

WV ACE Partial State Plan
Appendix E
Public Participation

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Appendix E

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west virginia department of environmental protection

Executive Office
601 57th Street, SE
Charleston, WV 25304

Austin Caperton, Cabinet Secretary
dep.wv.gov

January 7, 2021

Mr. Cosmo Servidio (3RA00)
Regional Administrator
U.S. Environmental Protection Agency
Region 3
1650 Arch Street
Philadelphia, PA 19103-2029
Submitted via E-mail to Servidio.Cosmo@epa.gov and SPeCS

Re: West Virginia CAA § 111(d) Partial Plan for
Greenhouse Gas Emissions from Existing Electric
Utility Generating Units (EGUs)

Dear Administrator Servidio:

I am herein submitting for approval the *West Virginia Clean Air Act (CAA) § 111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)*. This partial plan is being submitted to fulfill the State's obligations under CAA § 111(d)(1) to implement the Affordable Clean Energy (ACE) rule for one designated coal-fired EGU in West Virginia. The State Plan addresses the final action by the U.S. Environmental Protection Agency (EPA), *Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations* at 84 Fed. Reg. 32520 (July 8, 2019) as it applies to Longview Power LLC located in Maidsville, West Virginia.

CAA section 111(d)(1) requires each state submit to the U.S. EPA a plan which establishes standards of performance for any existing source in response to the issuance of emission guidelines by the U.S. EPA and provide for the implementation and enforcement of such standards. The state plan must be at least as protective as the emission guidelines promulgated by the U.S. EPA. This partial State Plan establishes the standards of performance for Longview Power LLC, an existing source located in West Virginia, and provides for the implementation and enforcement of such standards of performance. The West Virginia Department of Environmental Protection (DEP), Division of Air Quality issued Permit R13-3495 to Longview Power LLC on December 23, 2020 in accordance with the West Virginia Air Pollution Control Act (West Virginia Code §§22-5-1 et

seq.) and 45 C.S.R. 13 – *Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, Permission to Commence Construction, and Procedures for Evaluation.*

I certify that the public hearing regarding the revised CAA § 111(d) State Plan for the *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)* was held in accordance with the information provided in the public notice and West Virginia laws and consistent with the public hearing requirements specified in 40 C.F.R. § 60.23a. I further certify that the list of witnesses and their organizational affiliations, if any, appearing at the hearing, public hearing transcript, summary of received public comments, and response to comment document are included in the partial State Plan.

The WV DEP commits to submit the full State Plan to the U.S. EPA as required under the *Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations* at 84 Fed. Reg. 32520 (July 8, 2019).

If you or your staff have any questions concerning this submittal, please contact Laura Crowder at (304) 414-1253.

Sincerely yours,



Austin Caperton
DEP Cabinet Secretary

AC/lmj
Enclosures

cc: Laura M. Crowder, DAQ (*cover letter via e-mail*)
Christina Fernandez, USEPA (*cover letter via e-mail*)
Mary Cate Opila, USEPA (*cover letter via e-mail*)

Appendix E
Public Participation
Legal Advertisements

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**Proposed West Virginia Section 111(d) State Plan
Control of Greenhouse Gas Emissions from
Existing Coal-Fired Electric Utility Generating Units**

Notice of Public Hearing and Public Comment Period

The West Virginia Department of Environmental Protection (DEP), Division of Air Quality (DAQ) is developing a Clean Air Act (CAA) section 111(d) partial State Plan for the Control of Greenhouse Gas Emissions from Existing Coal-Fired Electric Utility Generating Units (EGUs) for submittal to the United States Environmental Protection Agency (U.S. EPA). This partial State Plan was developed in response to the U.S. EPA promulgation of 40 C.F.R. Part 60, Subpart UUUUa, *Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units*; the implementing regulations under 40 C.F.R. Part 60, Subpart Ba, *Adoption and Submittal of State Plans for Designated Facilities*; and the voluntary air quality permit application submitted to the DAQ by Longview Power LLC on June 1, 2020. The U.S. EPA published the Affordable Clean Energy Rule (ACE) consisting of emission guidelines for greenhouse gas (GHG) emissions from existing EGUs under section 111(d) of the CAA at 84 Fed. Reg. 32520 on July 8, 2019.

Section 111(d) of the CAA requires all states to submit a plan to the U.S. EPA which establishes standards of performance for any existing source for any air pollutant to which a standard of performance would apply if the existing source were a new source and provides for the implementation and enforcement of such standards of performance. Such plans are commonly referred to as State Plans.

This partial State Plan applies to Longview Power LLC that owns and operates one existing coal fired EGU located in Maidsville, WV. This proposed State Plan will establish the standard of performance for Longview Power LLC and will provide for the implementation and enforcement of such standard of performance.

DAQ will hold a public hearing on the proposed ACE partial State Plan at 6:00 p.m. on Tuesday, December 1, 2020. The public hearing will be held virtually to prevent the spread of COVID-19 in accordance with the WVDEP COVID-19 Policy. Instructions for participating and for providing oral comments at the virtual public hearing are provided below.

The public comment period begins October 30, 2020 and ends at the conclusion of the public hearing on December 1, 2020. Written comments may be submitted at any time during the public comment period as instructed below. Both oral and written comments will be made part of the State Plan record. Comments received after the conclusion of the public comment period will not be accepted.

The proposed partial WV ACE State Plan is available at:

- The DAQ website at <https://dep.wv.gov/daq/publicnoticeandcomment/Pages/default.aspx>.
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Written Comments

- E-mail written comments to Laura.M.Jennings@wv.gov with “WV ACE State Plan Comments” in the subject line, or
- Mail hard copy comments to the attention of Laura Jennings at the WV Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, WV 25304.

Public Hearing Participation

The public hearing is being held to satisfy the requirements for submitting a CAA §111(d) State Plan. The purpose of the public hearing is to accept comments concerning the proposed WV ACE partial State Plan. Comments will be responded to in writing at a later date.

Members of the public can participate online or listen via telephone. **Participant pre-registration is required by 5:00 p.m. on Tuesday, December 1, 2020.** To register, please complete the participant registration form at <https://apps.dep.wv.gov/daq-register/ace>. A confirmation e-mail will be sent with information on how to join the public hearing. If you do not have internet access and want to register, please contact Sandie Adkins or Stephanie Hammonds at (304) 926-0475 by 5:00 p.m. on Monday, November 30, 2020. Registration is required to fulfill the state’s obligation under federal air quality regulations to include a list of participants.

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Witnesses are requested to submit a written copy of their verbal testimony by email to Laura.M.Jennings@wv.gov.

Event title: Public hearing for proposed WV ACE Partial State Plan

Date and time: Tuesday, December 1, 2020 at 6:00 p.m.

Location: Virtual. PRE-REGISTRATION IS REQUIRED as described in this notice.

Your registration confirmation will have the log-in and call-in number details.

Contact Information

For more information on the proposed WV ACE State Plan call 304-926-0475.



