



west virginia department of environmental protection

**DRAFT West Virginia
State Implementation Plan Revision for
Clean Air Act Section 110(a)(2)(A)-(M)
Requirements for the 2008 8-Hour Ozone
National Ambient Air Quality Standards**

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West Virginia Division of Air Quality
601 57th Street, SE

Promoting a healthy environment

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DRAFT West Virginia State Implementation Plan Revision for Clean Air Act

Section 110(a)(2)(A)-(M) Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards

A State Implementation Plan (SIP) is a plan for each state that identifies how that state will attain and/or maintain the primary and secondary National Ambient Air Quality Standards (NAAQS). The SIP is a series of complex, fluid documents containing regulations, source-specific requirements, non-regulatory items such as plans and inventories, and in some cases additional requirements promulgated by the U.S. Environmental Protection Agency (EPA). The initial SIPs for states were approved by EPA on May 31, 1972. SIPs can be revised by the state with EPA approval as necessary. The federally enforceable SIP for West Virginia is compiled in 40 CFR Part 52, Subpart XX. In this revision to the SIP, West Virginia is demonstrating that it has adequate resources and authority to implement the 2008 8-hour ozone NAAQS.

This SIP revision addresses requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act (CAA) many of which have been addressed in other SIP revisions. It is a compilation of elements that demonstrate how the 2008 8-hour ozone NAAQS is being implemented, maintained and enforced in West Virginia. The elements of this SIP revision, once approved by EPA, will provide a federally enforceable compilation of how West Virginia will continue to comply with the Section 110(a)(2) requirements of the CAA for the 2008 8-hour ozone NAAQS.

In 1961, the West Virginia Legislature passed the Air Pollution Control Act (APCA), making West Virginia the sixteenth state to have a statewide air pollution control law. The law provided for a separate state agency composed of a seven member Commission, a Director and staff. The powers, authorities and funding of the original Commission were subsequently conveyed to the Office of Air Quality and then to the Division of Air Quality (WVDAQ) within the West Virginia Department of Environmental Protection (WVDEP). Staffing, funding and legal authorities now incorporate over 90 full time staff, with a multi-million dollar annual budget and approximately 40 legislative rules. DAQ has a variety of substantial funding sources, including construction/modification permit fees, Title V operating permit fees, non-Title V operating fees, general State revenue and federal grant monies. The agency has demonstrated the ability to implement state and federal requirements for fifty years as most recently evidenced by federally approved Revised Motor Vehicle Emission Budgets for the Charleston, Huntington, Parkersburg, Weirton, and Wheeling 8-Hour Ozone Maintenance Areas, and Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards. Legislative authority for the West Virginia air quality program relating to the responsibilities in the Clean Air Act is codified in the West Virginia Air Pollution Control Act, W.Va. Code §22-5, more specifically §22-5-1, which gives West Virginia the primary responsibility for assuring air quality pursuant to the CAA.

Many elements of Section 110(a)(2)(A)-(M) are already addressed in the approved SIP or recently submitted SIP revisions for other NAAQS. This SIP revision may reiterate and/or reinforce some of these previously submitted and/or approved elements. Some requirements, such as those for intergovernmental consultation, air quality modeling and compliance with Part D of the CAA, are fulfilled during the development and submission to EPA, as a SIP revision, of attainment plans and related requirements due under Subpart 1 and, in the case of the 2008 8-hour ozone NAAQS, Subpart 2 of the CAA. West Virginia has no designated 2008 8-hour ozone NAAQS non-attainment areas, and is currently monitoring attainment of the standard at all ozone sampling sites within the state.

Section 110(a) element	<i>The implementation plan shall:</i>	West Virginia Implementation
§110(a)(2)(A)	<p><i>include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.</i></p>	<p>Enforceable Emission Limitations and Other Control Measures: The WVDEP Cabinet Secretary (Secretary) has the authority under W.Va. Code §§22-1-3(a), 22-5-4(a)(4) and 22-5-4(a)(17) to promulgate rules in accordance with the Administrative Procedures Act (W.Va. Code §§ 29A3-1 et seq.). Approximately forty fully-adopted legislative rules implemented under the auspices of the APCA are currently in effect and codified at Title 45 of the West Virginia Code of State Rules, including the ambient air quality standards for criteria pollutants (including the 2008 8-hour ozone NAAQS) contained in 45CSR8. Enforceable emission limitations and other control measures for ozone may be found in the West Virginia Code of State Rules as necessary or appropriate to meet the applicable requirements of the CAA:</p> <p>45CSR13 - The purpose of this SIP approved rule (68 FR 9559) is to set forth the procedures for stationary source reporting, and the criteria for obtaining a permit to construct and operate a new stationary source which is not a major stationary source, to modify a non-major stationary source, to make modifications which are not major modifications to an existing major stationary source, to relocate non-major stationary sources within the state of West Virginia. Ozone is a “regulated pollutant” as defined under 45CSR13-2.20. An emissions increase of six (6) pounds per hour and ten (10) tons per year or more, or more than 144 pounds per calendar day of NOx or VOC at a source triggers a modification under 45CSR13.</p> <p>45CSR14 - The purpose of this SIP approved rule is to satisfy the prevention of significant deterioration permit program requirements in Part C of the CAA. SIP-approved revisions to the rule include references to NOx as a precursor of ozone (76 FR 30832). 45CSR14 contains a significance level for ozone of 40 tpy of VOC or NOx. No de minimis air quality level is provided for ozone. However, any net emissions increase of 100 tons per year or more of VOC or NOx subject to PSD would be required to perform an ambient impact analysis, including the gathering of air quality data. A PSD source in an attainment area may have NOx or VOC emission limitation in a permit under 45CSR14 based upon a BACT analysis. On August 31, 2011, West Virginia submitted a revision to the SIP which includes provisions for 8-hour ozone NAAQS implementation under 45CSR14.</p> <p>45CSR19 - The purpose of this SIP approved rule (71 FR 64468) is to satisfy the nonattainment area new source review permit program requirements in Part D of the CAA. 45CSR19 contains a significance level for ozone of 40 tpy of VOC or NOx. A</p>

