

(1) The area is redesignated to attainment for the 2008 8-hour ozone NAAQS, at which time the requirements no longer apply; or (2) EPA determines that the area has violated the 2008 8-hour ozone NAAQS, at which time the area is again required to submit such plans.

### III. 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 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant 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 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 Clean Air Act; 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, 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 action 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).

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).

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 September 11, 2020. Filing a petition for reconsideration by the Administrator of this final action 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 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: June 22, 2020.

**Dennis Deziel,**

*Regional Administrator, EPA Region 1.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R03-OAR-2019-0577; FRL-10010-63-Region 3]

#### Air Plan Approval; West Virginia; Redesignation and Maintenance Plan for the West Virginia Portion of the Steubenville Sulfur Dioxide Nonattainment Area

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the request from the State of West Virginia to redesignate to attainment its respective portion of the Steubenville, Ohio-West Virginia multi-state sulfur dioxide (SO<sub>2</sub>) nonattainment area (referred to as the "Steubenville Nonattainment Area" or the "Area") for the 2010 1-hour SO<sub>2</sub> primary national ambient air quality standard (NAAQS) (also referred to as the "2010 SO<sub>2</sub> NAAQS"). EPA is also approving, as a revision to the West Virginia state implementation plan (SIP), West Virginia's maintenance plan for its portion of the Steubenville Nonattainment Area. Emissions of SO<sub>2</sub> in the Area have been reduced, and monitored ambient SO<sub>2</sub> readings in the nonattainment area are currently well below the 2010 SO<sub>2</sub> NAAQS.

**DATES:** This final rule is effective on August 12, 2020.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2019-0577. All documents in the docket are listed on the <https://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 <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Sara Calcinore, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2043. Ms. Calcinore can also be reached via

electronic mail at [calcinore.sara@epa.gov](mailto:calcinore.sara@epa.gov).

#### SUPPLEMENTARY INFORMATION:

### I. Background

The Steubenville Nonattainment Area is comprised of a portion of Jefferson County, Ohio and a portion of Brooke County, West Virginia.<sup>1</sup> On October 22, 2019 (84 FR 56385), EPA approved the attainment plans for the Steubenville Nonattainment Area as well as new emissions limits for the primary SO<sub>2</sub> sources in the Area. These sources include: (1) The American Electric Power (AEP) Cardinal Power Plant (referred to as “Cardinal Power Plant”) located in Brilliant, Ohio; (2) the JSW Steel USA Ohio facility (JSW Steel) in Mingo Junction, Ohio; (3) the Mingo Junction Energy Center, also in Mingo Junction, Ohio; and (4) Mountain State Carbon (MSC) in Follansbee, West Virginia.<sup>2</sup> EPA redesignated the Ohio portion of the Steubenville Nonattainment Area to attainment on November 29, 2019 (84 FR 65683).

On August 22, 2019, West Virginia submitted a request to redesignate the West Virginia portion of the Steubenville Nonattainment Area. On March 20, 2020 (85 FR 16038), EPA published a notice of proposed rulemaking (NPRM) for the State of West Virginia. In the NPRM, EPA proposed approval of West Virginia’s request to redesignate to attainment its portion of the Steubenville Nonattainment Area as well as West Virginia’s corresponding maintenance plan for the Area.

### II. Summary of SIP Revision and EPA Analysis

EPA reviewed West Virginia’s redesignation request and found that West Virginia’s portion of the Steubenville Nonattainment Area satisfies the Clean Air Act (CAA) section

107(d)(3)(E) requirements for redesignation. EPA also found that West Virginia’s maintenance plan for the Area satisfies the requirements of CAA section 175A. EPA’s rationale for this action can be found in the March 20, 2020 NPRM.

EPA received one adverse comment on the proposal. As discussed in section III in this final rule’s preamble, EPA concludes that West Virginia has satisfied the relevant requirements of CAA section 107(d)(3)(E) for the redesignation of its portion of the Steubenville Nonattainment Area. Therefore, EPA is redesignating West Virginia’s portion of the Steubenville Nonattainment Area to attainment for the 2010 SO<sub>2</sub> NAAQS and is approving, as a revision to the West Virginia SIP, the corresponding maintenance plan for the Area.

### III. Public Comments and EPA Response

EPA received one comment on the March 20, 2020 NPRM. The comment and EPA’s response are discussed below. The comment is included in the docket for this action, available online at [www.regulations.gov](http://www.regulations.gov), Docket ID: EPA-R03-OAR-2019-0577.