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Advertising Invoice

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**PROPOSED
West Virginia
Section 111(d)
State Plan**

Control of Greenhouse
Gas Emissions from
Existing Coal-Fired
Electric Utility
Generating Units

**NOTICE OF
PUBLIC HEARING
AND PUBLIC
COMMENT PERIOD**

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Section 111(d) of the CAA requires all states to submit a plan to the U.S. EPA which establishes standards of performance for any existing source for any air pollutant to which a standard of performance would apply if the existing source were a new source and provides for the implementation and enforcement of such standards of performance. Such plans are commonly referred to as State Plans.

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DAQ will hold a public hearing on the proposed ACE partial State Plan at 6:00 p.m. on Tuesday,

Affidavit of Legal Publication and Posting

STATE OF WEST VIRGINIA

COUNTY OF Kanawha, TO-WIT

I Janice Alston, Classified Advertising

Representative of the The Charleston Gazette-Mail, a newspaper

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certify that the annexed publication was inserted in said

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The cost of publishing said annexed advertisement

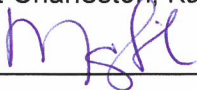
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Ending On: 10/30/2020

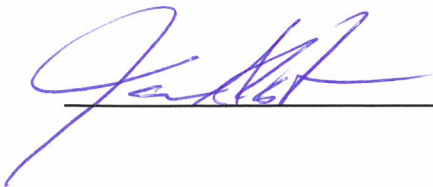
Given under my hand this day 10/30/2020

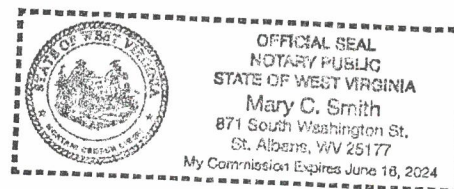
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at Charleston, Kanawha County, West Virginia



Notary Public of, in and for Kanawha County, West Virginia

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Kindrick, Pamela K

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To: Kindrick, Pamela K
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Receipt - Ticket #:500144592

APPROVED

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BrandType: VISA
TransType: SALE
Name: pamela kindrick
Card Number: XXXXXXXXXXXXX7040 *
Clerk: marysmith
Auth Code: 065534
AVS Reply: (Y) ZIP/Address Match
CVV2 Card Code: (M) Match
Invoice #: 100598

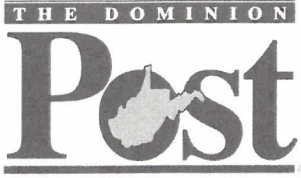
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ATTN: *Pamela Kendrick*
CHARLESTON WV 25304

Account - 1060123
Invoice - 1087940
Invoice Date - 10/30/20
Payment Terms - Net 30 Days

S# 3610089
DATE RECEIVED 11/4/2020
SIGN *Pamela Kendrick*
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DATE	REFERENCE	DESCRIPTION / OTHER COMMENTS	INCHES	LINES	INSERTIONS	AMOUNT
10/30/20	1298	Dominion Post: Classifieds 1298 October 30 Proposed West Virginia Section 111(d) State 101 Legals <i>3336-0000-0313-9320-13000-3224-3610</i>	28.5073		1	192.66
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		EXP DATE		
		SECURITY CODE		
		CHECK NUMBER		
		SIGNATURE		

**Proposed West Virginia Section 111(d) State Plan
Control of Greenhouse Gas Emissions from
Existing Coal-Fired Electric Utility Generating Units**

Notice of Public Hearing and Public Comment Period

The West Virginia Department of Environmental Protection (DEP), Division of Air Quality (DAQ) is developing a Clean Air Act (CAA) section 111(d) partial State Plan for the Control of Greenhouse Gas Emissions from Existing Coal-Fired Electric Utility Generating Units (EGUs) for submittal to the United States Environmental Protection Agency (U.S. EPA). This partial State Plan was developed in response to the U.S. EPA promulgation of 40 C.F.R. Part 60, Subpart UUUUa, Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; the implementing regulations under 40 C.F.R. Part 60, Subpart Ba, Adoption and Submittal of State Plans for Designated Facilities; and the voluntary air quality permit application submitted to the DAQ by Longview Power LLC on June 1, 2020. The U.S. EPA published the Affordable Clean Energy Rule (ACE) consisting of emission guidelines for greenhouse gas (GHG) emissions from existing EGUs under section 111(d) of the CAA at 84 Fed. Reg. 32520 on July 8, 2019.

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Written Comments

- E-mail written comments to Laura.M.Jennings@wv.gov with "WV ACE State Plan Comments" in the subject line, or
- Mail hard copy comments to the attention of Laura Jennings at the WV Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, WV 25304.

Public Hearing Participation

The public hearing is being held to satisfy the requirements for submitting a CAA §111(d) State Plan. The purpose of the public hearing is to accept comments concerning the proposed WV ACE partial State Plan. Comments will be responded to in writing at a later date.

Members of the public can participate online or listen via telephone. **Participant pre-registration is required by 5:00 p.m. on Tuesday, December 1, 2020.** To register, please complete the participant registration form at <https://apps.dep.wv.gov/daq-register/ace>. A confirmation e-mail will be sent with information on how to join the public hearing. If you do not have internet access and want to register, please contact Sandie Adkins or Stephanie Hammonds at (304) 926-0475 by 5:00 p.m. on Monday, November 30, 2020. Registration is required to fulfill the state's obligation under federal air quality regulations to include a list of participants.

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Witnesses are requested to submit a written copy of their verbal testimony by email to Laura.M.Jennings@wv.gov.

Event title: Public hearing for proposed WV ACE Partial State Plan
Date and time: Tuesday, December 1, 2020 at 6:00 p.m.
Location: Virtual. PRE-REGISTRATION IS REQUIRED as described in this notice.
Your registration confirmation will have the log-in and call-in number details.

Contact Information

For more information on the proposed WV ACE State Plan call 304-926-0475.



The Dominion Post

1251 Earl L Core Road
Morgantown, WV 26505
(304) 291-9420

PUBLISHER'S CERTIFICATE OF PUBLICATION

I, Brad Pennington, Advertising Director of

THE DOMINION POST, a newspaper of general circulation

published in the City of Morgantown, County and State

of said, do hereby certify that the annexed

Legal Notice

was published in the said THE DOMINION POST once a week

for 1 successive weeks commencing on the

30th day of October, 2020 and ending on the

30th day of October, 2020.

The publisher's fee for said publication is \$192.66

Given under my hand this 30th day of

October, 2020

(SEAL)

Advertising Director of THE DOMINION POST

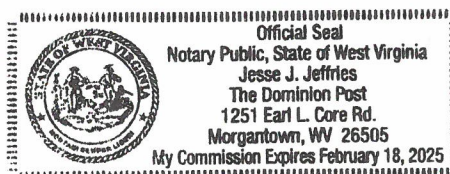
Subscribed and sworn to before me this 30th

day of October, 2020

Notary Public of Monongalia County, W. Va.

