



west virginia department of environmental protection

**Proposed West Virginia
State Implementation Plan Revision for
Clean Air Act Section 110(a)(2)(A)-(M)
Requirements for Nitrogen Dioxide**

November 2, 2012

West Virginia Division of Air Quality
601 57th Street, SE
Charleston, W.Va. 25304

Promoting a healthy environment

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Proposed West Virginia State Implementation Plan Revision for Clean Air Act Section 110(a)(2)(A)-(M) Requirements for Nitrogen Dioxide

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 2010 1-hour nitrogen dioxide (NO₂) NAAQS. The 2010 1-hour NO₂ NAAQS are incorporated by reference in West Virginia legislative Rule 45CSR8.

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 2010 1-hour NO₂ 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.

In 1961, the State Legislature passed the Air Pollution Control Law of West Virginia, 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 a federally approved revision to the West Virginia hospital/medical/infectious waste incinerator (HMIWI) Section 111(d)/129 plan, limited approval of West Virginia's Regional Haze SIP revision, and approval of revisions to West Virginia's Prevention of Significant Deterioration of Air Quality SIP. 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 (APCA), 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) already exist 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 under Subpart 1 and Subpart 5 of the CAA. On February 17, 2012, EPA rule established air quality designations for all areas in the United States for the 2010 1-hour NO₂ NAAQS. In the final rule at 77FR9584, EPA designated the entire state of West Virginia as unclassifiable/attainment for the 2010 1-hour NO₂ NAAQS.

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 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 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 2010 1-hour NO₂ NAAQS) contained in legislative rule 45CSR8. Enforceable emission limitations and other control measures for NO₂ may be found in the Code of State Rules as necessary or appropriate to meet the applicable requirements of the CAA:</p> <p>45CSR11 - The purpose of this West Virginia SIP approved rule (58FR34526) is to provide a mechanism to prevent the buildup of air pollutant 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 developed which will be initiated at each criteria stage to prevent further deterioration of the air supply to any air quality region or substantial portion thereof. 45CSR11 contains episode criteria, methods of measurement, preplanned reduction strategies and emission reduction plan requirements for sources of NO₂ emissions in West Virginia.</p> <p>45CSR13 - The purpose of this West Virginia SIP approved rule (72FR5932) 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. NO₂ is a “regulated pollutant” as defined under 45CSR13-2.20.b. 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 NO₂ triggers a modification under 45CSR13.</p> <p>45CSR14 - The purpose of this West Virginia SIP approved rule (77FR63736) is to satisfy the prevention of significant deterioration permit program requirements in Part C of the CAA. 45CSR14 contains a significant impact level for NO₂ of 1.0 µg/m³ for annual averaging times and a de minimis air quality impact concentration of 14 µg/m³ over an annual averaging time. 45CSR14 also contains a maximum allowable pollutant concentration increase over baseline concentration for NO₂ of 2.5, 25 and 50</p>

<p>§110(a)(2)(A) (continued)</p>	<p>$\mu\text{g}/\text{m}^3$ for annual arithmetic mean averaging time in Class I, Class II and Class III areas, respectively, and a maximum allowable pollutant concentration increase over minor source baseline concentration for NO_2 of $25 \mu\text{g}/\text{m}^3$ for annual arithmetic mean averaging time. A PSD source in an attainment area may have a NO_2 emission limitation in a permit under 45CSR14 based upon a BACT analysis in accordance with CAA Sections 165(a)(3) and (4).</p> <p>45CSR16 - The purpose of this rule is to incorporate the federal New Source Performance Standards under Part A of the Clean Air Act and 40 CFR Part 60. West Virginia received NSPS program delegation for Part 60 NSPS authority under 45CSR16 on December 14, 1984 at FR48692. West Virginia has received automatic delegation of authority to enforce part 60 NSPS in accordance with EPA letters of 03/19/01, and 01/08/02 as well as EPA's Notice at 67FR15486. All current emission limitations or standards of performance for NO_2 promulgated under 40 CFR Part 60 are incorporated by reference under 45CSR16, except any limitation or standard that may be included in Subparts B, C, Ca, Cb, Cc, Cd, Ce, Ea, Eb, Ec, WWW, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, LLLL and MMMM.</p> <p>45CSR18 - The purpose of this rule is to adopt standards of performance, and establish emission guidelines and compliance times pursuant to Sections 111(d) and 129 of the federal Clean Air Act for solid waste combustion sources in West Virginia. EPA recently approved West Virginia's Section 111(d)/129 Plan for hospital/medical/infectious waste incinerators at 77FR3389. Section 111(d)/129 solid waste combustion sources in West Virginia are subject to any applicable NO_2 standard of performance or emission guideline promulgated under 40 CFR 60, Subparts Eb, AAAA, Ec, Ce, CCCC, DDDD, EEEE and LLLL.</p> <p>45CSR19 - The purpose of this West Virginia SIP approved rule (71FR64468) is to satisfy the nonattainment area new source review permit program requirements in Part D of the CAA. 45CSR19 contains a significance level for NO_2 and significant impact level (ambient air concentration increase) of $1.0 \mu\text{g}/\text{m}^3$ for annual averaging times. West Virginia has no designated NO_2 non-attainment areas.</p> <p>45CSR30 - This West Virginia rule establishes a permitting program pursuant to Title V of the CAA. Any major stationary source subject to enforceable NO_2 emission limitations or control measures pursuant to 45CSR11, 45CSR13, 45CSR14, 45CSR16, 45CSR18 or 45CSR19 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 direct final rule published on 10/03/01 (66FR50325). EPA approved revisions to 45CSR30 contained in DAQ's 07/01/01 rule via a separate DFR published on 10/09/01 (66FR51318). These revisions became federally effective 11/23/01. West Virginia submitted a revision of its approved Operating Permit Program to EPA Region III on June 6, 2012.</p>
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<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 WVDEP Cabinet 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>Monitoring System Operation: On February 17, 2012, EPA promulgated air quality designations for the 2010 1-hour NO₂ NAAQS. In this final rule at 77FR9584, the entire state of West Virginia is designated unclassifiable/attainment for the 2010 1-hour NO₂ NAAQS. Because West Virginia has no NO₂ nonattainment areas and is well below the thresholds of the criteria to establish NO₂ monitoring, no monitoring for this pollutant is necessary.</p>