**§110(a)(2)(A)
(continued)**

NSR source in an ozone non-attainment area may have a NO_x or VOC emission limitation in a permit under 45CSR19 based upon a LAER analysis. On June 29, 2010, West Virginia submitted a revision to the SIP which includes provisions for 8-hour ozone NAAQS implementation under 45CSR19. West Virginia submitted a subsequent revision to the SIP which includes minor revisions to 45CSR19 that ensure consistency with federal counterpart. West Virginia has no designated ozone non-attainment areas under the 2008 8-hour Ozone NAAQS.

45CSR21 - The purpose of this SIP approved rule (60 FR 6022) is to apply reasonably available control technology for VOC sources located in Putnam County, Kanawha County, Cabell County, Wayne County, and Wood County West Virginia.

45CSR29 - This SIP approved rule (60 FR 39855) requires the submission of VOC and NO_x emissions statements for sources in Putnam, Kanawha, Cabell, Wayne, Wood, and Greenbrier counties.

45CSR30 - This legislative rule establishes a permitting program pursuant to Title V of the CAA. Any major stationary source subject to enforceable NO_x or VOC emission limitations or control measures pursuant to 45CSR13, 45CSR14, 45CSR19, 45CSR21 or 45CSR29 will be contained in a permit issued by West Virginia under its established Title V permit program. The effective date of interim approval of West Virginia's Title V Program and 45CSR30 was 12/15/95. EPA fully approved the West Virginia Title V program via DFR published on 10/03/01 (66 FR 50325). EPA approved revisions to 45CSR30 contained in DAQ's 07/01/01 rule via a separate DFR published on 10/09/01 (66 FR 51318). These revisions became federally effective 11/23/01.

45CSR33 - This rule establishes the Acid Rain Program pursuant to Title IV of the CAA in West Virginia. This federal program approval rule incorporates by reference the Nitrogen Oxides Reduction Program set forth in 40 CFR Part 76.

Clean Air Interstate Rule (CAIR) - West Virginia received approval of its CAIR SIP revision on August 4, 2009 (74 FR 38536) which contained three state rules; 45CSR39, 45CSR40 and 45CSR41. 45CSR39 and 45CSR40 are the annual and ozone season CAIR NO_x trading programs which set NO_x budgets for the purpose of reducing interstate transport of PM and ozone.

Cross-State Air Pollution Rule (CSAPR) - Federal Implementation Plan (FIP) (76 FR 48208) - Through the CSAP FIP, EPA is limiting interstate transport of ozone. West Virginia is subject to the FIP and the CSAP Rule.

Pursuant to West Virginia Code, §22-5-1 declares the state's public policy "to fulfill its primary responsibility for assuring air quality pursuant to the 'Federal Clean Air Act', as amended."

		<p>The Secretary has the authority under W.Va. Code §§22-5-4(a)(1) & (3) “to develop ways and means for the <i>regulation and control</i> of pollution of the air of the state” and “conduct such studies and research relating to air pollution and its control and abatement”.</p>
<p>§110(a)(2)(B)</p>	<p><i>provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality, and upon request, make such data available to the Administrator;</i></p>	<p>Establishment of Monitoring System: Pursuant to West Virginia Code, §22-1-1(a)(1), “protecting the environment is fundamental to the health and welfare of individual citizens,” and, the state “has a duty to provide and maintain a healthful environment for our citizens.” Under §22-1-1(a)(2), “the state has the primary responsibility for protecting the environment.” §22-1-1(b) “declares that the establishment of a department of environmental protection is in the public interest” and that “It is the policy of the stateto use all practical means and measures to prevent or eliminate harm to the environment and biosphere, to create and maintain conditions under which man and nature can exist in productive harmony,</p> <p>Additionally, §22-5-1 declares the state’s public policy “to fulfill its primary responsibility for assuring air quality pursuant to the ‘Federal Clean Air Act’, as amended.”</p> <p>As set forth in §22-1-1(b)(5), the WVDEP, “insofar as federal environmental programs require state participation” must “endeavor to obtain and continue state primacy in the administration of such federally-mandated programs,.....and to cooperate with appropriate federal agencies to meet environmental goals.”</p> <p>Under §22-1-6(a), the Secretary “is the chief officer of the department” with the powers, duties and authority pursuant to §§22-5-2(3) and 22-5-4.</p> <p>The Secretary has the authority under W.Va. Code §§22-5-4(a)(1) & (3) “to develop ways and means for the regulation and control of pollution of the air of the state” and “conduct such studies and research relating to air pollution and its control and abatement”.</p> <p>Therefore, under manifold statute authority, West Virginia operates and maintains an established network of ambient air monitors in West Virginia for the purpose of assessing compliance with the National Ambient Air Quality Standards, which Congress provided for in the CAA, and such standards promulgated by EPA to protect the health and welfare of individual citizens.</p> <p>Monitoring System Operation: To assess compliance with the 2008 8-hour ozone NAAQS, DAQ operates a network of air quality monitors at appropriate locations in West Virginia that have been designated by EPA as either Federal Reference or Federal Equivalent monitors, in accordance with recent revisions to the ozone monitoring network requirements. All ambient air monitors are subject to the Quality Assurance requirements of 40 CFR Part 58, Appendix A. Additionally all monitors have</p>