My commission expires on the 18th day of

Feb 2025



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WEST VIRGINIA REGISTER

Published by the Office of the
Secretary of State

Volume XXXVII

Issue 44

October 30, 2020

A Weekly Publication

Administrative Law Division

Mac Warner
Secretary of State
Bldg. 1, Suite 157K
1900 Kanawha Blvd. East
Charleston, WV 25305-0770
(304) 558-6000
sos.wv.gov

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Attorney General Opinions

Other Documents or Information Filed

This week's publication includes documents submitted by the following agencies:

Air Quality

Counseling

Dentistry

Health and Human Resources

Health Care Authority

Housing Development Fund

Insurance Commission

Motor Vehicles

Registered Professional Nurses

**Proposed West Virginia Section 111(d) State Plan
Control of Greenhouse Gas Emissions from
Existing Coal-Fired Electric Utility Generating Units
Notice of Public Hearing and Public Comment Period**

FILED
2020 OCT 21 A 10:22

OFFICE WEST VIRGINIA
SECRETARY OF ENVIRONMENTAL PROTECTION

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Contact Information

For more information on the proposed WV ACE State Plan call 304-926-0475.

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Public Notice Archives

DEP Enhanced Mailing List - View List Message

This Message was sent out on Friday, October 30, 2020 @ 10:31 AM

From: dep.online@wv.gov
Subject: DEP Public Notice - Notice of Public Hearing and Public Comment Period - Proposed West Virginia Section 111(d) State Plan Control of Greenhouse Gas Emissions from Existing Coal-Fired Electric Utility Generating Units

Proposed West Virginia Section 111(d) State Plan Control of Greenhouse Gas Emissions from Existing Coal-Fired Electric Utility Generating Units

Notice of Public Hearing and Public Comment Period

The West Virginia Department of Environmental Protection (DEP), Division of Air Quality (DAQ) is developing a Clean Air Act (CAA) section 111(d) partial State Plan for the Control of Greenhouse Gas Emissions from Existing Coal-Fired Electric Utility Generating Units (EGUs) for submittal to the United States Environmental Protection Agency (U.S. EPA). This partial State Plan was developed in response to the U.S. EPA promulgation of 40 C.F.R. Part 60, Subpart UUUUa, Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; the implementing regulations under 40 C.F.R. Part 60, Subpart Ba, Adoption and Submittal of State Plans for Designated Facilities; and the voluntary air quality permit application submitted to the DAQ by Longview Power LLC on June 1, 2020. The U.S. EPA published the Affordable Clean Energy Rule (ACE) consisting of emission guidelines for greenhouse gas (GHG) emissions from existing EGUs under section 111(d) of the CAA at 84 Fed. Reg. 32520 on July 8, 2019.

Section 111(d) of the CAA requires all states to submit a plan to the U.S. EPA which establishes standards of performance for any existing source for any air pollutant to which a standard of performance would apply if the existing source were a new source and provides for the implementation and enforcement of such standards of performance. Such plans are commonly referred to as State Plans. This partial State Plan applies to Longview Power LLC that owns and operates one existing coal fired EGU located in Maidsville, WV. This proposed State Plan will establish the standard of performance for Longview Power LLC and will provide for the implementation and enforcement of such standard of performance. DAQ will hold a public hearing on the proposed ACE partial State Plan at 6:00 p.m. on Tuesday, December 1, 2020. The public hearing will be held virtually to prevent the spread of COVID-19 in accordance with the WVDEP COVID-19 Policy. Instructions for participating and for providing oral comments at the virtual public hearing are provided below.

The public comment period begins October 30, 2020 and ends at the conclusion of the public hearing on December 1, 2020. Written comments may be submitted at any time during the public comment period as instructed below. Both oral and written comments will be made part of the State Plan record. Comments received after the conclusion of the public comment period will not be accepted. The proposed partial WV ACE State Plan is available at:

- The DAQ website at <https://dep.wv.gov/daq/publicnoticeandcomment/Pages/default.aspx>.
- If you do not have internet capability, please contact DAQ for alternatives at the phone numbers provided below.

Written Comments

- E-mail written comments to Laura.M.Jennings@wv.gov with "WV ACE State Plan Comments" in the subject line, or
- Mail hard copy comments to the attention of Laura Jennings at:

WV ACE Partial State Plan

Appendix E: Public Participation

https://apps.dep.wv.gov/MLists2/Archive/view_text.cfm?ListID=1&MessageID=29900

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WV Department of Environmental Protection, Division of Air Quality,
601 57th Street SE,
Charleston, WV 25304.

Public Hearing Participation

The public hearing is being held to satisfy the requirements for submitting a CAA §111(d) State Plan. The purpose of the public hearing is to accept comments concerning the proposed WV ACE partial State Plan. Comments will be responded to in writing at a later date.

Members of the public can participate online or listen via telephone. Participant pre-registration is required by 5:00 p.m. on Tuesday, December 1, 2020. To register, please complete the participant registration form at <https://apps.dep.wv.gov/daq-register/ace>. A confirmation e-mail will be sent with information on how to join the public hearing. If you do not have internet access and want to register, please contact Sandie Adkins or Stephanie Hammonds at (304) 926-0475 by 5:00 p.m. on Monday, November 30, 2020. Registration is required to fulfill the state's obligation under federal air quality regulations to include a list of participants.

If you wish to speak at the virtual public hearing, you must pre-register by 5:00 p.m. on Monday, November 30, 2020. Please limit testimony to one witness for each organization. Verbal testimony is limited to 5 minutes for each witness. Video demonstrations and screen sharing by witnesses will not be permitted. To register to speak, please indicate "yes" you want to provide oral comments on the record when you register with the previously provided link. A confirmation e-mail will be sent with information on how to join the public hearing. If you do not have internet access and want to register to speak, please contact Sandie Adkins or Stephanie Hammonds at (304) 926-0475 by 5:00 p.m. on Monday, November 30, 2020. Witnesses are requested to submit a written copy of their verbal testimony by email to Laura.M.Jennings@wv.gov.

Event title: Public hearing for proposed WV ACE Partial State Plan

Date and time: Tuesday, December 1, 2020 at 6:00 p.m.

Location: Virtual. PRE-REGISTRATION IS REQUIRED as described in this notice.

Your registration confirmation will have the log-in and call-in number details.

Contact Information

For more information on the proposed WV ACE State Plan call 304-926-0475.