<p>§110(a)(2)(B) (continued)</p>		<p>Availability of Data: In order to keep EPA informed of planned changes to monitoring sites, WVDEP 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, WVDEP 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. West Virginia's 2011 Annual Air Quality Monitoring Network Design Plan was submitted to EPA on June 22, 2011, and consequently approved by EPA via letter received by West Virginia on December 6, 2011. On June 27, 2012, West Virginia submitted a 2012 Annual Air Quality Monitoring Network Design Plan to EPA.</p> <p>As provided in West Virginia Code, §§22-5-4(a)(2), 22-5-10 and §110(a)(2)(B) of the CAA, WVDEP will collect and report to EPA ambient air quality data. 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. 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, including a permit program as required in parts C and D;</i></p>	<p>Enforcement of Control Measures for the 2010 1-Hour NO₂ NAAQS: Pursuant to §22-1-6(a), the WVDEP Cabinet 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 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>§110(a)(2)(C) (continued)</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 2010 1-hour NO₂ NAAQS, West Virginia's permitting program includes the following three SIP approved rules: NSR rule 45CSR13 (72FR5932) which provides a permitting program for construction and modification of minor sources, PSD rule 45CSR14 (77FR63736) which satisfies the prevention of significant deterioration permit program requirements in Part C of the CAA, and NNSR rule 45CSR19 (71FR64468) which satisfies the nonattainment area new source review permit program requirements set forth in Part D of the CAA. West Virginia also has an approved Title V operating permit program (66FR50325).</p> <p>West Virginia's SIP-approved minor NSR permitting program under 45CSR13 (72FR5932) provides regulation of the modification and construction of minor stationary sources as necessary to assure that the 2010 1-hour NO₂ NAAQS are achieved.</p> <p>EPA has not proposed to amend the PSD regulations with regard to the 2010 1-hour NO₂ NAAQS. However, West Virginia will revise its PSD program under 45CSR14 (77FR63736) to address any applicable EPA amendments of the NO₂ PSD rules within three years from the date of such amendments.</p> <p>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 2010 1-hour NO₂ NAAQS through SIP-approved PSD rule 45CSR14 (77FR63736). The PSD program will regulate future growth and provide for continued maintenance of the standard.</p>
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<p>§110(a)(2)(D)</p>	<p><i>contain adequate provisions -</i> <i>(i) prohibiting, consistent with the</i></p>	<p>Significant Contribution and Interference with Maintenance: EPA has designated all monitored areas throughout the nation, including all states which border West Virginia, as unclassifiable/attainment for the 2010 1-hour NO₂ NAAQS. Because there</p>