<p>§110(a)(2)(B) (continued)</p>		<p>met the minimum siting requirements of Part 58, Appendix E. WVDAQ analyzes collected air quality data to determine attainment status under the NAAQS.</p> <p>On March 27, 2008, EPA revised the 8-hour ozone NAAQS (73 FR 16436). In this final rule, EPA noted that the agency intends to issue a consequent final rule regarding revised monitoring requirements under the new NAAQS. The agency proposed the 8-hour ozone monitoring rule on July 9, 2009, but has yet to issue a final rule. The existing network and procedures for the 1997 ozone NAAQS are considered adequate for the 2008 8-hour ozone NAAQS, as the pollutant is unchanged; only the standard (or level) is different.</p> <p>Availability of Data: In order to keep EPA informed of planned changes to monitoring sites, WVDAQ provides EPA Region III with adequate prior notification. Details of these changes and anticipated approvals of the changes are communicated to EPA. On an annual basis, WVDAQ submits to EPA a monitoring site design plan required under 40 CFR §58.10, that describes how West Virginia is complying with monitoring requirements and explains any changes to the monitoring network. This plan also provides for a description of each change, the reason for each change, and any other information relevant to the change. As required under 40 CFR Part 58, Subpart B at §58.10, West Virginia's 2011 Annual Air Quality Monitoring Network Design Plan was submitted to EPA on June 22, 2011, and consequently approved by EPA on December 6, 2011.</p> <p>As provided in West Virginia Code, §§22-5-4(a)(2), 22-5-10 and §110(a)(2)(B) of the CAA, WVDAQ will collect and report in a timely manner to EPA ambient air quality data for ozone. West Virginia has also committed within the 105 grant document to monitoring and reporting data for ozone. The reports will comply with the federal requirements of 40 CFR §58.16. The data is reviewed, edited, validated, and entered into the EPA Air Quality System (AQS) for updating pursuant to prescribed AQS procedures set forth in 40 CFR §51.320. The EPA AQS receives each report within 90 days after the end of the quarterly reporting period. Data is certified annually as required under 40 CFR §58.15.</p>
<p>§110(a)(2)(C)</p>	<p><i>include a program to provide for the enforcement of the measures described in subparagraph (A) and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved,</i></p>	<p>Enforcement of Control Measures for the 2008 8-Hour Ozone NAAQS: Pursuant to §22-1-6(a), the Secretary "is the chief officer of the department" with the powers, duties and authority pursuant to §§22-5-2(3) and 22-5-4.</p> <p>The Secretary has the authority under W.Va. Code §§22-1-3(a), 22-5-4(a)(4) and 22-5-4(a)(17) to promulgate rules in accordance with the Administrative Procedures Act (W.Va. Code §§ 29A3-1 et seq.)</p> <p>The Secretary has the authority under W.Va. Code §22-5-4(a)(5) "to enter orders</p>

<p>§110(a)(2)(C) (continued)</p>	<p>including a permit program as required in parts C and D;</p>	<p>requiring compliance with the provisions of this article and the rules lawfully promulgated hereunder.”</p> <p>The Secretary has the authority under W.Va. Code §22-5-4(a)(9) “to enter and inspect any property, premise or place for the purpose of ascertaining the state of compliance with this article and the rules promulgated under the provisions of this article.”</p> <p>The Secretary has the authority under W.Va. Code §22-5-4(a)(16) “to do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the Federal Clean Air Act</p> <p>The Secretary also has the authority under W.Va. Code §22-5-5 to enter an order directing a person to <i>cease and desist activity which violates the provisions of §22-5-1 et seq and the rules promulgated pursuant thereto.</i></p> <p>Pursuant to W.Va. Code §22-5-6, <i>violators of the provisions of §22-5-1 et seq and the rules promulgated pursuant thereto are subject to civil penalty.</i></p> <p>West Virginia therefore has an established legal framework and inherent ability to provide for the enforcement of the measures described the §110(a)(2)(A) element of this document, and contained in a permit issued under 45CSR13, 45CSR14, 45CSR19 or 45CSR30 (see below).</p> <p>Regulation of the Modification and Construction of Stationary Sources: The Prevention of Significant Deterioration (PSD) and nonattainment area New Source Review (NNSR) programs contained in Parts C and D of Title I of the CAA, and collectively referred to as the major New Source Review (NSR) program, govern preconstruction review and permitting of any new or modified major stationary sources of air pollutants regulated under the CAA as well as any precursors to the formation of that pollutant when identified for regulation by EPA. For the 2008 8-hour ozone NAAQS, West Virginia's permitting program includes the following three SIP approved rules: PSD rule 45CSR14, NNSR rule 45CSR19, and minor NSR rule 45CSR13. West Virginia also has an approved Title V operating permit program (66 FR 50325).</p> <p>PSD - PSD rule 45CSR14 (76 FR 30832) satisfies the prevention of significant deterioration permit program requirements in Part C of the CAA. West Virginia is authorized to implement its existing PSD permit program in order to ensure that the construction and modification of major stationary sources does not cause or contribute to a violation of the 2008 8-hour ozone NAAQS through SIP-approved rule 45CSR14. 45CSR14 ensures that new or modified sources will apply Best Available Control Technology (BACT) to reduce emissions of VOC or NOx in accordance with CAA sections 165 (a)(3) and (4). This fully-adopted and SIP-approved rule applies to all regulated NSR pollutants, and includes NOx as a precursor to ozone.</p>
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<p>§110(a)(2)(D)</p>	<p><i>contain adequate provisions -</i></p> <p><i>(i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will-</i></p> <p><i>(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard, or</i></p> <p><i>(II) interfere with measures</i></p>	<p>Prongs I & II - Prohibiting Significant Contribution or Interference With Maintenance of the NAAQS: West Virginia is subject to the following interstate NOx reduction trading programs intended to eliminate a state's significant contribution to nonattainment in another state or interference with another state's maintenance of the NAAQS.</p> <p>Clean Air Interstate Rule (CAIR) - West Virginia received approval of its CAIR SIP revision on August 4, 2009 (74 FR 38536) which contained three state rules; 45CSR39, 45CSR40 and 45CSR41. 45CSR39 and 45CSR40 are the annual and ozone season CAIR NOx trading programs which set respective NOx budgets for the purpose of reducing interstate transport of PM and ozone.</p> <p>Cross-State Air Pollution Rule (CSAPR) - Federal Implementation Plan (FIP) (76 FR 48208) - Through the CSAPR FIP, EPA is limiting interstate transport of ozone. West Virginia is subject to the FIP and the CSAP Rule.</p> <p>Prong III – Prohibiting Interference With Required PSD Measures: West Virginia</p>