[<< View Another Message](#)

**West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing
Electric Utility Generating Units (EGUs)
RESPONSE TO COMMENTS**

The West Virginia Department of Environmental Protection (DEP), Division of Air Quality (DAQ) commenced the public comment period for the *Clean Air Act (CAA) Section 111(d) Partial State Plan for the Control of Greenhouse Gas Emissions from Existing Coal-Fired Electric Utility Generating Units (EGUs)*, hereafter referred to as the State Plan, on October 30, 2020. The DAQ published the legal notice, including notice of the public hearing in the Charleston Newspapers, the Dominion Post, and in the West Virginia State Register. The public notice for the proposed State Plan was also sent to all subscribers of the DEP's Enhanced mailing List on October 30, 2020. Additionally, the DAQ provided the required notification to the U.S. EPA and to the Air Quality Directors of the neighboring states as a courtesy. As noted in the public notice, the proposed State Plan, including all appendices were made available for public inspection on the DAQ website at the time of public notice at the following web link:

<https://dep.wv.gov/daq/publicnoticeandcomment/Pages/default.aspx>

The public comment period concluded December 1, 2020 after satisfying the required 30-day period. The public hearing was held virtually to prevent the spread of COVID-19 in accordance with the DEP COVID-19 Policy on December 1, 2020, to accept oral comments on the proposed ACE State Plan and in accordance with the public notice.

Written comments were received from (in alphabetic order) Ms. Sarah Carballo representing the Ohio Valley Environmental Coalition (OVEC), Mr. John Christensen representing Citizens Climate Lobby LLC, Mr. James Kotcon representing the West Virginia Chapter of the Sierra Club, and Mr. Duane Nichols representing the Mon Valley Clean Air Coalition. Oral comments were provided by (in speaking order) Mr. Alex Cole representing OVEC, Mr. Jason Bostic representing the West Virginia Coal Association, Ms. Angie Rosser representing the West Virginia Rivers Coalition, Mr. James Kotcon representing the West Virginia Chapter of the Sierra Club, Mr. Duane Nichols representing the Mon Valley Clean Air Coalition, and Mr. Chris Hamilton representing the West Virginia Coal Association. Chat communication during the public hearing included comments from (in sequential order) Ms. Sarah Cross representing the West Virginia Rivers Coalition, Mr. John Christensen representing Citizens Climate Lobby LLC, and the DEP chat room moderator Ms. Christina Richmond.

The following table was developed to link specific comments and responses to individual commenters. A summary of the written, oral, and chat comments received are provided below along with the response to each comment. Similar comments are grouped together and each commenter that provided the comment is identified with the comment. The original written comments and the public hearing transcript are provided as part of the formal State Plan public participation record.

Table 1: Commenter Identification.

Commenter ID	Name	Organization	Comment Format (oral, written, chat)
1	Ms. Sarah Carballo	Ohio Valley Environmental Coalition (OVEC), Huntington WV	Written
2	Mr. John Christensen	Citizens Climate Lobby LLC	Written
3	Mr. James Kotcon	West Virginia Chapter of the Sierra Club	Written
4	Mr. Duane Nichols	Mon Valley Clean Air Coalition	Written
5	Mr. Alex Cole	Ohio Valley Environmental Coalition (OVEC)	Oral
6	Mr. Jason Bostic	West Virginia Coal Association	Oral
7	Ms. Angie Rosser	West Virginia Rivers Coalition	Oral
8	Mr. James Kotcon	West Virginia Chapter of the Sierra Club	Oral
9	Mr. Duane Nichols	Mon Valley Clean Air Coalition	Oral
10	Mr. Chris Hamilton	West Virginia Coal Association	Oral
11	Ms. Sarah Cross	West Virginia Rivers Coalition	Chat
12	Mr. John Christensen	Citizens Climate Lobby LLC	Chat

There were not any changes made to the Final State Plan based on comments received during the public participation process.

The comments below are a summary of the comments received on the proposed State Plan. All original comments along with this response to comment document are included as Appendix E to the Final *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)* and provided on the DAQ website at <https://dep.wv.gov/daq/planning/ACE%20Rule/Pages/default.aspx>.

Comment 1. (Commenters 1, 5)

The Ohio Valley Environmental Coalition is one of many organizations concerned with addressing the serious threats to our climate posed by greenhouse gas emissions from fossil fuels.

Response 1

No response required.

Comment 2 (Commenters 1, 5)

According to the West Virginia Affordable Clean Energy (ACE) Partial State Plan, West Virginia has one or more existing coal fired EGUs meeting the definition of a designated facility that commenced construction on or before January 8, 2014 that would be affected by this State Plan to implement the emission guidelines of 40 C.F.R. Part 60, Subpart UUUUa, Emission Guidelines

for Greenhouse Gas Emissions from Existing Electric Utility Generating Units, *at Longview Power LLC*.

Response 2

Longview Power LLC (LVP) is one of the existing coal-fired EGUs that meet the definition of a designated facility in 40 C.F.R § 60.5775a. Owners or operators of designated facilities must comply with the plan that a State develops to implement the emission guidelines contained in 40 C.F.R. 60, Subpart UUUUa, *Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Unit*, published at 84 Fed. Reg. 32520 (July 8, 2019), hereafter referred to as the ACE Rule, and comply with any underlying state requirements, such as a permit¹.

Comment 3 (Commenters 1, 5)

The standard of performance, based on the calculation provided by Longview Power LLC in a permit that was issued to the facility prior to West Virginia submitting this State Plan to the U.S. Environmental Protection Agency (U.S. EPA) for approval, would allow 2 percent greater emissions than occurred in 2014, before heat-rate improvements (HRIs) were installed at Longview, and nearly 8 percent higher than the current performance. Therefore, instead of seeking improvements in performance and reductions in emissions, the limits imposed by the permit would allow significant increases in greenhouse gas emissions². (The transcript for the public hearing indicates 80 % higher in the oral testimony.)

Response 3

The DAQ calculated the standard of performance for LVP based on data submitted by LVP. It is the responsibility of the DAQ to determine the standard of performance established in Permit R13-3495, issued to LVP December 23, 2020, prior to submittal of the final State Plan to the U.S. EPA. As clearly stated in the federal ACE Rule “state plan requirements must be fully adopted as a matter of state law, or issued as a permit, order, or consent agreement, before the plan is submitted to the EPA”³

Regarding the comment concerning an increase in greenhouse gas emissions, a weighted average formula was developed for LVP to be calculated based on the actual time that will be spent operating in each of the established load bins and based on a standard that was developed for each of the load bins that encompasses multiple components that are explained in more detail in section 4.4.b, *Determination of each Standard of Performance*, of the State Plan. The underlying permit to this State Plan (R13-3495) established this emission standard in accordance with the federal emission guidelines in the ACE Rule.

¹ 40 C.F.R. § 60.5770a(a).

² Source: Comments on draft permit # R13-3495, Longview Power greenhouse gas permit submitted by the West Virginia Chapter of Sierra Club.

³ 84 Fed. Reg. 32553 (July 8, 2019).

It is a requirement of the federal ACE rule that the standard be established in the terms of pounds (lbs) of carbon dioxide per unit of energy output from the emissions unit⁴. The limits in Permit R13-3495 do not relieve Longview Power of the responsibility to comply with all of the requirements established in R14-0024G to which LVP is also subject and includes a limit on the amount of heat energy that can be burned in their electric generating unit (EGU)⁵. This heat energy input limit indirectly caps Longview's carbon dioxide emissions on a mass basis. However, this indirect cap is not in the form of the CO₂ standard as set forth in the emissions guidelines⁶ and, therefore, is not acceptable for this State Plan.

