

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

DATE: April 22, 2010

SUBJECT: Technical Support Document for the State of West Virginia State Implementation Plan for Section 110(a)(2) Infrastructure Requirements for the 1997 8-hour Ozone and the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards
/s/

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A. INTRODUCTION

The Environmental Protection Agency (EPA) is taking action on certain submittals made by West Virginia to meet the Clean Air Act (CAA) section 110(a)(2) requirements of the revised 1997 8-hour ozone national ambient air quality standards (NAAQS), the 1997 fine particulate (PM_{2.5}), and the revised 2006 PM_{2.5} NAAQS.

B. BACKGROUND

1997 8-Hour Ozone and PM_{2.5} NAAQS

On July 18, 1997, EPA promulgated a revised NAAQS for ozone (62 FR 38856) and a new NAAQS for PM_{2.5} (62 FR 38652). The new ozone NAAQS was based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. The new PM_{2.5} NAAQS established a health-based PM_{2.5} standard of 15.0 micrograms per cubic meter (µg/m³) based on a 3-year average of annual mean PM_{2.5} concentrations, and a twenty-four hour standard of 65µg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations.

Whenever a new or revised NAAQS is promulgated, section 110(a) of the CAA imposes obligations upon States to submit State Implementation Plan (SIP) revisions that provide for the implementation, maintenance, and enforcement of the new or revised

NAAQS within three years following the promulgation of such NAAQS. Although States typically have met many of the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone and PM standards, States (including all of the Region 3 States) were still required to submit SIP revisions that address section 110(a)(2) for the 1997 NAAQS. These SIPs were due in July 2000. However, intervening litigation over the 1997 8-hour ozone and PM_{2.5} NAAQS created uncertainty about how to proceed and, as of October 2007, States had not submitted SIPs to meet these infrastructure requirements.

In March of 2004, Earthjustice initiated a lawsuit against EPA for failure to take action against States that had not made SIP submissions to meet the requirements of sections 110(a)(1) and (2), i.e., failure to make a “finding of failure to submit the required SIP 110(a) SIP elements.” On March 10, 2005, EPA entered into a Consent Decree with Earthjustice that obligated EPA to make official findings in accordance with section 110(k)(1) of the CAA, as to whether States have made complete SIP submissions, pursuant to sections 110(a)(1) and (2), by December 15, 2007 for the 1997 8-hour ozone NAAQS and by October 5, 2008 for the 1997 PM_{2.5} NAAQS. EPA made completeness findings for the 1997 8-hour ozone NAAQS on March 27, 2008 (73 FR 16205) and on October 22, 2008 (73 FR 62902) for the 1997 PM_{2.5} NAAQS. These findings pertained only to whether the submissions were complete, pursuant to 110(k)(1)(A), and did not constitute EPA approval or disapproval of such submissions.

Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These elements are: 1) submissions required by section 110(a)(2)(C) to the extent that subsection pertains to a permit program in Part D Title I of the CAA; and 2) any submissions required by section 110(a)(2)(I), which pertain to the nonattainment planning requirements of Part D Title I of the CAA. The determinations required by the consent decree excluded any determination regarding such portion of section 110(a)(2)(C) and section 110(a)(2)(I), therefore, this action does not cover these specific elements. This action also does not address the requirements of 110(a)(2)(D)(i), which have been addressed by a separate finding issued by EPA on April 25, 2005 (70 FR 21147).

With respect to West Virginia’s obligations pursuant to CAA sections 110(a)(1) and (2) for the 1997 8-hour ozone and PM_{2.5} NAAQS, this technical support document will review only those elements which were the subject of EPA’s completeness findings. The March 27, 2008 (73 FR 16205) action made a completeness finding that the West Virginia submittals of December 3, 2007 and April 3, 2008 addressed some but not all of the 110(a)(2) requirements. Specifically, EPA found that West Virginia failed to address sections 110(a)(2)(B), (E)(i), (G) (with respect to authority comparable to section 303), (H) and (J) (relating to public notification under section 127), (M), and Part C Prevention of Significant Deterioration (PSD) permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made nitrogen oxides (NO_x) a precursor for

ozone in the Part C regulations found in 40 CFR 51.166 and in 40 CFR 52.21. The West Virginia submittal dated May 21, 2008 addressed these findings, with the exception of the Part C PSD, which will be taken as a separate action.