*Comment:* On April 20, 2020, EPA received an anonymous comment on the NPRM. The commenter questioned how West Virginia can confirm the current compliance of the modeled facilities (*i.e.*, Cardinal Power Plant, JSW Steel, Mingo Junction Energy Center, and MSC) in the Steubenville Nonattainment Area when three of the four facilities are not within West Virginia’s jurisdiction. The commenter requests that EPA independently determine whether all four facilities are currently in compliance with their modeled limits.

*EPA Response:* States generally have the best information on the compliance status of sources within their jurisdiction. Therefore, EPA is primarily relying on Ohio to provide information on the compliance status of the Ohio sources and West Virginia to provide information on the compliance status of the West Virginia source. Ohio Environmental Protection Agency (OEPA)’s request for redesignation confirmed that the modeled facilities located in its portion of the Area (*i.e.*, Cardinal Power Plant, JSW Steel, and Mingo Junction Energy Center) are in full compliance with their emission limits.<sup>3</sup> EPA accepted and concurred

with this statement regarding compliance by Ohio sources explicitly in its September 20, 2019 NPRM proposing approval of Ohio’s redesignation request and implicitly in its November 29, 2019 final rulemaking notice (FRN). See 84 FR 49492 and 84 FR 65683.

West Virginia has provided adequate assurance that MSC, the only primary SO<sub>2</sub> source within West Virginia’s portion of the Steubenville Nonattainment Area, is in compliance with its emissions limits as well as other conditions of the September 29, 2017 consent order (Consent Order Number CO-SIP-C-2017-9).<sup>4</sup> Appendix C of West Virginia’s August 22, 2019 submittal includes documentation of MSC’s compliance with the consent order, including an August 9, 2016 letter from MSC confirming the disconnection of the coke oven gas (COG) pipeline to Mingo Junction Energy Center and a February 1, 2017 letter verifying that the data acquisition and monitoring system required by the consent order is operational.<sup>5</sup> In the February 1, 2017 letter, MSC also commits to submitting the quarterly reports required by the consent order. EPA has reviewed the quarterly reports submitted by MSC to the WVDEP from October 1, 2017 to March 31, 2020,<sup>6</sup> and finds that MSC is complying with the emissions limits, in accordance with the SIP-approved consent order, that were used in the modeling demonstration for the Steubenville Nonattainment Area.<sup>7</sup>

<sup>4</sup> As stated previously, the emissions limits in the September 29, 2017 consent order were used for the modeling included in the attainment demonstration for the Steubenville Nonattainment Area. The consent order is approved in the West Virginia SIP and is permanent and Federally enforceable.

<sup>5</sup> The September 29, 2017 consent order (Consent Order Number CO-SIP-C-2017-9) supersedes and replaces a previous consent order (Consent Order Number CO-SIP-2015-14). Consent Order Number CO-SIP-2015-14 required MSC to physically disconnect the COG pipeline leading to Mingo Junction Energy Center by January 1, 2017. It also required MSC to install, operate, and maintain a continuous monitoring system (CMS) and submit quarterly reports to the West Virginia Department of Environmental Protection (WVDEP) beginning with the January 1 through March 31, 2017 quarter. MSC submitted the August 9, 2016 and February 1, 2017 letters to WVDEP in order to demonstrate compliance with these requirements of Consent Order Number CO-SIP-2015-14. These requirements are also included in the September 29, 2017 consent order that replaced Consent Order Number CO-SIP-2015-14 and was approved into the West Virginia SIP. 84 FR 56385 (October 22, 2019); 40 CFR 52.2520(d).

<sup>6</sup> Consent Order Number CO-SIP-C-2017-9 was effective September 29, 2017. Therefore, the applicable period for determining compliance with the emissions limits contained in the September 29, 2017 consent order is October 1, 2017 to March 31, 2020, which is the most recent completed quarter.

<sup>7</sup> The quarterly reports are included in the docket for this rulemaking, available online at <https://www.regulations.gov>.

<sup>1</sup> The Ohio portion of the nonattainment area included Cross Creek Township, Steubenville Township, Warren Township, Wells Township, and Steubenville City in Jefferson County. 40 CFR 81.336. The West Virginia portion of the nonattainment area is the Cross Creek Tax District in Brooke County. 40 CFR 81.349.

<sup>2</sup> The attainment plan for the Steubenville Nonattainment Area included dispersion modeling demonstrating that the Steubenville Nonattainment Area had attained the 2010 SO<sub>2</sub> NAAQS based on the allowable emissions from Cardinal Power Plant, JSW Steel, Mingo Junction Energy Center, and MSC. The emissions limits for Cardinal Power Plant, JSW Steel, and Mingo Junction Energy Center are approved into the Ohio SIP under Chapter 3745-18. See 40 CFR 52.1870(c). The emissions limits for MSC are included in a consent order dated September 29, 2017 (Consent Order Number CO-SIP-C-2017-9), which is approved into the West Virginia SIP. 84 FR 56385 (October 22, 2019); 40 CFR 52.2520(d). The emissions limits for all four facilities are permanent and Federally enforceable.