The ACE Rule requires evaluation of seven heat rate improvement technologies that EPA determined to be the Best System of Emission Reductions (BSER) for existing coal-fired EGUs⁷ and a comparison of any improvement potential against a baseline emission rate. The base period selected for LVP was calendar year 2016 through the second quarter of 2020. If the evaluation of the BSER technologies had determined additional heat rate improvement (HRI) opportunities were available through the implementation of feasible BSER technologies, then there would have been a corresponding reduction from the baseline in the standard. For the LVP BSER evaluation, that was not the case, as no additional HRI opportunities were available from the candidate technologies identified in the federal ACE emission guidelines. Based on the DAQ's review of LVP's evaluation of the BSER candidate technologies, LVP fully implemented six of the seven BSER candidate technologies and practices. The only BSER technology not currently installed is the use of variable frequency drives (VFD) on some facility equipment; however, the technology currently being utilized by Longview Power was determined by DAQ to be equivalent to or better than VFDs in this application. Enumeration of the reasons that the Variable Frequency Drives (VFD) were not feasible is provided in Appendix C to the State Plan. After review of the BSER candidate technologies for LVP, there was no reduction to the CO₂ emission rates from the baseline emission rates in setting the standard. In the Regulatory Impact Analysis (RIA) for the ACE Rule, the U.S. EPA acknowledged there is little to no potential for further HRI applying the BSER technologies from units currently operating with a heat rate of less than 9,773 Btu/kWh, identified as Group 1 units.⁸ The U.S. EPA's data indicates that Longview Power's unit heat rate is below this Group 1 heat rate threshold and is categorized as a Group 1 unit. In fact, review of the most recent heat rate data in the U.S. EPA's database indicates that LVP current operates with the lowest heat rate in the U.S. at 8,904 Btu/kWh⁹. It is not surprising then, the DAQ did not identify any additional improvements based on the BSER candidate technologies that would provide any additional heat rate improvements for the Longview Power EGU.

⁴ 84 Fed. Reg. 32555 (July 8, 2019).

⁵ Permit R14-0024G, Condition 5.1.1.a.

⁶ 40 CFR §60.5755a(a)(1).

⁷ 84 FR 32537. (July 8, 2019).

⁸ U.S. EPA, Regulatory Impact Analysis for the Repeal of the Clean Power Plan, and the Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units, June 2019, Page 1-16.

⁹ Nation Electric Energy Data System v6, https://www.epa.gov/sites/production/files/2020-10/needs_v620_10-05-20_0.xlsx, October 5, 2020.

Regarding the calculation of the standard of performance for each load bin based on the statistical mean plus two times the standard deviation, statistically speaking, 95% of the data will fall within this range. This is important especially for load bins LB-1 through LB-4 since less data is available in the baseline period for these load bins because LVP has operated over 90% of the time in LB-5. The use of the standard deviation therefore accounts for normal operational and measurement variability. It is worth noting that measurement accuracy alone can account for more variation than calculating the standard as the mean plus two times the standard deviation. Additional discussion on the use of statistical analysis was provided in Appendix C and Appendix F to the State Plan and can also be found in the Engineering Evaluation and Final Determination for Permit R13-3495 that are included in Appendix I to the State Plan.

Concerning the unit degradation adjustment factor (UDAF), this unit has been in service for less than ten years and most of the key pieces of equipment have not yet undergone a major maintenance outage. The unit will degrade (unit heat rate performance will decay) over time with or without implementing these HRI technologies. Lacking unit specific data, LVP proposed a decay and recovery rate less than the decay rate (decay curve) of similar units operating in the same regional transmission organization (PJM). The DAQ's detailed evaluation of the proposed decay and recovery curve are provided in Regulatory Applicability Section of the Engineering Evaluation. The U.S. EPA recognized degradation of equipment in its discussion of the BSER candidate technologies, such as the blade path upgrade discussion when it states "(t)hese improvements in new turbines can also be utilized to improve the efficiency of older steam turbines whose efficiency has degraded over time."¹⁰

The UDAF allows for a 0.4% increase per year in the standard in terms of pounds per megawatt hour over 5 years because of the degradation of the emissions unit between maintenance outages and for a decrease of the standard of 0.7% every fifth year to account for the efficiency recovered during reconditioning/repairing degraded equipment during major maintenance outages. The UDAF is capped in 2046, as shown in Table 4.4.b-3 of the State Plan.

For additional explanation of degradation, please also refer to the DAQ's Response to Comment 18.

For a more detailed explanation and justification of how and why the established standards of performance were developed for LVP, please refer to Sections 4.4.a through 4.4.c of the State Plan and Appendices C and F to the State Plan. This response attempts to summarize over 100 pages of detailed narrative and data analysis provided in the referenced sections and appendices to the State Plan.

Comment 4 (Commenters 1, 5)

While the U.S. EPA proposes affording states wide latitude in determining whether their individual coal plants should pursue HRIs, plans that protect plants from the costs of new regulations are not

¹⁰ 84 Fed. Reg. 32539 (July 8, 2019).

enough to overcome the decline of coal due to dismal economics compared to other energy sources.

Response 4

The reason provided by the U.S. EPA in the preamble to the final ACE Rule for affording States latitude in determining the standard of performance for designated EGUs located in their jurisdiction is stated as follows:

The U.S. fleet of existing coal-fired EGUs is diverse in terms of size, vintage, fuel usage, design, geographic location, etc. The HRI potential for each unit will be influenced by source-specific factors such as the EGU's past and projected utilization rate, maintenance history, and remaining useful life (among other factors). Therefore, standards of performance must be established from a unit-level evaluation of the application of the BSER and consideration of other factors at the unit level. States are in the best position to make those evaluations and to consider of other unit-specific factors, and indeed CAA section 111(d)(1) directs EPA to permit states to take such factors into consideration as they develop plans to establish performance standards for existing sources within their jurisdiction¹¹.

The U.S. EPA determined that heat rate improvement (HRI) is the best system of emission reduction (BSER) for existing coal-fired electric utility generating units (EGUs)¹² and identified a list of “candidate technologies” of the BSER that included technologies, equipment upgrades, and operating and maintenance practices that were deemed most impactful because they can be applied broadly and are expected to provide significant HRI without limitations due to geography, fuel type, and other characteristics¹³. The State is required to evaluate the applicability of each of the following HRI to each designated facility, Longview Power LLC specifically for the West Virginia partial State Plan:

- i. Neural network/intelligent sootblowers;
- ii. Boiler feed pumps;
- iii. Air heater and duct leakage control;
- iv. Variable frequency drives;
- v. Blade path upgrades for steam turbines;
- vi. Redesign or replacement of economizer; and
- vii. Improved operating and maintenance practices¹⁴.