EPA will take separate action on the portions of section 110(a)(2)(C) and (J) for the 1997 8-hour ozone NAAQS as they relate to West Virginia's PSD permit program. With respect to this permit program, on November 29, 2005 (70 FR 71612), EPA promulgated a change that made NO_x a precursor for ozone in the Part C regulations at 40 CFR 51.166 and 40 CFR 52.21. In the March 27, 2008 completeness findings, it was determined that while West Virginia had an approved PSD program in its SIP codified at 40 CFR 52.2520, West Virginia's regulation, 45CSR14, did not fully incorporate NO_x as a precursor for ozone. On July 20, 2009, West Virginia submitted revisions to 45CSR14 to include NO_x as a precursor for ozone. Action on this PSD SIP revision will be taken at a later time, and consequently, elements 110(a)(2)(C) and (J) as they pertain to the PSD permit program for the 1997 8-hour ozone NAAQS will be addressed in this future action as well.

2006 PM_{2.5} NAAQS

On October 17, 2006 (71 FR 61144), EPA revised the twenty-four hour average PM_{2.5} primary and secondary NAAQS from 65 µg/m³ to 35 µg/m³. As required by section 110(a)(1) of the CAA, the 110(a)(2) submittals were due within three years after promulgation of the revised standard, with the exception of 110(a)(2)(C) pertaining to the Part D permit program and 110(a)(2)(I) for the reasons discussed above for the 1997 8-hour ozone and PM_{2.5} standards.

C. EPA REQUIREMENTS

As discussed above, for the 1997 8-hour ozone and PM_{2.5} NAAQS, States must provide SIP submissions, or provide certification that address section 110(a)(2)(A) through (M), with the exception of the portion of 110(a)(2)(C) pertaining to a permit program in Part D Title I of the CAA, 110(a)(2)(I) and (D)(i). To help States meet this statutory requirement, EPA issued guidance on October 2, 2007 entitled "*Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards*," which listed the basic elements that States must include in their SIPs.

On September 25, 2009, EPA issued an updated guidance document entitled *Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)*, which clarifies, in further detail, expectations for certain elements to meet the requirements of sections 110(a)(1) and (2) of the CAA for both the 1997 and 2006 PM_{2.5} NAAQS. Specifically, guidance is provided for satisfying the section 110(a)(2)(D) requirements for the 2006 PM_{2.5} NAAQS, as well as guidance for satisfying the section 110(a)(2)(G) requirements that addresses both the 1997 and 2006 PM_{2.5} NAAQS. EPA notes,

however, that the requirements under 110(a)(2)(D)(i) are being addressed separately and are not included in this action.

D. STATE'S SUBMITTAL

West Virginia provided multiple submittals to satisfy the requirements of section 110(a)(1) and (2) of the CAA for the 1997 8-hour ozone and PM_{2.5} NAAQS, and the 2006 PM_{2.5} NAAQS. Submittals dated December 3, 2007, May 21, 2008, and October 1, 2009 addressed the 110(a)(2) requirements for 8-hour ozone. Submittals dated April 3, 2008, May 21, 2008, July 9, 2008, October 1, 2009, and March 18, 2010 addressed the 110(a)(2) requirements for the 1997 PM_{2.5} NAAQS. To satisfy the requirements of section 110(a)(1) and (2) for the 2006 PM_{2.5} NAAQS, the West Virginia Department of Environmental Protection (WVDEP) provided a submittal dated October 1, 2009, in accordance with the September 25, 2009 guidance. West Virginia's October 1, 2009 SIP submittal originally included the infrastructure elements for the 2008 8-hour ozone NAAQS. On March 18, 2010, WVDEP submitted a withdrawal request for the 110(a)(2)(A)-(M) elements for the 2008 8-hour ozone NAAQS from the October 1, 2009 submittal, leaving only the 2006 PM_{2.5} portion of the submittal in place for action. Therefore, action will only be taken on the PM_{2.5} portion of the October 1, 2009 submittal. On March 18, 2010, West Virginia made an additional submittal for the 110(a)(2)(G) element for both the 1997 and 2006 PM_{2.5} NAAQS. The submittals shown in Table 1 address the infrastructure elements, or portions thereof, identified in section 110(a)(2) that EPA is proposing to approve.