<p>§110(a)(2)(D) (continued)</p>	<p><i>required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,</i></p> <p><i>(ii) ensuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement);</i></p>	<p>confirms that new major sources and major modifications in the state are subject to PSD under legislative rule 45CSR14. The purpose of this West Virginia SIP approved rule is to satisfy the prevention of significant deterioration permit program requirements in Part C of the CAA. SIP-approved revisions to the rule include references to NOx as a precursor of ozone (76 FR 30832). Under 45CSR14, “.....all applications filed by any person to construct major new or modified stationary air pollution sources, intending to locate in areas with air quality better than the levels set to protect the public health and welfare, or that might impact those areas, must adequately meet the pre-construction review procedures and conditions of the Clean Air Act as amended”. This rule includes specific federal requirements which ensure that new or modified sources do not interfere with measures to prevent significant deterioration of air quality by providing a mechanism to prevent the development of any new non-attainment problems. 45CSR14 requires the evaluation of sources of air pollutants and to preclude the construction or relocation of any major stationary source or major modification in any area classified as attaining National Ambient Air Quality Standards or unclassifiable in which the establishment of such source or modification may interfere with the goals of the prevention of significant deterioration of air quality levels. On August 31, 2011, West Virginia submitted a revision to the SIP which includes provisions for 2008 8-hour ozone NAAQS implementation under 45CSR14.</p> <p>Prong IV - Measures Required to Protect Visibility: West Virginia’s Regional Haze SIP was submitted to EPA on June 8, 2008. By operation of law, it became technically and administratively complete on or about December 18, 2008. On July 13, 2011 at 76 FR 41158, EPA proposed a limited approval and limited disapproval of West Virginia’s Regional Haze SIP revision. The agency proposed to approve the revision as meeting the requirements of CAA sections 110(a)(2)(D)(i)(II) and 110(a)(2)(J). The deficiency in the SIP revision arises from the remand by the U.S. Court of Appeals for the District of Columbia to EPA of the Clean Air Interstate Rule (CAIR).</p> <p>Ensuring Compliance with Sections 126 and 115: West Virginia has demonstrated that it has met its obligations pursuant to CAA Section 126(a) through the adoption of 45CSR14-7, <i>Public Review Procedures</i> which requires notification to other states of potential impacts from a source.</p> <p>West Virginia has no current pending obligations pursuant to CAA sections 126(b), 126(c) or 115.</p> <p>West Virginia has submitted to EPA (August 31, 2011) a fully-adopted PSD program under 45CSR14 that applies to all regulated NSR pollutants, including GHG. West Virginia has made the necessary submittals to demonstrate that West Virginia has adequate provisions ensuring future compliance with the requirements of sections 126 and 115 of the CAA as may be necessary.</p>
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<p>§110(a)(2)(E)(i)</p>	<p><i>provide</i></p> <p><i>(i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof);</i></p>	<p>Personnel: WVDEP has demonstrated adequate personnel to carry out the implementation plan with respect to the 2008 8-hour ozone NAAQS. The Secretary employs adequate personnel and retains specialists under W.Va. Code §22-5-4(a)(8) that are "necessary, incident or convenient" to accomplish the statutory mandate to carry out the implementation plan. A staff of approximately 90 full time employees is employed at WVDAQ. The West Virginia Air Director supervises the air monitoring, compliance and enforcement, hazardous waste, permitting and planning sections, as well as three regional DAQ offices, and answers to the Secretary. Because of the nature of the national and state economy, WVDAQ does not anticipate any significant changes in necessary resources during the 5 years following SIP submittal; and projects a similar resource need at 1, 3, and five year intervals.</p> <p>Funding: The APCA provides adequate funding under W.Va. Code §§22-1-10(a) and 22-5-4(a)(17) to carry out the implementation plan. W.Va. Code §22-5-12 sets forth the statutory operating permit requirements for stationary sources under Title V of the CAA. 45CSR30 establishes fees sufficient to cover the direct and indirect costs of administering the air pollution control planning process, Title V operating permit program, and support the air pollution control program authorized by statute. The APCA also authorizes the establishment of fees to cover non-Title V permitting costs under 45CSR22. The air quality program also receives revenue from fines and penalties (Air Pollution Control Fund) and federal funds under Section 105 and 103 of the CAA, and state general appropriations.</p> <p>Legal Authority: The APCA, W.Va. Code §22-5-1, declares the state's policy "to fulfill its primary responsibility for assuring air quality" pursuant to the CAA. The Secretary is authorized under W.Va. Code §§22-1-6(c)(1) and 22-5-4(a)(12) to carry out and represent the state in any and all matters pertaining to the implementation plan. The Secretary has the authority under W.Va. Code §22-5-4(a)(16) "to do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the Federal Clean Air Act" The Secretary is not prohibited by any provision of federal or state law from carrying out the implementation plan or portion thereof. The legal authorities specified are available to the Secretary at the time of submission of this SIP revision.</p> <p>West Virginia has adopted emission standards and limitations and other measures necessary for attainment and maintenance of national standards. The Secretary has the authority under W.Va. Code §§22-1-3(a), 22-5-4(a)(4) and 22-5-4(a)(17) to promulgate rules in accordance with the Administrative Procedures Act (W.Va. Code §§ 29A3-1 et seq.). Approximately forty rules revised under the auspices of the APCA are currently in effect and codified at Title 45 of the Code of State Rules, including the ambient air quality standards for ozone and other criteria pollutants contained in 45CSR8. Statutory permitting requirements are set forth in W.Va. Code §§22-5-11 & 12. West Virginia has an EPA-approved air permitting program for both major and minor facilities, under state rules 45CSR13, 45CSR14, 45CSR19 and 45CSR30 (as</p>
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**§110(a)(2)(E)(i)
(continued)**