In Section D entitled *Determination of Emission Limitation Achievable from Application of HRI BSER Candidate Technologies in §60.5740a(A)(1) and (2)*, of Appendix C, *Standards of Performance Demonstration*, to the State Plan, the DEP provided a demonstration of the

¹¹ 84 Fed. Reg. 32536 (July 8, 2019).

¹² 84 Fed. Reg. 32535 (July 8, 2019).

¹³ *Id.* at 32536.

¹⁴ 84 Fed. Reg. 32580 (July 8, 2019).

exhaustive evaluation that was conducted for each of the above listed BSER candidate technologies as they relate to Longview Power LLC, thereby meeting the requirements of the federal ACE Rule.

Comment 5 (Commenters 1, 5)

The precedent that would be established by this plan as it applies to designated facilities ignores the net societal cost of increased greenhouse gas emissions on our health and our environment in favor of an industry in terminal decline, as evidenced by the consistent downward trend in the amount of coal consumed by the electric power sector since 2015 and the steady decrease in coal production in the United States due to increased competitiveness of the cost of renewable energy.¹⁵ According to the International Energy Agency (IEA) in their annual report on global energy trends, “energy produced by solar panels is now cheaper than that produced by coal- or gas-powered plants in most nations.”

Response 5

West Virginia is required to submit a State Plan to the U.S. EPA that implements the emission guidelines contained in 40 C.F.R. Part 60, Subpart UUUUa¹⁶. Section 20 of Article 5 of Chapter 22 of the West Virginia State Code requires the West Virginia DEP to submit a complete or partial State Plan to the U.S. EPA if one or more EGU facilities are voluntarily prepared to move forward with a compliance plan for one or more of their EGUs.

The partial West Virginia State Plan for Longview Power LLC meets all applicable federal requirements provided in 40 C.F.R. § 60.5735a. These elements include the identification of the designated facility, the development of the standard of performance, identification of applicable monitoring, reporting and recordkeeping requirements for the designated facility, state reporting requirements, adherence to the requirements of 40 C.F.R. Part 60, Subpart Ba, and inclusion of the information required under 40 C.F.R. § 60.5740a. The DEP clearly identified how it demonstrated each of these requirements in the State Plan.

The ACE rule does not require States to include “the net societal cost of increased greenhouse gas emissions on our health and our environment” as a component of the State Plan. The U.S. EPA; however, addressed compliance costs, domestic climate benefits, ancillary health co-benefits, and net benefits in the federal rulemaking¹⁷.

Comment 6 (Commenters 1, 5)

This is a critically consequential time for the energy sector and for the urgent global response to climate change. The Ohio Valley Environmental Coalition strongly opposes any guidelines or plans for implementation that do not fully weigh the cost of increased greenhouse gas emissions

¹⁵ Source: U.S. Energy Information Administration Annual Coal Report 2019.

¹⁶ 40 C.F.R. § 60.5710a.

¹⁷ 84 Fed. Reg. 32571 (July 8, 2019) and Regulatory Impact Analysis for the Repeal of the Clean Power Plan, and the Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units.

or other impacts of coal-fired power plants, including Longview Power LLC or other designated facilities.

Response 6

Please refer to the response to Comment 5.

Comment 7 (Commenter 2)

“Thank you for accepting my comments per the new air quality rules imposed by DEP when there weren't any needed.”

Response 7

West Virginia is required to submit a State Plan to the U.S. EPA that implements the emission guidelines contained in 40 C.F.R. Part 60, Subpart UUUUa¹⁸. Section 20 of Article 5 of Chapter 22 of the West Virginia State Code requires the West Virginia DEP to submit a complete or partial State Plan to the U.S. EPA if one or more EGU facilities are voluntarily prepared to move forward with a compliance plan for one or more of their EGUs. LVP submitted a voluntary permit application requesting a permit to establish CO₂ emission limits in accordance with the requirements of the federal ACE emission guidelines on June 1, 2020. This State Plan submittal is in response to the receipt of said permit application.

Comment 8 (Commenter 2)

I concur with all the speakers on the hearing except for Jason Bostic and Chris Hamilton who represent the coal industry lobbying organization in WV. All the other speakers were very well versed in the issue and I agree with them wholeheartedly. Alex Cole, Angie Rosser, James Kotcon, and Duane Nichols expressed my beliefs in their entirety.

Response 8

No response required.

Comment 9 (Commenter 2)

I am a member of Sierra Club and wholeheartedly endorse Jim Kotcon's comments therein. As attached.

Response 9

Please refer to responses to Commenter 3 comments and responses.

Comment 10 (Commenters 2, 3)

Please accept the following comments on behalf of the approximately 2600 members of the West Virginia Chapter of Sierra Club. We recognize that this is a partial State Plan being developed solely for Longview Power LLC, and that the rules for greenhouse gas limits (45-CSR-44) have not yet been approved in final form by the Legislature. This Partial Plan appears to be mandated

¹⁸ 40 C.F.R. § 60.5710a.

by Senate Bill 810, but nothing in that bill requires a Partial Plan to be as lax and ineffective as is being proposed here.

Response 10

The State Plan fully complies with the federal ACE Rule as demonstrated for requirement in the State Plan and expanded upon in the appendices to the State Plan. See also response to Comments 3 and 5.

Comment 11 (Commenters 2, 3)

We hope you will consider these comments as this Partial Plan incorporates language almost verbatim (from) the first proposed draft permit of its kind in West Virginia and therefore may set precedents for other permits that follow when rules are finalized.

Response 11

The DEP considers all comments received during public comment periods.

Each designated EGU in the statewide fleet is unique and will require an in-depth analysis of the data associated with that EGU, including a detailed review of the BSER candidate technologies. In its discussion about the selection of HRI as the BSER, the U.S. EPA addresses this uniqueness of EGUs by stating:

Heat rate improvement measures can be applied—and some measures have already been applied—to all existing EGUs (supporting the Agency's determination that HRI measures are the BSER). However, the U.S. fleet of existing coal-fired EGUs is a diverse group of units with unique individual characteristics that are spread across the country.¹⁹ As a result, heat rates of existing coal-fired EGUs in the U.S. vary substantially. Thus, even though the variation in heat rates among EGUs with similar design characteristics, as well as year-to-year variation in heat rate at individual EGUs, indicate that there is potential for HRI that can improve CO₂ emission performance across the existing coal-fired EGU fleet, this potential may vary considerably at the unit level—including because particular units may not be able to employ certain HRI measures, or may have already done so.²⁰

Comment 12 (Commenters 2, 3)

The Sierra Club is among many organizations challenging the EPA's Affordable Clean Energy rule as it is inadequate to address the serious threats to our climate posed by greenhouse gas emissions from fossil fuels. If that rule is overturned, we expect much more stringent emissions

¹⁹ For example, the current fleet of existing fossil fuel-fired EGUs is quite diverse in terms of size, age, fuel type, operation (e.g., baseload, cycling), boiler type, etc. Moreover, geography and elevation, unit size, coal type, pollution controls, cooling system, firing method, and utilization rate are just a few of the parameters that can impact the overall efficiency and performance of individual units.

