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**40 CFR Parts 52 and 81**

[WV9-1-6583, WV9-2-6584; FRL-5057-1]

**Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Redesignation of the Charleston, WV Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** On November 13, 1992, the West Virginia Department of Commerce, Labor and Environmental Resources; Division of Environmental Protection; Office of Air Quality (WVOAQ) submitted a request to EPA to redesignate the Charleston moderate ozone nonattainment area (Kanawha and Putnam Counties) from nonattainment to attainment and also submitted a maintenance plan for the Charleston area as a revision to the West Virginia State Implementation Plan (SIP). On June 13, 1994, EPA proposed approval of West Virginia's redesignation request and maintenance plan. No adverse comments were received on the proposal. EPA is approving West Virginia's request to redesignate the Charleston moderate ozone nonattainment area from nonattainment to attainment and is approving the maintenance plan submitted by WVOAQ as a revision to the West Virginia SIP because relevant requirements set forth in the Clean Air Act, as amended in 1990, have been met. This action is being taken in accordance with the Clean Air Act (CAA).

**EFFECTIVE DATE:** This final rule will become effective September 6, 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 and the West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

**FOR FURTHER INFORMATION CONTACT:** Michael Dubowe at (215) 597-1109, Todd Ellsworth at (215) 597-2906.

**SUPPLEMENTARY INFORMATION:** On June 13, 1994 (59 FR 30326-30331), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. The NPR proposed that the Charleston moderate ozone nonattainment area be redesignated from nonattainment to attainment and that the maintenance plan submitted by the WVOAQ as a revision to the West Virginia SIP be approved contingent upon West Virginia's submittal of a revision to its maintenance plan's provisions to clarify the procedures for implementation of contingency measures. The formal request for the redesignation of the Charleston moderate ozone nonattainment area from nonattainment to attainment and the maintenance plan SIP revision were submitted to EPA by the State of West Virginia on November 13, 1992. Subsequent revisions to the State's maintenance plan were submitted to EPA on February 28, 1994 and August 10, 1994.

**Maintenance Plan**

West Virginia's August 10, 1994 submittal revised the maintenance plan to clarify the State's enforceable procedures for implementation of contingency measures specified in the maintenance plan. The revision requires that one or more of the "contingency measures" listed and described in the maintenance plan shall be selected within three months after verification of a violation of the ozone national ambient air quality standard. The regulatory measures shall be adopted as emergency rules and implemented within six months after adoption. In accordance with West Virginia law, the provisions of these emergency regulations are fully enforceable. The emergency rule(s), subsequently, will be filed as legislative rule(s) for permanent authorization by the legislature in accordance with West Virginia law.

EPA is approving the State of West Virginia's maintenance plan for the Charleston area because EPA finds that West Virginia's submittal meets the requirements of section 175A of the CAA.

**Errors and Corrections**

The NPR for the Charleston redesignation request and maintenance plan SIP revision published in the **Federal Register** on June 13, 1994 (59 FR 30326-30331) contains several errors that are corrected as follows:

**Summary.** 59 FR 30326. The third sentence of this section reads "\* \* \* West Virginia submitted an update to its November 13, 1994 submittal." The date

in this sentence should have read November 13, 1992.

**Section I—Background.** 59 FR 30326 and 30327. This section states that West Virginia submitted a SIP projecting attainment by December 31, 1982 and failed to meet that deadline. This statement is incorrect, invalidating the subsequent language referring to Charleston as a nonattainment area for that period. On November 25, 1980, West Virginia requested that the EPA approve a change in the Designation of Air Quality Control Region (AQCR) IV from nonattainment of the ozone NAAQS to attainment based on air quality data showing attainment for the years 1978-1980. EPA approved this request in the November 9, 1981 **Federal Register** (46 FR 55261). The area remained in attainment of the ozone NAAQS until 1988. As a result of 1988 calendar year ambient ozone measurements, EPA notified West Virginia on November 8, 1989 that the State's ozone SIP was inadequate to assure the attainment of the ozone NAAQS in several counties including the Charleston (Kanawha/Putnam County) area. Pursuant to the 1990 Clean Air Act amendments, this area was officially designated as a moderate ozone nonattainment area on January 6, 1991.

**Section III. Review of West Virginia's Submittal,** subsection 5.B., 59 FR 30330. This section states that "\* \* \* emissions projections are dependent upon the implementation of the federal reformulated gasoline program." This statement is incorrect. West Virginia's maintenance plan did not commit to the use of or rely on credits from the federal reformulated gasoline program.

Other specific requirements of the Charleston ozone nonattainment area redesignation request and associated maintenance plan and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. All of the public comments received on the NPR were positive and in support of EPA's action to approve the redesignation request and maintenance plan.

**Final Action**

EPA is approving West Virginia's request to redesignate the Charleston moderate ozone nonattainment area from nonattainment to attainment because the agency has determined that the provisions of section 107(d)(3)(E) of the Act for redesignation of nonattainment areas to attainment have been met. In addition, EPA is approving the ozone maintenance plan for the Charleston area as a revision to the West



Virginia SIP because it meets the requirements of 175A.

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 3 action for signature by the 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. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, to approve the maintenance plan for the Charleston area and to redesignate the Charleston ozone nonattainment area to attainment, must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial

review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

**40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

**40 CFR Part 81**

Air pollution control, National parks, Wilderness areas.

Dated: August 10, 1994.

W.T. Wisniewski, Acting Regional Administrator, Region III.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

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

Authority: 42 U.S.C. 7401-7671q.

**Subpart XX—West Virginia**

2. Section 52.2520 is amended by adding paragraph (c)(32) to read as follows:

**§ 52.2520 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

(29) The ten year ozone maintenance plan including emission projections and contingency measures for Charleston, West Virginia (Kanawha and Putnam Counties), as revised and effective on August 10, 1994 and submitted by the West Virginia Division of Environmental Protection; Office of Air Quality:

(i) Incorporation by reference.

(A) The ten year ozone maintenance plan including emission projections and contingency measures for the Charleston, West Virginia (Kanawha and Putnam Counties) revised and effective August 10, 1994.

**PART 81—[AMENDED]**

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

**Subpart C—Section 107 Attainment Status Designation**

4. In § 81.349 the ozone table is amended by revising the entries for "Kanawha County" and Putnam County" under Charleston Area to read as follows:

**§ 81.349 West Virginia.**

**WEST VIRGINIA—OZONE**

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date	Type
Charleston Area Kanawha County. ....	October 6, 1994 .....	Unclassifiable/Attainment .....	.....	.....
Putnam County .....	October 6, 1994 .....	Unclassifiable/Attainment .....	.....	.....

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

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**40 CFR Part 272**

[FRL-5059-1]

**Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for Minnesota**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** Under the Resource Conservation and Recovery Act of 1976,

as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant final authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of title 40 Code of Federal Regulations (40 CFR part 272) to provide notice of the authorization status of State programs, and to incorporate by reference those provisions of State statutes and regulations that EPA will enforce under RCRA section 3008. Thus, EPA intends to codify the Minnesota authorized State program in 40 CFR part 272. The purpose of this action is to incorporate

by reference EPA's approval of recent revisions to Minnesota's program.  
**DATES:** This document will be effective November 7, 1994, unless EPA publishes a prior **Federal Register (FR)** action withdrawing this immediate final rule. All comments on this action must be received by the close of business October 6, 1994. The incorporation by reference of certain Minnesota statutes and regulations was approved by the Director of the Federal Register as of November 7, 1994, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.  
**ADDRESSES:** Written comments should be sent to Mr. Gary Westefer, Minnesota Regulatory Specialist, Office of RCRA,