

(37) Income received by American Indian beneficiaries from Trust or Restricted lands (Pub. L. 103-66) .....	Excluded	Excluded	Excluded	Excluded	3.262(v)
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3. In § 3.262, paragraph (v) and its authority citation are added to read as follows:

**§ 3.262 Evaluation of income.**

(v) *Income received by American Indian beneficiaries from trust or restricted lands.* There shall be excluded from income computation payments of up to \$2,000 per calendar year to an individual Indian from trust lands or restricted lands as defined in 25 CFR 151.2. (January 1, 1994) (Authority: Sec. 13736, Pub. L. 103-66; 107 Stat. 663)

4. In § 3.272, paragraph (r) and its authority citation are added to read as follows:

**§ 3.272 Exclusions from income.**

(r) *Income received by American Indian beneficiaries from trust or restricted lands.* Income of up to \$2,000 per calendar year to an individual Indian from trust lands or restricted lands as defined in 25 CFR 151.2. (January 1, 1994) (Authority: Sec. 13736, Pub. L. 103-66; 107 Stat. 633)

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[WV 5-1-6307-FRL-4888-7]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia: Limited Approval and Disapproval of PM-10 Implementation Plan for the Follansbee Area**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking simultaneous limited approval and limited disapproval action on a State Implementation Plan (SIP) revision submitted by the State of West Virginia. West Virginia submitted the plan revisions in order to achieve the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal

to a nominal 10 micrometers (PM-10) and to fulfill other Clean Air Act (Act) requirements for the Follansbee, West Virginia area. The limited approval makes bilateral consent orders between the West Virginia Office of Air Quality and six companies federally enforceable and fulfills some of the requirements of the Act applicable to the Follansbee area. The limited disapproval disapproves West Virginia's submittal for the purpose of fulfilling its requirements under sections 172 and 189 of the Act to demonstrate that the SIP will provide for the attainment of the NAAQS. These actions are being taken under section 110 of the Act in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality improvement by strengthening the SIP

**EFFECTIVE DATE:** This rule will become effective on August 24, 1994.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW Washington, DC 20460; and West Virginia Department of Environmental Protection, Office of Air Quality 1558 Washington Street, East, Charleston, West Virginia, 25311.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Casey, (215) 597-2746.

**SUPPLEMENTARY INFORMATION:** The air quality planning requirements for PM-10 nonattainment areas, such as the Follansbee area, are set out in subparts 1 and 4 of Title I of the Act. Among other requirements, the Act requires that SIPs provide for reasonably available control measures (RACM) including reasonably available control technology (RACT), emissions inventories, and demonstrations (including air quality modeling) that the SIP will provide for attainment of the NAAQS by the statutory attainment date.

On January 7 1994 (59 FR 988), EPA published a Notice of Proposed Rulemaking (NPR) that proposed

limited approval and limited disapproval West Virginia's November 15, 1991 PM-10 SIP submittal for the Follansbee, West Virginia PM-10 nonattainment area. The submittal is not fully approvable because it does not demonstrate attainment of NAAQS, and, therefore, does not satisfy the requirements of section 189(a)(1)(B) of the Clean Air Act. Specifically, the modeling is unapprovable as a demonstration of attainment because of deficiencies in estimating emissions from coke oven batteries and other sources, the lack of an approvable analysis of intermediate terrain, and the nonguideline use of the Gaussian Plume Multiple Source Air Quality Algorithm (RAM) dispersion model in a meteorologically rural area.

While the submittal does not meet specific provisions of Part D, it does contain some provisions (enforceable consent orders) which advance the NAAQS-related air quality protection goals of the Act. Therefore, EPA is approving the submittal for the limited purpose of approving the consent agreements and making them part of the SIP. EPA has evaluated the consent agreements for consistency with the Act and EPA regulations and has found that they provide State and federally enforceable provisions to decrease PM-10 emissions in the nonattainment area.

While approving the consent orders for incorporation by reference into the SIP EPA is taking no action at this time on the contingency measures contained therein with respect to the requirements of section 172(c)(9) of the Act. The General Preamble to Title I of the Clean Air Act Amendments established a November 15, 1993 deadline for state submittal of contingency plans (57 FR 13498).

In addition to the limited approval and limited disapproval, EPA proposed to determine that PM-10 precursors, such as sulfur dioxide, nitrogen oxides, and volatile organic compounds, do not contribute significantly to PM-10 concentrations in the Follansbee area. (See section 189(e).) EPA based this proposal on air quality data presented by West Virginia in its submittal.

The rationale for today's action is presented in more detail in the NPR and in the Technical Support Document

(TSD) which is available at the addresses indicated above.

#### Summary of Public Comments

EPA received two letters of comment; comments were submitted by the West Virginia Department of Environmental Protection and by the Wheeling-Pittsburgh Steel Corporation (WPS).