²⁰ 84 Fed. Reg. 32535 (July 8, 2019).

reductions would be required. Likewise, the state rule 45-CSR-44, is similarly inadequate and may yet be modified by the Legislature.

Response 12

The DEP is not relying on proposed rule 45 C.S.R. 44 as the legal basis for this State Plan. For additional discussion regarding the legal authority concerning the submittal of the State Plan, please refer to section 4.9 of the State Plan.

The public comment period for proposed rule 45 C.S.R. 44 concluded July 28, 2020 after which the DEP responded to comments posed by the Sierra Club and others in the response to comment document that is part of the formal rulemaking record that is available on the West Virginia Office of the Secretary of State's website.

Section 20 of Article 5 of Chapter 22 of the West Virginia Code requires the West Virginia DEP to submit a complete or partial State Plan to the U.S. EPA by September 1, 2020 if one or more EGU facilities are voluntarily prepared to move forward with a compliance plan for one or more of their EGUs. The DEP received a permit application from Longview Power LLC on June 1, 2020 and is required by Section 11 of Article 5 of Chapter 22 of the West Virginia Code and 45 CSR 13 to issue a permit within a reasonable time not to exceed ninety calendar days, after the date the Secretary determines the application is complete; however, may extend this time by thirty days to allow for public comment. The DEP is not at liberty to await court decisions on legal actions concerning federally effective regulations prior to taking required action to implement such federal regulation. The effective date of the federal ACE Rule was September 6, 2019.

Comment 13 (Commenters 2, 3)

The specific comments below reiterate many points on our comments on Longview's draft permit and demonstrate that the draft permit is a faulty basis for this Partial Plan. We urge WV-DEP to go back to the drawing board and respond to these issues before submitting a partial plan to US-EPA.

Response 13

The DAQ issued Permit R13-3495 to Longview Power LLC on December 23, 2020 after consideration of and response to all public comments received, including those posed by the West Virginia Chapter of the Sierra Club. The responses to comments received are provided in the *Final Determination for the Construction Permit of Longview Power LLC Maidsville Facility located in Maidsville, Monongalia County, West Virginia* identified by permit application number R13-3495, facility identification number 061-00134 and dated December 23, 2020, hereafter referred to as the Final Determination. A copy of the Final Determination is provided in Appendix I to the State Plan.

The use of a permit, such as R13-3495, to establish and enforce air quality emission limitations and requirements to implement federal emission guidelines is legally grounded. The U.S. EPA allows for the establishment of the standards of performance in the form of a permit, as it states in

the preamble to the ACE Rule “state plan requirements must be fully adopted as a matter of state law, or issued as a permit, order, or consent agreement, before the plan is submitted to the EPA”²¹.

The DAQ has the statutory and regulatory authority under West Virginia Code §§ 22-5-1 et seq. to adopt and enforce rules and regulations to implement the West Virginia State Plan. The authority for 45 C.S.R. 13 is provided under West Virginia Code §§ 22-5-11, *Construction, modification or relocation permits required for stationary sources of air pollutants*. Section 5.7 of 45 C.S.R. 13 states:

The Secretary shall issue such permit or registration unless he or she determines that the proposed construction, modification, registration or relocation will violate applicable emission standards, will interfere with attainment or maintenance of an applicable ambient air quality standard, cause or contribute to a violation of an applicable air quality increment, or be inconsistent with the intent and purpose of this rule or W. Va. Code § 22-5-1, et seq., in which case the Secretary shall issue an order denying such construction, modification, relocation and operation.

Please refer to section 4.9 of the State Plan for a more comprehensive discussion concerning the legal authorities demonstrated for this State Plan compliance with 40 C.F.R. § 60.26a.

Comment 14 (Commenters 2, 3)

Section 4 states that the proposed Plan satisfies requirements for the Longview Power permit. However, that permit, like the 45-CSR-44 rule, is still “draft”. No response to our detailed comments and objections of Nov. 9, 2020 has yet been filed, and the permit does not yet appear in final form. It is inappropriate to base a State Plan on a draft permit that may yet be subject to change.

Response 14

The DEP relied upon existing West Virginia DEP legal authority for the final State Plan submittal to the U.S. EPA, as explained in detail in section 4.9 of the State Plan.

The DEP did not rely on proposed rule 45CSR44 as the legal basis for developing this State Plan. As communicated numerous times in the State Plan narrative, all references to proposed legislative rule 45CSR44 are provided solely to communicate the intention of the West Virginia DEP for the remaining designated facilities within its jurisdiction.

The DEP issued Permit R13-3495 to Longview Power LLC on December 23, 2020 after consideration of and response to all public comments received, including those posed by the West Virginia Chapter of the Sierra Club. The response to comments was sent to all public notice participants of the Longview Power LLC R13-3495 permitting process and are summarized in the Final Determination which is available as Appendix I to the State Plan. No changes were made to the final permit as a result of comments received during the public participation process.

²¹ 84 Fed. Reg. 32553 (July 8, 2019).

Please also refer to the response to Comment 24 below.

Comment 15 (Commenters 2, 3)

Section 4.1. Source Inventory. Subpart UUUUa - Identification of Designated Facilities, requires that the State identify the designated facilities covered by its plan “and all designated facilities in the State that meet the applicability criteria in §60.5775a.” This Partial Plan does not comply as it lists only the Longview facility. A Partial Plan cannot and should not be approved without a complete inventory, even if that Plan covers a more limited number of facilities. Failure to include a complete inventory means that this Partial plan may inadvertently preclude future options by requiring other plants to meet more stringent requirements to make up for the lax requirements expected of Longview. Defaulting to a draft rule and a draft permit is by no means an adequate inventory of remaining facilities, as this Partial Plan attempts to do.

Response 15

The DEP identifies in the Executive Summary (Section 1.0) of the State Plan that it is a partial State Plan submittal limited in scope to Longview Power LLC and the DEP intends to submit a State Plan that will address the implementation of the ACE emission guidelines at the remaining designated facilities to the U.S. EPA at a later time. The source inventory in section 4.1 of the State Plan, therefore, is limited in scope to the applicability of the State Plan, in this case, Longview Power LLC.

Identifying remaining designated facilities located within West Virginia at such time as the full State Plan is submitted to the U.S. EPA will not result in a change to the definition of a designated facility, as specified in the federal ACE rule, nor will it preclude any future options. The DEP is required to develop a standard of performance for each designated EGU in West Virginia in accordance with the requirements specified in the federal ACE rule and is required to evaluate the applicability of each of the BSER HRI for each designated facility on a case-by-case basis.

The DEP relies upon existing legal authority for the development of this State Plan. Please refer to the response to Comment 14 for additional discussion regarding the existing legal authority for submitting this State Plan to the U.S. EPA.

Determining the approvability of the State Plans it receives is the responsibility of the U.S. EPA.

