

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(89) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(89) In submittals dated July 2, 1993; June 30, 1994; and November 23, 1994, the Missouri Department of Natural Resources (MDNR) submitted a State Implementation Plan (SIP) to satisfy Federal requirements for an approvable nonattainment area lead SIP for the Doe Run primary and secondary smelter near Bixby, Missouri (Doe Run-Buick). Although Missouri rule 10 CSR 10-6.120 contains requirements which apply statewide to primary lead smelting operations, EPA takes action on this rule insofar as it pertains to the Doe Run-Buick facility. Plan revisions to address the other lead smelters in the state are under development.

(i) Incorporation by reference.

(A) Revised regulation 10 CSR 10-6.120 (section (2)(C), section (4)) entitled Restriction of Emissions of Lead from Primary Smelter-Refinery Installations, effective August 28, 1994.

(B) Consent Order, entered into between the Doe Run Company and MDNR, dated July 2, 1993.

(C) Consent Order amendment, signed by the Doe Run Company on August 30, 1994, and by MDNR on November 23, 1994.

(ii) Additional material.

(A) The Doe Run-Buick Work Practice Manual submitted on July 2, 1993. EPA approves the Work Practice manual with the understanding that any subsequent changes to the Work Practice Manual will be submitted as SIP revisions.

(B) Revisions to the Doe Run-Buick Work Practice Manual submitted on June 30, 1994.

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BILLING CODE 6560-50-P

40 CFR Part 52

[WVA10-1-5918a; FRL-5265-7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia—Emission Statement Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of West Virginia. This revision consists of an emission

statement program for stationary sources which emit volatile organic compounds (VOCs) and/or nitrogen oxides (NO_x) at or above specified actual emission threshold levels. This program applies to certain stationary sources within the West Virginia counties of Putnam, Kanawha, Cabell, Wayne, Wood, and Greenbrier. The intended effect of this action is to approve a regulation for annual reporting of actual emissions by sources that emit VOC and/or NO_x, within the counties listed above, in accordance with the 1990 Clean Air Act (CAA). This action is being taken under section 110 of the CAA.

DATES: This action will become effective September 18, 1995 unless notice is received on or before September 5, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments must be mailed to Marcia L. Spink, Associate Director (3AT00), Air Programs, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: Environmental Protection Agency, Region III, Air, Radiation, and Toxics Division, 841 Chestnut Building, Philadelphia, PA 19107; and the West Virginia Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 597-4713.

SUPPLEMENTARY INFORMATION: On August 10, 1993, the West Virginia Office of Air Quality (WVOAQ) submitted a SIP revision to EPA. This revision would add West Virginia Regulation Title 45, Series 29, "Rule Requiring the Submission of Emission Statements for Volatile Organic Compounds and Oxides of Nitrogen Emissions," consisting of Subsections: 1. General; 2. Definitions; 3. Applicability; 4. Compliance Schedule; 5. Emission Statement Requirements; 6. Enforceability; and 7. Severability, effective July 7, 1993 in the State of West Virginia to the West Virginia SIP.

I. Background

The air quality planning and SIP requirements for ozone nonattainment and transport areas are set out in subparts I and II of Part D of Title I of the Clean Air Act, as amended by the

Clean Air Act Amendments of 1990. EPA published a "General Preamble" describing EPA's preliminary views on how it intends to review SIP's and SIP revisions submitted under Title I of the CAA, including those State submittals for ozone transport areas within the States (see 57 FR 13498 (April 16, 1992) ("SIP: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990"), 57 FR 18070 (April 28, 1992) ("Appendices to the General Preamble"), and 57 FR 55620 (November 25, 1992) ("SIP: NO_x Supplement to the General Preamble")).

EPA also issued a draft guidance document describing the requirements for the emission statement programs discussed in this action, entitled "Guidance on the Implementation of an Emission Statement Program" (July, 1992). The Agency is also conducting a rulemaking process to modify title 40, part 51 of the CFR to reflect the requirements of the emission statement program.

Section 182 of the Act sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in marginal ozone nonattainment areas, which are also made applicable by section 182 (b), (c), (d), and (e) to all other ozone nonattainment areas. Among the requirements in section 182(a) is a program for stationary sources to prepare and submit to the State each year emission statements certifying their actual emissions of VOCs and NO_x. This section of the Act provides that the States are to submit a revision to their SIPs by November 15, 1992 establishing this emission statement program.

If a source emits either VOC or NO_x at or above the designated minimum reporting level, the other pollutant should be included in the emission statement, even if it is emitted at levels below the specified cutoffs.

States may waive, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tons per year of actual plant-wide NO_x or VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emissions factors established by EPA (such as those found in EPA publication AP-42) or other methods acceptable to EPA.

At minimum, the emission statement data should include:

- Certification of data accuracy;
- Source identification information;
- Operating schedule;

- Emissions information (to include annual and typical ozone season day emissions);
- Control equipment information; and
- Process data.

EPA developed emission statements data elements to be consistent with other source and State reporting requirements. This consistency is essential to assist States with quality assurance for emission estimates and to facilitate consolidation of all EPA reporting requirements.

II. EPA's Evaluation of West Virginia's Submittal

A. Procedural Background

In accordance with the requirements of 40 CFR § 51.102, a public hearing concerning West Virginia's SIP revision was held on June 23, 1993, in Charleston, West Virginia to solicit public comment on the implementation plan for the State. Following the public hearing, the plan was adopted by the State and signed by the Governor's designee on July 7, 1993 and submitted to EPA on August 10, 1993 as a revision to the SIP.