Table 1: 110(a)(2) Elements, or Portions Thereof, EPA is Proposing to Approve for the 1997 Ozone and PM_{2.5} and 2006 PM_{2.5} NAAQS

Submittal Date	1997 8-Hour Ozone	1997 PM _{2.5}	2006 PM _{2.5}
December 3, 2007	A, C, D(ii), E, F, G, J, K, L		
April 3, 2008		A, C, D(ii), E, F, J, L	
May 21, 2008	B, E, F, G, H, J, K, M	B, E, F, G, H, J, K, M	
July 9, 2008		G	
October 1, 2009	C	C	A, B, C, D(ii), E, F, G, H, J, K, L, M
March 18, 2010		G	G

* Note: On December 11, 2007 and October 1, 2009, West Virginia submitted element 110(2)(D)(i), which will be addressed in a separate action.

E. EVALUATION OF STATE SUBMITTAL

As noted above, West Virginia provided multiple submittals for the 1997 8-hour ozone and PM_{2.5} NAAQS, and for the 2006 PM_{2.5} NAAQS. However, the demonstrations

submitted by West Virginia for how it is meeting many of the elements are substantively identical for both the ozone and PM_{2.5} NAAQS, therefore, the following evaluation of each element pertains to all standards except as otherwise noted.

1. Section 110(a)(2)(A)

Pursuant to West Virginia Code section 22-5-4(a)(1) and (3), the Secretary has the authority 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.” The Secretary has the authority under West Virginia Code sections 22-1-3(a), 22-5-4(a), and 22-5-4(a)(17) to promulgate rules in accordance with the Administrative Procedures Act (West Virginia Code section 29A3-1 et seq.).

For the ozone NAAQS, enforceable emission limits, control measures, and compliance schedules are contained in those provisions of West Virginia’s federally approved NO_x SIP Call Regulations (71 FR 56881 and 67 FR 31733). Additional emission limitations and schedules are found in West Virginia’s volatile organic compound (VOC) control regulations (60 FR 6022 and 60 FR 39855). Control measures are identified in approved maintenance plans for the Charleston (71 FR 39001), Huntington (71 FR 54421), Parkersburg (72 FR 25967), Wheeling (72 FR 27060), and Weirton (72 FR 27247) areas.

For the PM_{2.5} NAAQS, the pertinent emission limitations and other control measures are contained in West Virginia’s SIP-approved State Rules 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR8, and 45CSR10. Additionally, the requirements for section 110(a)(2)(A) for PM_{2.5} are also found in West Virginia’s approved permitting program, which includes three SIP-approved rules: minor New Source Review (NSR) (68 FR 9559), PSD rule (71 FR 64470), and major NSR (71 FR 64468). The State also has an approved Title V operating permit program (66 FR 50325).

2. Section 110(a)(2)(B)

Under manifold statute authority, pursuant to West Virginia Code sections 22-1-1(a)(1), 22-1-1(a)(2), 22-1-1(b), 22-5-1, 22-1-1(b)(5), 22-1-6(a), 22-5-4(a)(1) and (3), 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.

To assess NAAQS compliance, the Division of Air Quality (DAQ) operates a network of monitors in West Virginia that have been designated by EPA as either Reference or Equivalent monitors. All ambient air monitors are subjected to the Quality Assurance requirements of 40 CFR Part 58, Appendix A. Additionally, all monitors have met the minimum siting requirements of Part 58, Appendix E.

In order to keep EPA informed of planned changes to the monitoring network, 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 network design plan required under 40 CFR 58.10, of any changes to the 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 provided in West Virginia Code sections 22-5-4(a)(2) and 22-5-10, WVDEP collects and reports to EPA ambient air quality data for sulfur dioxide (SO₂), carbon monoxide (CO), ozone (O₃), PM₁₀, and PM_{2.5}. The reports 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.

WVDEP analyzes such air quality data to determine attainment status or progress, as demonstrated by the 8-hour ozone redesignation and maintenance plan requests submitted and/or approved during calendar years 2006, 2007, and first quarter of 2008.

3. Section 110(a)(2)(C)

Pursuant to West Virginia Code sections 22-1-6(a), 22-1-3(a), 22-5-4(a), 22-5-5, and 22-5-6, the West Virginia Cabinet Secretary has enforcement authority of emission limitations and control measures for ozone and PM_{2.5} NAAQS.