applicable).

The Secretary is authorized to enforce applicable laws, regulations, and standards under W.Va. Code §§22-1-6(d)(3), 22-05-4(a)(5) and 22-05-4(a)(6), and seek injunctive relief under W.Va. Code §22-5-7.

The Secretary is authorized to abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons. W.Va. Code §22-5-5 authorizes the Secretary to issue an order to cease and desist any activity that violates the Air Pollution Control Act. The Secretary may also suspend, modify or revoke a source's permit. Under §22-5-6, the Secretary may also institute lawsuits for civil penalties. §22-5-7 authorizes the Secretary to seek applications for injunctive relief. §22-5-8 authorizes the Secretary, with the written authorization of the Governor, to shut down a source, thereby preventing the emission of air pollutants which substantially contributes to an emergency that requires immediate action to protect public health. As provided in West Virginia Code, §§22-5-4(a)(2) and 22-5-10, the Secretary may consult with EPA to affirm accuracy of any information considered while executing authority under §§22-5-5, -6, -7 or -8.

The Secretary is authorized to prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard. New major sources and major modifications in West Virginia are subject to PSD under legislative rule 45CSR14. The purpose of this West Virginia SIP approved rule (76 FR 30832) is to satisfy the prevention of significant deterioration permit program requirements in Part C of the CAA. Under 45CSR14, ".....all applications filed by any person to construct major new or modified stationary air pollution sources, intending to locate in areas with air quality better than the levels set to protect the public health and welfare, or that might impact those areas, must adequately meet the pre-construction review procedures and conditions of the Clean Air Act as amended". This rule includes specific federal requirements which ensure that new or modified sources do not interfere with measures to prevent significant deterioration of air quality by providing a mechanism to prevent the development of any new non-attainment problems. 45CSR14 requires the evaluation of sources of air pollutants and to preclude the construction or relocation of any major stationary source or major modification in any area classified as attaining National Ambient Air Quality Standards or unclassifiable in which the establishment of such source or modification may interfere with the goals of the prevention of significant deterioration of air quality levels.

Under W.Va. Code §22-5-4(a)(14), the Secretary is authorized to obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards. Under W.Va. Code §§22-5-4(a)(14) and 22-5-4(a)(15), the Secretary is authorized to require recordkeeping. Under W.Va. Code §22-