<p>§110(a)(2)(D) (continued)</p>	<p><i>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 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>are no NO₂ nonattainment areas, there are no sources within West Virginia that emit NO₂ which contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the 2010 1-hour NO₂ NAAQS.</p> <p>As set forth in 45CSR14-4, ambient air quality increments and ceilings <i>are not confined to a state boundary</i>. Pursuant to the public review procedures set forth in 45CSR14-17, <i>West Virginia must provide notice to any state affected by a proposed source or modification</i>. The WVDAQ must send a copy of the advertisement to the applicant, to the Administrator, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: <i>any other State or local air pollution control agencies</i>, the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency, any State, and any Federal Land Manager, whose lands may be affected by emissions from the source or modification.</p> <p>As set forth in 45CSR14-9, any person proposing to construct or relocate a major stationary source or to make a major modification must demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emission increases or reductions (including secondary emissions) would not cause or contribute to air pollution in violation of any National Ambient Air Quality Standard or any applicable maximum allowable increase over the baseline concentration <i>in any area</i>.</p> <p>Interference With Required Measures Under Part C: Because there are no NO₂ nonattainment areas, there are no sources within West Virginia that interfere with measures in an applicable implementation plan for any other state under Part C of the CAA to prevent significant deterioration of air quality or to protect visibility. West Virginia 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 (77FR63736) 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.</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</i></p>	<p>Personnel: WVDEP has demonstrated adequate personnel to carry out the implementation plan with respect to the 2010 1-hour NO₂ 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. WVDAQ has a staff of approximately 90 full time employees. 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 WVDEP Cabinet Secretary. Because of the nature of the national and state economies, WVDAQ does not anticipate any changes in resources considered necessary 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 (Chapter 2, Article 5 of the W.Va. Code) 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</p>

<p>§110(a)(2)(E)(i) (continued)</p>	<p><i>federal or state law from carrying out such implementation plan or portion thereof);</i></p>	<p>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 fund 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 WVDEP Cabinet 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, including revising the SIP as necessary. 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 WVDEP Cabinet 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 promulgated under the auspices of the APCA are currently in effect and codified at Title 45 of the Code of State Rules, including the 2010 1-hour NO₂ NAAQS and NAAQS for other criteria pollutants contained in SIP approved rule 45CSR8 (77FR56125). 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 applicable).</p> <p>The WVDEP Cabinet Secretary is authorized to enforce applicable laws, regulations, and standards under WV Code §§22-1-6(d)(3), 22-05-4(a)(5) and 22-05-4(a)(6), and seek injunctive relief under WV Code §22-5-7.</p> <p>The WVDEP Cabinet 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 APCA. 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 of NO₂ emissions, thereby preventing the emission of air pollutants which substantially contributes to an emergency that requires immediate action to</p>
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<p>§110(a)(2)(E)(i) (continued)</p>		<p>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>The WVDEP Cabinet 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 (77FR63736) 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.</p> <p>Pursuant to W.Va. Code §22-5-4(a)(14), the WVDEP Cabinet Secretary is authorized to obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards. Under WV Code §§22-5-4(a)(14) and 22-5-4(a)(15), the WVDEP Cabinet Secretary is authorized to require recordkeeping. Under W. Va. Code §22-5-44(a)(9), the WVDEP Cabinet 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 WVDEP Cabinet 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 WV Code §22-5-10, the WVDEP Cabinet 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 2010 1-hour NO₂ 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 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>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 NO₂ 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, 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 requirements.</p> <p>45CSR16 - The purpose of this rule is to incorporate the federal New Source Performance Standards under Part A of the Clean Air Act and 40 CFR Part 60. All current monitoring requirements for NO₂ promulgated under 40 CFR Part 60 are incorporated by reference under 45CSR16 except any limitation or standard that may be included in Subparts B, C, Ca, Cb, Cc, Cd, Ce, Ea, Eb, Ec, WWW, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, LLLL and MMMM.</p> <p>45CSR18 - The purpose of this rule is to adopt standards of performance, and establish emission guidelines and compliance times pursuant to Sections 111(d) and 129 of the federal Clean Air Act for solid waste combustion sources in West Virginia. Section 111(d)/129 solid waste combustion sources in West Virginia are subject to any applicable NO₂ monitoring requirement promulgated under 40 CFR 60, Subparts Eb, AAAA, Ec, Ce, CCCC, DDDD, EEEE and LLLL.</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</p>

		<p>require periodic reports on the nature and amounts of emissions and emissions-related data from owners or operators of stationary sources (monitoring data) of NO₂. 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 and via compliance orders. WVDAQ periodically reports emission inventory information to EPA as required by 40 CFR Part 51, Subparts A and K.</p> <p>45CSR16 - The purpose of this rule is to incorporate the federal New Source Performance Standards under Part A of the Clean Air Act and 40 CFR Part 60. All current reporting requirements for NO₂ promulgated under 40 CFR Part 60 are incorporated by reference under 45CSR16 except any limitation or standard that may be included in Subparts B, C, Ca, Cb, Cc, Cd, Ce, Ea, Eb, Ec, WWW, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, LLLL and MMMM.</p> <p>45CSR18 - The purpose of this rule is to adopt standards of performance, and establish emission guidelines and compliance times pursuant to Sections 111(d) and 129 of the federal Clean Air Act for solid waste combustion sources in West Virginia. Section 111(d)/129 solid waste combustion sources in West Virginia are subject to any applicable NO₂ reporting requirement promulgated under 40 CFR 60, Subparts Eb, AAAA, Ec, Ce, CCCC, DDDD, EEEE and LLLL.</p> <p>Correlation of Reports: W.Va. Code §22-1-6(d)(3) authorizes the 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 NO₂ emission limitations or standards established pursuant to 45CSR11, 45CSR13, 45CSR14, 45CSR18, 45CSR19, 45CSR30 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 DEP 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). WVDEP generally makes information available for public access through its website, but also makes hard copy reports available upon written request. CEMS emissions data are uploaded to AIRS and CAMD, and EPA may make such data available to the public.</p>
§110(a)(2)(G)	<i>provide for authority comparable</i>	Comparable Authority: W.Va. Code §22-5-5 authorizes the Secretary to issue an