For the ozone NAAQS, monitoring, recordkeeping, and reporting requirements are found in West Virginia's approved NO_x SIP Call rules (71 FR 56881 and 67 FR 31733), in West Virginia's VOC control regulations (60 FR 6022), and in State Rule 45CSR40. An additional approved provision includes submission of VOC and NO_x emissions statements for sources in Putnam, Kanawha, Cabell, Wayne, Wood, and Greenbrier Counties. For the PM_{2.5} NAAQS, monitoring, recordkeeping, and reporting requirements are found in State Rules 45CSR39 and 45CSR41.

For both the ozone and PM_{2.5} NAAQS, additional provisions are found in West Virginia's current permitting program, which includes three SIP-approved rules: minor NSR rule 45CSR13 (68 FR 9559), PSD rule 45CSR14 (71 FR 64470), and major NSR 45CSR19 (71 FR 64468). The State also has an approved Title V operating permit program (66 FR 50325).

EPA will take separate action on the portion of section 110(a)(2)(C) for the 1997 8-hour ozone NAAQS as it relates to West Virginia's PSD permit program. On July 20, 2009, West Virginia submitted revisions to regulation 45CSR14 to include NO_x as a precursor for ozone. Action on this PSD SIP revision will be taken at a later time, and consequently, element 110(a)(2)(C) as it pertains to the PSD permit program for the 1997 8-hour ozone NAAQS will be addressed in this future action as well.

In addition, the requirements of section 110(a)(2)(C) that pertain to a permit program in Part D Title I of the CAA will be addressed separately and are not included in this action.

4. Section 110(a)(2)(D)(i)

The requirements of section 110(a)(2)(D)(i) will be addressed separately and are not included in this action.

5. Section 110(a)(2)(D)(ii)

West Virginia is not subject to the requirements of sections 126 and 115 of the CAA.

6. Section 110(a)(2)(E)

West Virginia has adequate authority under the West Virginia Air Pollution Control Act (APCA), West Virginia Code section 22-5-1, to carry out its SIP obligations with respect to the 8-hour ozone and PM_{2.5} NAAQS and to revise the SIP as necessary.

The WVDEP Cabinet Secretary is authorized under West Virginia Code sections 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, and under West Virginia Code section 22-5-4(a)(16) to do all things necessary and convenient to prepare and submit a plan. The Secretary is not prohibited by any provision of federal or state law from carrying out the implementation plan or portion thereof. The Secretary has the authority under West Virginia Code sections 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 (West Virginia Code sections 29A3-1 et seq.). Approximately forty rules revised under the auspices of the Air Pollution Control Act (APCA) are currently in effect and codified at Title 45 of the Code of State Rules, including the ambient air quality standards for criteria pollutants contained in 45CSR8. Statutory permitting requirements are set forth in West Virginia Code sections 22-5-11 and 12.

WVDEP has adequate personnel to carry out the implementation plan with respect to 8-hour ozone and PM_{2.5} NAAQS requirements. The Secretary employs adequate personnel and retains specialists under West Virginia Code section 22-5-4(a)(8) that are "necessary, incident or convenient" to accomplish the statutory mandate to carry out the implementation plan.

The APCA provides adequate funding under West Virginia Code sections 22-1-10(a) and 2-5-4(a)(17) to carry out the implementation plan. West Virginia Code section 22-5-12 sets forth the statutory operating permit requirements for stationary sources under Title V of the CAA. Regulation 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, special federal funds for PM_{2.5}, and state general appropriations.

The requirements of section 110(a)(2)(E)(ii) are not applicable to West Virginia because it does not have a board which approves air quality permits or enforcement orders. Likewise, the requirements of section 110(a)(2)(E)(iii) are not applicable to West Virginia because it does not rely on local or regional entities for specific SIP implementation.

7. Section 110(a)(2)(F)

West Virginia Code section 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 emissions 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. The State's NO_x SIP Call Regulations (45CSR1 & 45CSR26) also require the installation, maintenance, and replacement of monitoring equipment.

West Virginia Code sections 22-5-4(a)(15) authorizes the Secretary to require periodic reports on the nature and amounts of emissions and emissions-related data from owners or operators of stationary sources (monitoring data). Pursuant to West Virginia Code sections 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. The State's NO_x SIP Call Regulations (45CSR1 & 45CSR26) also require periodic reporting of emissions data.