<sup>3</sup> See also Appendix D of West Virginia’s August 22, 2019 submittal included in the docket for this rulemaking action, available online at <https://www.regulations.gov>, Docket ID: EPA-R03-OAR-2019-0577.

As mentioned previously, the emissions limits on Cardinal Power Plant, JSW Steel, Mingo Junction Energy Center, and MSC are all permanent and federally enforceable. These four sources are all subject to monitoring, testing, recordkeeping, and reporting requirements to assure compliance with the SO<sub>2</sub> emissions limits. WVDEP and OEPA have comprehensive programs to identify sources of violations of the SO<sub>2</sub> NAAQS and approved compliance and enforcement programs to address violations. WVDEP has committed to continuing the enforcement of all rules related to SO<sub>2</sub> emissions in the Steubenville Nonattainment Area and has verified that it has the legal authority and necessary resources to actively enforce any violations of its rules or permit provisions.

EPA finds that MSC is complying with the emissions limits set forth in the September 29, 2017 consent order. EPA also continues to believe that the sources in the Ohio portion of the area are complying with limits in the approved attainment plan, which West Virginia and EPA rely upon in concluding that West Virginia's portion of the area is attaining the standard. EPA continues to find that West Virginia's August 22, 2019 submittal satisfies the CAA section 107(d)(3)(E) requirements for the redesignation of the West Virginia portion of the Steubenville Nonattainment Area. Therefore, EPA is finalizing the redesignation of the West Virginia portion of the Steubenville Nonattainment Area for the 2010 SO<sub>2</sub> NAAQS.

#### IV. Final Action

EPA is approving the redesignation of the West Virginia portion of the Steubenville Nonattainment Area (*i.e.*, Cross Creek Tax District in Brooke County) from nonattainment to attainment of the 2010 SO<sub>2</sub> NAAQS. EPA is also approving, as a revision to the West Virginia SIP, West Virginia's maintenance plan for the Steubenville Nonattainment Area. EPA has found that the maintenance plan demonstrates maintenance of the SO<sub>2</sub> NAAQS through 2030 in the Steubenville Nonattainment Area and satisfies the requirements of CAA section 175A.

#### V. Statutory and Executive Order Reviews

##### A. General Requirements

Under the CAA, redesignation of an area to attainment and the accompanying approval of the

maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 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 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 (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).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 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).

##### 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 September 11, 2020. 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 approving the redesignation of the Steubenville Nonattainment Area and associated maintenance plan may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

##### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter,

Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

#### 40 CFR Part 81

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

Dated: June 16, 2020.

**Cosmo Servidio,**  
*Regional Administrator, Region III.*

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 81 as follows:

#### **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

#### **Subpart XX—West Virginia**

■ 2. In § 52.2520, amend paragraph (e) by adding in the table an entry for “2010 Sulfur Dioxide Maintenance Plan” at the end of the table to read as follows:

#### **§ 52.2520 Identification of plan.**

*	*	*	*	*
(e)	*	*	*	*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* 2010 Sulfur Dioxide Maintenance Plan.	* Steubenville Area (Cross Creek Tax District, Brooke County).	* 08/22/19	* 7/10/2020, [insert <b>Federal Register</b> citation].	* Docket No. 2019–0577.

■ 3. Section 52.2525 is amended by adding paragraph (d) to read as follows:

#### **§ 52.2525 Control strategy: Sulfur dioxide.**

(d) EPA approves the maintenance plan for Cross Creek Tax District, Brooke County, West Virginia, submitted by the Department of Environmental Protection on August 22, 2019.

#### **PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

■ 4. The authority citation for part 81 continues to read as follows:

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

#### **Subpart C—Section 107 Attainment Status Designations**

■ 5. In § 81.349 amend the table “West Virginia—2010 Sulfur Dioxide NAAQS [Primary]” by revising the entry for “Steubenville, OH-WV” to read as follows:

#### **§ 81.349 West Virginia.**

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#### **WEST VIRGINIA—2010 SULFUR DIOXIDE NAAQS** [Primary]

Designated area <sup>1 3</sup>	Designation	
	Date <sup>2</sup>	Type
Steubenville, OH-WV .....	8/12/2020	Attainment.
Brooke County (part) .....	8/12/2020	
Area bounded by the Cross Creek Tax District .....	8/12/2020	
* .....	*	*

<sup>1</sup> Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

<sup>2</sup> This date is April 9, 2018, unless otherwise noted.

<sup>3</sup> Mineral County will be designated by December 31, 2020.

\* \* \* \* \*

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