1. In correspondence dated February 4, 1994, West Virginia described its "planned action" to correct the deficiencies in its submittal. West Virginia stated its intent to correct PM-10 emission rates, perform an analysis of intermediate terrain, and replace RAM with an approvable technique for modeling certain area sources under rural meteorological conditions. Additionally West Virginia also related its intent to alter the characterizations of certain buoyant volume sources.

*EPA Response* West Virginia did not comment on EPA's proposed action or its underlying rationale, so no response is necessary. EPA intends to provide technical guidance to West Virginia to assist in the submittal of a fully approvable SIP revision.

2. EPA received comments from WPS dated February 4, 1994. WPS commented on and disputed deficiencies identified by EPA in the NPR. WPS also provided its own air quality analysis. WPS's comments are summarized and responses are provided below.

#### a. Coke Oven Emissions

*WPS Comment.* WPS agrees that the coke oven emissions estimations are in error and provided revised estimates attributed to the West Virginia Office of Air Quality.

*EPA Response.* As described above, EPA intends to provide technical guidance to West Virginia to assist in the submittal of a fully approvable SIP revision.

#### b. Intermediate Terrain<sup>1</sup>

*WPS Comment.* WPS comments that at the time of the West Virginia SIP submittal, there was no single, EPA-approved model applicable to intermediate terrain; that its consultant had developed a post-processor to combine the results of simple and complex terrain models; and that EPA had approved the use of this post-processor in two permit applications in West Virginia in 1988. WPS continues to comment that its submittals to West Virginia and Ohio were consistent with EPA's intermediate terrain policy

<sup>1</sup> "Intermediate terrain" is a term used to describe terrain with an elevation between stack height and plume height. It is a subset of complex terrain and is defined separately for each stack.

including, in 1991, an analysis employing a model that integrates simple and complex terrain models. Finally, WPS comments that the deficiency relating to intermediate terrain is not identified in EPA's August 3, 1993 notice of proposed rulemaking for the Ohio PM-10 SIP (58 FR 41218).

*EPA Response.* West Virginia's attainment demonstration did not address intermediate terrain as required by the Guideline on Air Quality Models as revised in 1986 (EPA-450/2-78-027R)<sup>2</sup> and clarified in 1989.<sup>3</sup> WPS's comments do not dispute this fact. The consultant's post-processor and integrated model were two of several approaches available at the time to implement EPA's intermediate terrain policy (See, for example, EPA's widely available post-processor, POSTIT). The development of these techniques by WPS or its consultant does not alter the fact that no such analysis was included in the West Virginia SIP submittal. Therefore, this comment does not affect today's action or its underlying rationale.

As matter of clarification, EPA's August 3, 1993 notice for Ohio affected the regulation of PM-10 emissions statewide.<sup>4</sup> Today's action applies only to the West Virginia SIP. Because of the broader scope of that notice, some issues that were presented in the NPR for the Follansbee, West Virginia nonattainment area were relegated to the technical support document<sup>5</sup> in EPA's rulemaking on the Ohio SIP. The NPR for the Ohio SIP clearly referred interested readers to the TSD for further information regarding EPA's underlying rationale for that notice, generally and the deficiencies in Ohio's attainment demonstration, specifically. That TSD clearly articulated EPA's concern over Ohio's lack of an intermediate terrain analysis and other deficiencies in Ohio's November 4, 1991 and January 8, 1992 SIP submittals.

#### c. The Use of RAM

*WPS Comment.* WPS commented that the use of RAM was discussed with the Ohio Environmental Protection Agency (OEPA) before the West Virginia SIP was submitted. WPS also comments that this deficiency was not articulated in

<sup>2</sup> This document has subsequently been revised (Supplement B) and incorporated into federal regulations at 40 CFR part 51 appendix W.

<sup>3</sup> June 8, 1989 memorandum from Joseph Tikvart to Alan Cimorelli.

<sup>4</sup> West Virginia and Ohio collaborated on parts of the attainment demonstration, but each submittal stands alone.

<sup>5</sup> Memorandum from John Summerhays and Randall Robinson to "Files" dated November 17 1992.

EPA's NPR for the Ohio PM-10 SIP referenced above (58 FR 41218).

*EPA Response.* Conversations between WPS and OEPA do not exempt or ameliorate the deficiencies in West Virginia submittal or invalidate today's action or its underlying rationale. As noted above, EPA's notice regarding the Ohio SIP addressed this deficiency through its technical support document.

#### d. WPS's Air Quality Analysis

*WPS Comment.* WPS supplied an alternative air quality analysis that concluded, "Controls resulting in the PM-10 emissions in Attachment 2 are shown to meet the NAAQS for PM-10 when naturally occurring buoyancy of several process fugitives is included in the dispersion modeling. Attachment 2 lists the PM-10 emissions rates for model input.

*EPA Response.* Setting aside the problem that this analysis was not submitted by the State of West Virginia and, therefore, does not satisfy the requirement of section 189(a)(2), this analysis is not approvable as an attainment demonstration for at least two reasons.