<p>§110(a)(2)(E)(i) (continued)</p>		<p>5-44(a)(9), the Secretary is authorized to and to make inspections and conduct tests of air pollution sources.</p> <p>Under W.Va. Code §22-5-4(a)(15), the Secretary is authorized to require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources. Under W.Va. Code §22-5-10, the Secretary is authorized to make such data available to the public as reported and as correlated with any applicable emission standards or limitations.</p>
<p>§110(a)(2)(E)(ii)</p>	<p><i>(ii) requirements that the state comply with the requirements respecting state boards under section 128, and</i></p>	<p>State Boards Under Section 128: Because West Virginia does not have a board which approves permits or enforcement orders, this element is not applicable.</p>
<p>§110(a)(2)(E)(iii)</p>	<p><i>(iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision;</i></p>	<p>Responsibility for Implementation of Assured Local Plan Provision: West Virginia has not relied on any local or regional government, agency, or instrumentality for the implementation of any state implementation plan provision for the 2008 8-hour ozone NAAQS. West Virginia will retain primacy with respect to any future plan that relies on local or regional governments, agencies or instrumentalities. By statute, West Virginia has prime responsibility for ensuring adequate implementation of such a plan provision. The Secretary has the authority under W.Va. Code §22-5-4(a)(16) “to do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the Federal Clean Air Act”</p> <p>As set forth in §22-1-1(b)(5), the WVDEP, “insofar as federal environmental programs require state participation” must “endeavor to obtain and continue state primacy in the administration of such federally-mandated programs,.....and to cooperate with appropriate federal agencies to meet environmental goals.”</p>
<p>§110(a)(2)(F)</p>	<p><i>require, as may be prescribed by the Administrator -</i></p> <p><i>(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such</i></p>	<p>Monitoring: W.Va. Code §22-5-4(a)(15) authorizes the Secretary to require the installation, maintenance and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor and report emissions of NOx or VOC from such sources as the Secretary may prescribe. Under this authority, West Virginia requires the installation, maintenance, and replacement of monitoring equipment at stationary sources through permits issued under 45CSR13, 45CSR14, 45CSR19, 45CSR30, CAIR rules 45CSR39 and 45CSR40, and via compliance orders. West Virginia is subject to the Air Emission Reporting Rule (AERR) set forth in 40 CFR Part 51, Subpart A. WVDAQ’s emissions inventory program provides source-specific emissions data to EPA pursuant to the AERR reporting</p>

	<p><i>sources,</i></p> <p><i>(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and</i></p> <p><i>(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;</i></p>	<p>requirements. WVDAQ notes that major sources of NOx in West Virginia have installed continuous emission monitors for NOx as required by the CAIR (rules 45CSR39 and 45CSR40) and the CSAPR FIP. These sources monitor their annual and ozone season NOx emissions in accordance with 40 CFR Part 75.</p> <p>Reporting: In accordance with the emission reports and recordkeeping requirements set forth in 40 CFR §51.211, W.Va. Code §§22-5-4(a)(15) authorizes the Secretary to require periodic reports on the nature and amounts of NOx or VOC emissions and emissions-related data from owners or operators of stationary sources (monitoring data). Pursuant to W.Va. Code §§22-5-4(a)(14), the Secretary is authorized to require such information as the Secretary may require in a form or manner prescribed by the Secretary (emissions inventory program). Under this authority, West Virginia requires periodic reports on the nature and amounts of emissions and emissions-related data from stationary sources through permits issued under 45CSR13, 45CSR14, 45CSR19, 45CSR30, CAIR rules 45CSR39 and 45CSR40, and via compliance orders. WVDAQ periodically reports emission inventory information to EPA as required by 40 CFR Part 51, Subparts A and K. WVDAQ notes that major sources of NOx in West Virginia have continuous emission monitors for NOx as required by the CAIR (rules 45CSR39 and 45CSR40) and the CSAPR FIP. These sources report their annual and ozone season NOx emissions in accordance with 40 CFR Part 75.</p> <p>Correlation of Reports: W.Va. Code §22-1-6(d)(3) authorizes the Cabinet Secretary to “investigate for violations of statutes or rules which the department is charged with enforcing.” §22-5-4(a)(3) authorizes the Secretary to correlate periodic emissions reports with any NOx or VOC emission limitation or standard established pursuant to 45CSR13, 45CSR14, 45CSR19, 45CSR30, CAIR rules 45CSR39 and 45CSR40, via compliance orders, or the CAA. As set forth in W.Va. Code §22-5-10, the Secretary makes available at reasonable times for public inspection the periodic emissions reported under §§22-5-4(a)(14) & (15). The Secretary has the responsibility of making all records, reports or information obtained by the Department or referred to at public hearings under the provisions of the APCA available to the public, except to the extent the records, reports or information are protected by confidentiality pursuant to 45CSR31. The types of records WVDAQ routinely provides access to include notifications, inspection reports, notices of violation, enforcement orders, applications, permit review letters, sample results, monitoring reports, permits, approvals and denials that would relate to §110(a)(2)(F). WVDAQ generally makes information available for public access through its website, but also makes hard copy reports available upon written request. Reports submitted under 40 CFR Part 75 are made available to the public by EPA.</p>
<p>§110(a)(2)(G)</p>	<p><i>provide for authority comparable to that in section 303 and adequate contingency plans to</i></p>	<p>Comparable Authority: W.Va. Code §22-5-5 authorizes the Cabinet Secretary to issue an order to cease and desist any activity that violates the Air Pollution Control Act. The Secretary may also suspend, modify or revoke a source’s permit. Under §22-5-6, the</p>