West Virginia Code section 22-1-6(d)(3) authorizes the Secretary to "investigate for violations of statutes or rules which the department is charged with enforcing." Section 22-5-4(a)(3) authorizes the Secretary to correlate periodic emissions reports with any emission limitations or standards established pursuant to 45CSR13, 45CSR14, 45CSR19, 45CSR30, or the CAA. As set forth in West Virginia Code section 22-5-10, the Secretary makes available at reasonable times for public inspection the periodic emissions reported under sections 22-5-4(a)(14) and (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 section 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.

8. Section 110(a)(2)(G)

West Virginia Code section 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 section 22-5-6, the Secretary may also institute lawsuits for civil penalties. Section 22-5-7 authorizes the Secretary to seek applications for injunctive relief. Section 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, sections 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 sections 22-5-5, -6, -7, or -8.

On March 18, 2010, West Virginia submitted a certification of classification as a priority III emergency episode plan region. The requirement for a State to submit an emergency episode plan is based on a priority region classification. For States with a 24-hour $PM_{2.5}$ concentration above $140.5 \mu g/m^3$, using the most recent three years of data, are required to develop an emergency episode plan. States that do not meet this threshold would be classified as priority III and would not be required to adopt an emergency episode plan for $PM_{2.5}$. $PM_{2.5}$ monitors in West Virginia show that $PM_{2.5}$ concentration levels for the past three years are below the $140.5 \mu g/m^3$ threshold, therefore West Virginia is not required to adopt an emergency episode plan for $PM_{2.5}$.

9. Section 110(a)(2)(H)

West Virginia Code section 22-5-4(a)(16) authorizes the Secretary to do all things necessary and convenient to prepare and submit a plan. 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.

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.

10. Section 110(a)(2)(I)

EPA will be taking separate action on this element through the process of approval or disapproval of West Virginia's attainment demonstration plans for the respective NAAQS.

11. Section 110(a)(2)(J)

The APCA provides adequate authority under West Virginia Code section 22-5-4(a)(2) for West Virginia's practices of consultation with local governments, organizations and Land Managers with respect to SIP development. 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. As an example, WVDEP consulted with Federal Land Managers on the development of West Virginia's Regional Haze SIP revision, and provided an additional 30-day review and comment period beyond the general public review period.

West Virginia Code section 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. West Virginia has also implemented an anti-idling program to reduce pollutants from school buses and vehicles at public schools.

For the ozone and PM_{2.5} NAAQS, West Virginia's permitting program includes three SIP approved rules: minor NSR rule 45CSR13 (68 FR 9559), PSD rule 45CSR14 (71 FR 64470), and major NSR 45CSR19 (71 FR 64468). The State also has an approved Title V operating permit program (66 FR 50325).

EPA will take separate action on the portion of section 110(a)(2)(J) for the 1997 8-hour ozone NAAQS as it relates to West Virginia's PSD permit program. On July 20, 2009, West Virginia submitted revisions to 45CSR14 to include NO_x as a precursor for ozone. Action on this PSD SIP revision will be taken at a later time, and consequently, element 110(a)(2)(J) as it pertains to the PSD permit program for the 1997 8-hour ozone NAAQS will be addressed in this future action as well.

12. Section 110(a)(2)(K)

West Virginia Code, sections 22-5-4(a)(1) and (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. WVDEP participates in regional planning organizations such as the Association for Southeastern Integrated Planning (ASIP), which performs NAAQS modeling for member states. West Virginia will continue to perform modeling, as required under the CAA to demonstrate attainment of the NAAQS.

West Virginia Code sections 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 continue to submit the air quality modeling data as part of its relevant SIP submissions and through Federal grant commitments or in other ways that EPA may request.

13. Section 110(a)(2)(L)

Fees are collected according to West Virginia's approved SIP under PSD rule 45CSR14 (71 FR 64470) and major NSR rule 45CSR19 (71 FR 64468), as well as under their Title V permit program 45CSR30 (66 FR 50325).

14. Section 110(a)(2)(M)

West Virginia Code section 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. 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.

F. RECOMMENDATION

EPA's analysis of West Virginia's infrastructure submittals for the 1997 8-hour ozone and PM_{2.5} NAAQS, and the 2006 PM_{2.5} NAAQS concludes that West Virginia's submittals meet the requirements of section 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. It is recommended that a notice of proposed rulemaking be prepared approving West Virginia's infrastructure submittals for the 1997 8-hour ozone and PM_{2.5} NAAQS and the 2006 PM_{2.5} NAAQS.