First, the emissions estimations used as model input are flawed. While an attempt was made to correct the unapprovable aspects of emissions from coke ovens, estimates of emissions from WPS's basic oxygen furnaces (BOF) in Mingo Junction, Ohio remain profoundly underestimated. Deficiencies in BOF emissions estimation were outlined in the TSD and described in more detail in EPA's notice and TSD regarding the Ohio SIP.

Second, the buoyancy of emissions from certain large volume sources (coke oven battery fugitives, the BOF and blast furnace cast houses) was only incorporated in the estimation of impacts at receptors (locations) where a more conventional methodology failed to show attainment. This approach is unapprovable because incorporation of buoyancy effects, by design, will disturb the spatial distribution of estimated PM-10 impacts. Therefore, it is necessary to model using a more extensive array of receptors than was employed in the WPS analysis.

For these reasons, WPS's air quality analysis does not effect today's action or its underlying rationale.

#### Final Action

EPA is approving West Virginia's submittal for the limited purpose of incorporating the enforceable provisions into the SIP and disapproving the submittal for the purpose of fulfilling the attainment demonstration requirements of Part D of Title I of the

Act. EPA is also formally finding that PM-10 precursors do not contribute significantly to PM-10 concentrations exceeding the NAAQS in the Follansbee area (see section 189(e)).<sup>6</sup>

This limited disapproval constitutes a disapproval under section 179(a)(2) of the Act (see generally 57 FR 13566-67). As provided under section 179(a) of the Act, the State of West Virginia has up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of the disapproval before EPA is required to impose either the highway funding sanction or the requirement to provide two-to-one new source review offsets. If the State has not corrected its deficiency within 6 months thereafter, EPA must impose the second sanction. Any sanction EPA imposes must remain in place until EPA determines that the State has come into compliance. Note also that any final disapproval would trigger the requirement for EPA to impose a federal implementation plan within 24 months as provided under section 110(c)(1) of the Act.

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

This action has been classified as a Table 2 action for signature by the Acting Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. The U.S. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on U.S. EPA's request. This

<sup>6</sup> Note that while EPA is making general finding for this area, today's finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. EPA intends to issue future guidance addressing such potential differences in the significance of precursor emissions in PM-10 nonattainment areas.

request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 1994. Filing a petition for reconsideration by the Administrator of the Follansbee, West Virginia PM-10 final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

**Editorial Note:** This document was received by the Office of the Federal Register on July 19, 1994.

Dated: March 30, 1994.

**Stanley L. Laskowski,**  
Acting Regional Administrator, EPA Region III.

40 CFR part 52, subpart XX of chapter I, title 40 is amended as follows:

#### PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7642.

#### Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(26) to read as follows:

#### § 52.2520 Identification of plan.

(c)  
(26) Bilateral consent orders between the West Virginia Air Pollution Control Commission and six companies to limit emissions of particulate matter. The effective date of the consent order with Koppers is November 15, 1991; the effective date of the five other orders cited in paragraph (i)(B), below is November 14, 1991.

(i) Incorporation by reference.  
(A) Letter dated November 12, 1991 from the West Virginia Department of Commerce, Labor, and Environmental

Resources transmitting six consent orders.

(B) Consent orders with the following companies (West Virginia order number and effective date in parentheses): Follansbee Steel Corporation (CO-SIP-91-31, November 14, 1991); International Mill Service, Incorporated (CO-SIP-91-33, November 14, 1991); Koppers Industries, Incorporated (CO-SIP-91-32, November 15, 1991); Standard Lafarge (CO-SIP-91-29, November 14, 1991); Starvaggi Industries, Incorporated (CO-SIP-91-34, November 14, 1991); and Wheeling-Pittsburgh Steel Corporation (CO-SIP-91-29, November 14, 1991).

3. Section 52.2522 of chapter I, title 40 is amended by adding paragraph (f) to read as follows as follows:

#### § 52.2522 Approval Status.

(f) The Administrator approves West Virginia's November 15, 1991 SIP submittal for fulfilling all PM-10-specific requirements of part D of the Clean Air Act applicable to the Follansbee, West Virginia PM-10 nonattainment area, except for the section 189(a)(1)(B) requirement for a demonstration that the plan is sufficient to attain the PM-10 NAAQS, which the Administrator is disapproving, and the section 172(c)(9) requirement for contingency measures, which the Administrator has yet to act upon.

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#### 40 CFR Part 52

[CO33-1-6406; and CO5-1-6386; FRL-5003-7]

#### Clean Air Act Approval and Promulgation of PM<sub>10</sub> Implementation Plan and Oxygenated Gasoline Program for Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** In this action, EPA is finalizing two separate proposed actions: EPA is finalizing the limited approval of the control measures which were contained in the State Implementation Plan (SIP) revisions submitted by the State of Colorado to achieve attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>). EPA is approving these control measures for the limited purpose of strengthening the federally approved