	<p><i>implement such authority;</i></p>	<p>Secretary may also institute lawsuits for civil penalties. §22-5-7 authorizes the Secretary to seek applications for injunctive relief. §22-5-8 authorizes the Secretary, with the written authorization of the Governor, to shut down a violating source (including emitters of NOx or VOC), thereby preventing the emission of air pollutants which substantially contributes to an emergency that requires immediate action to protect public health. As provided in West Virginia Code, §§22-5-4(a)(2) and 22-5-10, the Secretary may consult with EPA to affirm accuracy of any information considered while executing authority under §§22-5-5, -6, -7 or -8.</p> <p>Contingency Plans: SIP approved rule 45CSR11 (58 FR 34526) provides a mechanism to prevent the buildup of ozone concentrations during periods of adverse meteorological conditions in which air pollutants may accumulate, thereby preventing the occurrence of an emergency due to the effects of these pollutants on health. To achieve this purpose, three stages of criteria (pollutant concentration levels) have been established and specific emission reduction plans will be implemented which will be initiated at each criteria stage to prevent further deterioration of the air quality to any air quality region in West Virginia.</p> <p>West Virginia satisfies the criteria to be classified a Priority III Region under 40 CFR §51.150(f) for ozone, as it does not meet the criteria set forth in 40 CFR §§51.150(a)-(e). Pursuant to 40 CFR §51.152(c), areas classified as Priority III do not need to develop episode (contingency) plans. To date, EPA has not promulgated a classification system for the 2008 8-hour ozone NAAQS.</p>
<p>§110(a)(2)(H)</p>	<p><i>provide for revision of such plan-</i></p> <p><i>(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and</i></p> <p><i>(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements, or</i></p>	<p>Revision of NAAQS: To satisfy the SIP revision provisions set forth in 40 CFR §51.104, W.Va. Code §22-5-4(a)(16) authorizes the Secretary to do all things necessary and convenient to prepare and submit a plan for the implementation, maintenance and enforcement of the Clean Air Act. WVDAQ has historically revised, and will continue to revise its NAAQS rules as necessary to take account of revisions of the national primary or secondary ambient air quality standards or improved or more expeditious methods of attaining the standards. Below are brief recent history examples of how West Virginia has promulgated various versions of NAAQS rule 45CSR8 to take account of revisions and maintain the primary and secondary NAAQS:</p> <p>On February 8, 2009, West Virginia received full SIP approval of its 2008 NAAQS rule 45CSR8 (74 FR 6552). This rule contains ambient air quality standards for all criteria pollutants, including the 2008 8-hour ozone NAAQS, equivalent to the national primary and secondary ambient air quality standards established under Section 109 of the Clean Air Act, and promulgated by the United States Environmental Protection Agency under 40 CFR Part 50 through June 1, 2007.</p> <p>The 2009 version of 45CSR8 includes the 2008 8-hour primary and secondary ozone NAAQS. Revisions to the rule also include deletion of references to the obsolete one-</p>

<p>§110(a)(2)(H) (continued)</p>	<p><i>to otherwise comply with any additional requirements established under this Act;</i></p>	<p>hour ozone NAAQS. The 2009 rule became effective June 1, 2009. EPA announced reconsideration of the 2008 8-hour primary and secondary ozone standards on September 16, 2009. Subsequently, EPA Region III advised the WVDAQ that 45CSR8 may not be approvable into the SIP because the new ozone standards were under reconsideration. At the request of EPA Region III, 45CSR8 was withdrawn as a revision to the SIP on November 16, 2009.</p> <p>The 2010 version of 45CSR8 included the 2008 8-hour primary and secondary ozone NAAQS, and the 2008 national primary and secondary lead NAAQS and deletion of redundant methods of measurement language in section 4. The 2010 rule became effective June 1, 2010. EPA Region III advised the WVDAQ that the 2010 version of 45CSR8 may not be approvable into the SIP because the new ozone standards were under reconsideration. At the request of EPA Region III, 45CSR8 was not submitted as a revision to the SIP.</p> <p>West Virginia submitted a NAAQS SIP revision to EPA Region III on July 8, 2011. Revisions to the 2011 version of the rule provide for incorporation by reference of the NAAQS as promulgated by the EPA as of June 1, 2010, rather than reiterating the NAAQS in the rule. Additionally, the EPA has revised the primary nitrogen dioxide NAAQS, and 45CSR8 incorporates by reference these revised standards. The 2011 rule became effective June 16, 2011. It incorporates the 2008 8-hour ozone NAAQS by reference.</p> <p>Inadequate Plan: W.Va. Code §22-5-4(a)(16) authorizes the Secretary to do all things necessary and convenient to prepare and submit a plan for the implementation, <i>maintenance</i> and enforcement of the Clean Air Act. When, if ever, EPA finds the SIP is substantially inadequate to attain the NAAQS which it implements or otherwise to comply with the CAA, West Virginia will revise the plan as necessary for adequacy.</p>
<p>§110(a)(2)(J)</p>	<p><i>meet the applicable requirements of section 121 (relating to consultation) and section 127 (relating to public notification) and part C (relating to prevention of significant deterioration of air quality and visibility protection)</i></p>	<p>Consultation: Satisfying the applicable requirements of Section 121 of the CAA, the APCA provides adequate authority under W.Va. Code §22-5-4(a)(2) for West Virginia's practices of consultation with local governments, organizations and Land Managers for purposes of air pollution control. WVDAQ also consults with such entities regarding implementation plans for air quality maintenance requirements, preconstruction review of direct sources, nonattainment requirements, and prevention of significant deterioration. For the 2008 8-hour ozone NAAQS, West Virginia's permitting program includes three SIP approved rules: minor NSR rule 45CSR13 (68 FR 9559), PSD rule 45CSR14 (76 FR 30832), and NNSR rule 45CSR19 (71 FR 64468). West Virginia also has an approved Title V operating permit program (66 FR 50325). WVDAQ has previously demonstrated a commitment to such consultation through encouragement and support for an Early Action Compact, and through Federal Land Manager consultation for the West Virginia Regional Haze SIP.</p>