	<p><i>to that in section 303 and adequate contingency plans to implement such authority;</i></p>	<p>order to cease and desist any activity that violates the APCA. 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 of NO₂ emissions, 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: West Virginia satisfies the criteria to be classified a Priority III Region under 40 CFR §51.150(f) for NO₂, 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.</p> <p>45CSR11 - The purpose of this West Virginia SIP approved rule (58FR34526) is to provide a mechanism to prevent the buildup of air pollutant 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 (3) stages of criteria (pollutant concentration levels) have been established and specific emission reduction plans will be developed which will be initiated at each criteria stage to prevent further deterioration of the air supply to any air quality region or substantial portion thereof. 45CSR11 contains episode criteria, methods of measurement, preplanned reduction strategies and emission reduction plan requirements for sources of NO₂ emissions in West Virginia.</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</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. WVDEP 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 incorporate revisions to the primary and secondary NAAQS:</p> <p>On February 10, 2009, West Virginia received full SIP approval of its 2008 NAAQS rule 45CSR8 (74FR6552). This rule contains ambient air quality standards for all criteria pollutants, including the 2006 PM_{2.5} 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</p>

<p>§110(a)(2)(H) (continued)</p>	<p><i>Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements, or to otherwise comply with any additional requirements established under this Act;</i></p>	<p>CFR Part 50 through June 1, 2007.</p> <p>The 2009 version of 45CSR8 includes the revised the 8-hour primary and secondary ozone NAAQS. Revisions to the rule also include deletion of references to the obsolete one-hour ozone NAAQS. EPA announced reconsideration of the 2008 primary and secondary ozone standards on September 16, 2009. Subsequently, EPA Region III advised the WV DAQ that 45CSR8 may not be approvable into the SIP because the ozone standard is 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 revised national primary and secondary lead NAAQS and deletion of redundant methods of measurement language in section 4. EPA Region III advised the WV DAQ that the 2010 version of 45CSR8 may not be approvable into the SIP because the ozone standard is 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 NAAQS rule 45CSR8 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. EPA has revised the primary nitrogen dioxide NAAQS, and 45CSR8 incorporates by reference the 2010 1-hour NO₂ NAAQS. On September 12, 2012, West Virginia received full SIP approval of 2011 rule 45CSR8 (77FR56125).</p> <p>West Virginia submitted a NAAQS SIP revision to EPA Region III on June 6, 2012. Revisions to the 2012 version of the rule incorporate by reference the 2010 1-hour SO₂ NAAQS. Specifically, EPA established a new 1-hour SO₂ standard at a level of 75 parts per billion (ppb), based on the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations.</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 W.Va. 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. WVDEP 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 2010 1-hour NO₂ NAAQS, West Virginia's</p>

<p>§110(a)(2)(J) (continued)</p>		<p>permitting program includes three SIP approved rules: minor NSR rule 45CSR13 (68FR9559), PSD rule 45CSR14 (77FR63736), and major NSR 45CSR19 (71FR64468). West Virginia also has an approved Title V operating permit program (66FR50325). WVDEP 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 WV Haze SIP.</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 2012 PSD rule 45CSR14 as a SIP revision to EPA Region III on June 6, 2012. This fully-adopted rule applies to all regulated NSR pollutants, including greenhouse gases.</p> <p>There are no new applicable visibility protection obligations under Section 110(a)(2)(J) as a result of the 2010 1-hour NO₂ NAAQS.</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 WVDEP 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. WVDEP also participates in regional planning organizations such as the Southeastern Modeling Analysis and Planning project (SEMAP), which performs NAAQS modeling for member states. Any air quality modeling to be conducted with respect to the NO₂ NAAQS may be source-oriented dispersion models such as AERMOD.</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</p>

		<p>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. West Virginia can also provide relevant data as part of the NAAQS implementation process.</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 (77FR63736) and major NSR rule 45CSR19 (71FR64468) (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 (66FR50325). 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.</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 WVDEP Cabinet 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 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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