modeling remain below the 85.0 ppb ozone NAAQS. For the SIP's 2010 base case, the revised modeling's maximum projected 8-hour ozone Design Values are found at the Rocky Flats North and Fort Collins West monitoring sites—84.7 ppb ozone at both locations in 2010. This is 0.2 ppb lower than the State's 2008 modeling projected using incorrect point source locations. Because it produced slightly lower values at the monitoring sites with maximum Design Values, the revised modeling supports the conclusions that EPA proposed regarding the 2008 modeling.

With this Notice of Data Availability, we are providing an opportunity for the public to comment on Colorado's October 2010 revised modeling, including comments on how it may affect EPA's proposed determinations as reflected in our July 21, 2010 proposal. We are not re-opening the comment period on the material that was before the Agency at the time of the July 21, 2010 proposal.

Colorado's October 2010 revised modeling is reflected in the following

two documents, which we have added to the rulemaking docket:

1. Final 2010 Ozone Attainment Demonstration Modeling for the Denver 8-Hour Ozone State Implementation Plan. Docket Number: EPA-R08-OAR-2010-0285-0025.

2. MEMORANDUM, October 7, 2010: ENVIRON: Denver Final 2010 Ozone Attainment Demonstration Modeling using Correct Point Source Locations. Docket Number: EPA-R08-OAR-2010-0285-0043.

We will take final action based on our notice of proposed rulemaking that was published in the **Federal Register** on July 21, 2010 (75 FR 42346), the comments we received on that proposal, Colorado's October 2010 revised modeling, and any comments we receive in response to this NODA.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 10, 2010.

**Carol Rushin,**

*Deputy Regional Administrator, Region 8.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA-R03-OAR-2010-0859; FRL-9240-3]

#### Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Commonwealth of Virginia; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) Units, Negative Declaration and Withdrawal of EPA Plan Approval

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the Commonwealth of Virginia's negative declaration and request for EPA withdrawal of its section 111(d)/129 plan (the plan) approval for HMIWI units. Submittal of a negative declaration or State plan revision is a requirement of the Clean Air Act (CAA). In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth of Virginia's negative declaration and request for EPA withdrawal of its plan approval for

HMIWI units. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by January 18, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2010-0859 by one of the following methods:

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

B. *E-mail:* [wilkie.walter@epa.gov](mailto:wilkie.walter@epa.gov).

C. *Mail:* EPA-R03-OAR-2010-0859, Walter K. Wilkie, Associate Director, Air Protection, Division, Office of Air Monitoring and Analysis, Mailcode 3AP40, 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-2010-0859 EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://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 <http://www.regulations.gov> or e-mail. The <http://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 <http://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