<p>§110(a)(2)(J) (continued)</p>		<p>Notification: W.Va. Code §22-4-(a)(10) authorizes the WVDAQ to notify the public of imminent and serious hazards to public health. W.Va. Code §22-1-12 provides authority for the public notification of NAAQS violations and education efforts as required by CAA Section 127. Each year, WVDEP issues a comprehensive Air Quality Annual Report, which compares monitored air quality data with the NAAQS, and tracks the Air Quality Index. The Report contains emissions information and air quality highlights from the previous year, and provides public awareness of criteria pollutants and their effects on health; educational website links to tips that improve air quality, links to technical websites and outreach efforts.</p> <p>PSD and Visibility: Pursuant to the CAA, if a regulated pollutant becomes subject to regulation under PSD, West Virginia's PSD rule 45CSR14 provides for the implementation of any new PSD requirements that are triggered upon the effective date of any new NAAQS. West Virginia submitted 2011 PSD rule 45CSR14 to EPA Region III on August 31, 2011. This fully-adopted rule applies to all regulated NSR pollutants, including greenhouse gases.</p> <p>West Virginia's Regional Haze SIP was submitted to EPA on June 8, 2008. By operation of law, it became technically and administratively complete on or about December 18, 2008. On July 13, 2011 at 76 FR 41158, EPA proposed a limited approval and limited disapproval of West Virginia's Regional Haze SIP revision. The agency proposed to approve the revision as meeting the requirements of CAA sections 110(a)(2)(D)(i)(II) and 110(a)(2)(J). The deficiency in the SIP revision arises from the remand by the U.S. Court of Appeals for the District of Columbia to EPA of the Clean Air Interstate Rule (CAIR), over which the state has no control.</p>
<p>§110(a)(2)(K)</p>	<p><i>provide for:</i></p> <p><i>(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and</i></p> <p><i>(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;</i></p>	<p>Air Quality Modeling: West Virginia Code, §§22-5-4(a)(1) & (3), authorizes the Secretary to "develop ways and means for the regulation and control of pollution of the air of the state" and "conduct such studies and research relating to air pollution and its control and abatement". Inherent in West Virginia's authority to meet the NAAQS and to conduct studies and research is the obligation for WVDAQ to perform modeling as required under the CAA to demonstrate attainment of the NAAQS, as prescribed by the Administrator. WVDAQ employs one full time technical employee who is responsible for air quality modeling. WVDAQ also participates in regional planning organizations such as the Association for Southeastern Integrated Planning (ASIP) and the Southeastern Modeling And Planning organization (SEMAP), which performs NAAQS modeling for member states. West Virginia will perform modeling, as required under the CAA to demonstrate attainment of the 2008 8-hour ozone NAAQS. Air quality modeling to be conducted with respect to the 2008 8-hour ozone NAAQS may utilize regional scale photochemical models such as CMAQ or CAM_x. However, because all ozone monitors in the state indicate compliance with the 2008 8-hour ozone NAAQS, WVDAQ does not expect that such modeling will be necessary.</p>

		<p>Submission of Data: W.Va. Code §§22-5-4(a)(2), 22-5-10 and 22-5-4(a)(16) authorizes the Secretary to submit, upon request by the Administrator, modeling data predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard. West Virginia will submit to EPA current and future air quality modeling data as part of its relevant SIP submissions and through Federal grant commitments or in other ways that EPA may request.</p>
<p>§110(a)(2)(L)</p>	<p><i>require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover-</i></p> <p><i>(i) the reasonable costs of reviewing and acting upon any application for such a permit, and</i></p> <p><i>(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V;</i></p>	<p>Permit Fees for Permit Review, Implementation and Enforcement: West Virginia has SIP approved PSD rule 45CSR14 (76 FR 30832) and major NSR rule 45CSR19 (71 FR 64468) (construction permits). Program permit fees are contained in the rules. The collected fees have been sufficient to cover permit review, and implementation and enforcement of permit terms and conditions.</p> <p>West Virginia also has an approved Title V operating permit program under 45CSR30 (66 FR 50325). Title V Program permit fees which satisfy the fee determination and certification requirements set forth in 40 CFR §70.9 are contained in the rule. The collected fees have been sufficient to cover permit review, and implementation and enforcement of permit terms and conditions. WVDAQ has periodically increased Title V permitting fees to ensure program sustainability.</p>
<p>§110(a)(2)(L) (continued)</p>		
<p>§110(a)(2)(M)</p>	<p><i>provide for consultation and participation by local political subdivisions affected by the plan;</i></p>	<p>Consultation: The Secretary has the authority under W.Va. Code §22-5-4(a)(16) “to do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the Federal Clean Air Act” Under this statute, and pursuant to the General Plan Requirements set forth in 40 CFR §51.240, the West Virginia Division of Air Quality is the organization authorized to develop, implement and enforce the SIP. W.Va. Code §22-5-4(a)(2) authorizes the</p>

		<p>Secretary to advise, consult and cooperate with local political subdivisions affected by the implementation plan. West Virginia consults with local governments, organizations and Land Managers with respect to SIP development.</p> <p>WVDAQ also consults with such entities regarding implementation plans for air quality maintenance requirements, preconstruction review of direct sources, nonattainment requirements, and prevention of significant deterioration.</p> <p>Notice and Opportunity for Public Hearing: In accordance with the federal procedural requirements at 40 CFR §51.102, any plan or plan revision, or individual compliance schedule, prepared by WVDAQ is subject to a 30 day public notice period with public hearing, or in cases where there is little anticipated public interest, the opportunity for a public hearing. State rules which contain such public notice procedures include permitting rules 45CSR13, 45CSR14, 45CSR19 and 45CSR30.</p>
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