B. Components of West Virginia's Emission Statement Program

There are several key and specific components of an acceptable emission statement program. Specifically, West Virginia must submit a revision to its SIP which consists of an emission statement program which meets the minimum requirements for reporting by the sources and the State. For the emission statement program to be approvable, West Virginia's SIP revision must include, at a minimum, definitions and provisions for applicability, compliance, and specific source reporting requirements and reporting forms.

Subsection 45-29-2. Definitions, includes, among others, definitions for the following terms: Actual emissions; Annual fuel process rate; Control efficiency; Control equipment identification code; Emission factor; Emission statement; Estimated emission method code; Estimated emission units; Facility; Measured emission methods code; Measured emission units; Owner or operator; Oxides of nitrogen; Ozone season; Percentage seasonal throughput; Person; Point; Potential to emit; Typical ozone season day; and Volatile organic compounds.

Subsections 45-29-1. General; 45-29-3. Applicability; 45-29-6. Enforceability; and 45-29-7. Severability require that a person who owns or operates any installation, source, or premises to report the levels

of emissions from all stationary sources of VOCs and NO_x. The state may, with EPA's approval, waive the Emission Statements requirements for classes or categories for stationary sources with facility-wide actual emissions of less than 25 tpy of VOC or NO_x, if the class or category is included in the Base Year ozone and Periodic ozone inventories are calculated using EPA approved emission factors or other methods acceptable to EPA. Subsection 45-29-5. Emission Statement Requirements, requires that a certifying official for each facility provide West Virginia with a statement reporting emissions by May 13, in 1993, and by April 15 of every year thereafter for the emissions discharged during the previous calendar year. This subsection of the regulation also delineates specific requirements for the content of these annual emission statements.

C. Enforceability

The State of West Virginia has provisions in its SIP which ensure that the emission statement requirements of West Virginia Regulation Title 45, Series 29, "Rule Requiring the Submission of Emission Statements for Volatile Organic Compounds and Oxides of Nitrogen Emissions," are adequately enforced.

EPA has determined that the submittal made by the State of West Virginia satisfies the relevant requirements of the CAA and EPA's guidance document, "Guidance on the Implementation of an Emission Statement Program" (July 1992).

III. Final Action

EPA is approving a revision to the West Virginia SIP to include Regulation Title 45, Series 29, "Rule Requiring the Submission of Emission Statements for Volatile Organic Compounds and Oxides of Nitrogen Emissions." This revision was submitted to EPA by the State of West Virginia on August 10, 1993.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will become effective September 18, 1995 unless, within 30 days of publication, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public

comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 18, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision of any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Redesignation of an area to attainment under section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities. SIP approvals under section 110 and subchapter I, part D of the clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP Approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410 (a) (2).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules

that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

The OMB has exempted this regulatory action from E.O. 12866 review.

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 October 3, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 approving West Virginia's Emission Statement Program 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, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Volatile organic compounds, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements.

Dated: July 14, 1995.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraphs (c)(34) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(34) Revisions to the West Virginia State Implementation Plan submitted by the Secretary, West Virginia Department of Commerce, Labor, and Environmental Resources, Office of Air Quality, on August 10, 1993.

(i) Incorporation by reference.

(A) Letter dated August 10, 1993 from the Secretary, West Virginia Department of Commerce, Labor, and Environmental Resources, Office of Air Quality submitting 45 Code of State Regulations (CSR) Series 29 "Rule Requiring the Submission of Emission Statements for Volatile Organic Compounds and Oxides of Nitrogen Emissions" as a revision to the West Virginia State Implementation Plan. The effective date of this rule, 45CSR29 is July 7, 1993.

(B) West Virginia Regulation Title 45, Series 29, "Rule Requiring the Submission of Emission Statements for Volatile Organic Compounds and Oxides of Nitrogen Emissions," consisting of Subsections: 1. General; 2. Definitions; 3. Applicability; 4. Compliance Schedule; 5. Emission Statement Requirements; 6. Enforceability; and 7. Severability, effective July 7, 1993.

(ii) Additional Material.

(A) Remainder of August 10, 1993 State submittal pertaining to 45 CSR Series 29, "Rule Requiring the Submission of Emission Statements for Volatile Organic Compounds and Oxides of Nitrogen Emissions."

(B) [Reserved]

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40 CFR Parts 52 and 81

[WV27-1-7013a, WV27-2-7014a; FRL-5265-9]

Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Redesignation of the Greenbrier County WV Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a redesignation request and two State

Implementation Plan (SIP) revisions submitted by the State of West Virginia. The first SIP revision is the 1990 base year ozone inventory for Greenbrier County. The second SIP revision establishes and requires a maintenance plan for the Greenbrier County area including contingency measures which provide for continued attainment of the ozone National Ambient Air Quality Standard (NAAQS). The intended effect of this action is to approve the 1990 base year ozone inventory, a redesignation request and the maintenance plan for Greenbrier County. On December 22, 1992 the West Virginia Department of Commerce, Labor & Environmental Resources submitted an ozone inventory for 1990. On September 9, 1994, the West Virginia Division of Environmental Protection (WVDEP) submitted a request to redesignate Greenbrier County from nonattainment to attainment. On September 9, 1994, the WVDEP also submitted a maintenance plan for Greenbrier County as a revision to the West Virginia State Implementation Plan. This action is being taken under sections 107 and 110 of the Clean Air Act (the Act).

DATES: This action will become effective September 18, 1995 unless notice is received on or before September 5, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the West Virginia Division of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 597-0545.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990 the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.