Comment 16 (Commenters 2, 3)

Section 4.2 Emissions Inventory. Longview’s draft permit proposes several “Load Bins” to specify emissions limits at various operating loads (Partial Plan Table 4.2). One of the most effective means of limiting emissions from plants that were designed as base load units is to ensure that operators limit operations to those periods when the plant can operate at optimal design loads, rather than as load-following units that would operate a significant proportion of the time in less efficient, higher-emitting Load Bins. We are concerned that the draft permit would

therefore likely result in an even greater increase in emissions as the plant ages and becomes less competitive in the market, just at the time when significant reductions are needed.

Response 16

The standards established for LVP must be constraining and realistic both now and into the future. Owners and operators of power plants are not in control of the rate at which they are told to operate by the electrical grid operator. LVP is a relatively young plant operating for less than ten years and as a result historical data at all modes of operation is limited and thus far 90% of operations have occurred as a base load unit.

Criteria pollutants such as nitrogen oxides or sulfur dioxide, are controlled by pollution control technologies or devices that are installed within the process that are designed to directly limit the pollutant being regulated and emitted into the atmosphere. In the case of carbon dioxide emissions, commercially available proven technologies that can be installed into the process to directly limit CO₂ emissions do not yet exist. This realization is one of the reasons that the U.S. EPA identified HRI as BSER when it finalized the federal ACE Rule. The federal ACE Rule requires that the developed standards be rate-based (rather than mass-based) and in the form of pounds of carbon dioxide emitted per (net or gross) unit of electricity generated.

Given the fact that LVP has been in operation less than ten years when this State Plan was developed and for the other reasons expanded upon in the State Plan, the DEP determined that establishing the standard of performance as a weighted average, based on the operating time in each load bin, allowed the DEP to establish a constraining standard for each load bin, yet also be a viable standard into the future.

It is worth noting that operating as efficiently as possible, regardless of the load bin within which it operates, is the most economically advantageous position for LVP.

Comment 17 (Commenters 2, 3)

The Engineering Evaluation (EE) for the draft Longview permit indicates that the limits were established using annual emissions averages, plus two Standard Deviations. Nothing in the federal ACE rule nor in the proposed 45-CSR-44 state rule requires that a 2-Standard Deviation variation be considered. Incorporation of statistical variability is appropriate to reflect random, uncontrollable variability in the production process or in measurement of the emission rate, but not for controllable variability. Because the proposed standard is based on annual average emissions, variations over shorter time periods are irrelevant. The annual average emission rates at Longview are a compilation of thousands of individual measurements over the year and so, address random variability over shorter time frames. The variation in annual performance over time largely reflect matters, such as technology upgrades, ongoing maintenance schedules and operating loads that are within the control of the operator and are not random events. Other variables, such as variation in annual average cooling water temperature, that are not in LVP's control and could theoretically affect the annual average emission rate are ordinarily quite small and have not been separately determined by WVDEP. The historic emission rates at Longview

(as measured and reported by the operator to EPA) demonstrate that the plant, even at 10 years of age, has sustained and maintained rolling annual average emission rates below 1750 lb/MWh (gross) or 1925 lb/MWh (net).

Response 17

As stated previously, proposed rule 45 C.S.R. 44 has no bearing on this action, the comment period on the proposed rule concluded on July 28, 2020; therefore, no response is provided concerning the proposed rule.

The calculation of the standard of performance for each load bin based on the mean plus two times the standard deviation means, statistically speaking, 95% of the data will fall within this range. This is important especially for load bins LB-1 through LB-4 due to the smaller amount of data available in the baseline period for these load bins because Longview Power has operated over 90% of the time in LB-5. The use of the standard deviation therefore accounts for normal operational and measurement variability. It is worth noting that measurement accuracy alone can account for more variation than the use of two times the standard deviation used to calculate the standard. The amount of data available for analysis in LB-5 was not the driver for the decision; however, for consistency purposes all load bin limits (other than startup/shutdown LB-0) were calculated similarly.

The use of two times the standard deviation (2*SD) for each bin in establishing the bin limit uses the historical variability in the data to create the margin of compliance. The average plus 2*SD covers or accounts for the highest rates in each of the load bins without adding any additional margin of compliance. Thus, Longview Power cannot claim that the bin limits are not appropriate or do not account for the variability of the CO₂ emission rate in each bin.

Additional discussion and justification for calculating the load bin standards as the mean plus two times the standard deviation is available in section 4.4 of the State Plan and Appendices C and F to the State Plan.

Comment 18 (Commenters 1, 2)

The inclusion of a Unit Degradation Adjustment Factor (page 11 of the Partial Plan) is based on the assumption of degraded performance as the plant ages (Table 4.4.b.3 of the Partial Plan), yet this assumption is contrary to observed facts. Longview's own data (See Figure One, below) also show that, after initial startup issues were resolved, the emission rate improved over time (as some – but by no means all - of the recommended HRI technologies were adopted) rather than degrading. It should also be understood that these rates include operation in all Load Bins and were achieved at a time when Longview's operator was under no obligation to maintain a specific emission limitation and may have found it to be economically rewarding to operate in a fuel-inefficient manner. Thus, instead of seeking improvements in performance and reductions in emissions, the proposed limits in the draft Partial Plan would allow significant increases in greenhouse gas emissions. Including emissions rates and UDAFs for plants that have not implemented the needed O&M is inappropriate. The UDAF also allows the emissions rate

increases to compound year-over-year, thus allowing much larger annual increases in later years. There does not appear to be any evidence to justify this, where it does occur, it shows a linear, not logarithmic, increase (even in plants not required to implement Heat Rate Improvements).

Since the goal is to limit greenhouse gas emissions, we recommend that the Partial Plan use lower rates for UDAF, provide better justification for any non-zero UDAF, and apply them only to the base year, rather than using a compound interest approach as currently proposed.

Commenter 3 Figure One. Longview Rolling Annual Average Emission Rates²²



Response 18²³

None of the O&M practices that are outlined in the emission guidelines prevent unit degradation. Longview Power's efforts to operate the most efficient unit possible, continually looking for and implementing HRIs at the facility, hide the unit's decay within OPM²⁴ data. The OPM data is on a net generation basis and is responsive to operating changes that affect the auxiliary load on the unit.

The 40 C.F.R. Part 75 emission data can be used to determine a unit's heat rate; however, this data is limited because the heat rate can only be calculated on a gross basis. With the configuration of the Longview Power unit, this calculated heat rate would not take into consideration degradation of certain pieces of equipment that use electric energy to operate (e.g., electrically driven pumps, fans, mills, etc.).

²² Source: emissions data reported by Longview to USEPA www.ampd.epa.gov.

²³ Majority of this response is copied from DAQ's response to comments #10, #14, #15, and Mr. Kotcon's Comment #6 of the oral comments in the Final Determination for R13-3495.

²⁴ Black & Vetch's Online Performance Model.

The DAQ calculated the unit's heat rate on a gross basis from 2012 through 2nd Quarter 2020 by load bin. The following is the daily heat rate for Load Bin 5 with a linear trendline added to the chart.

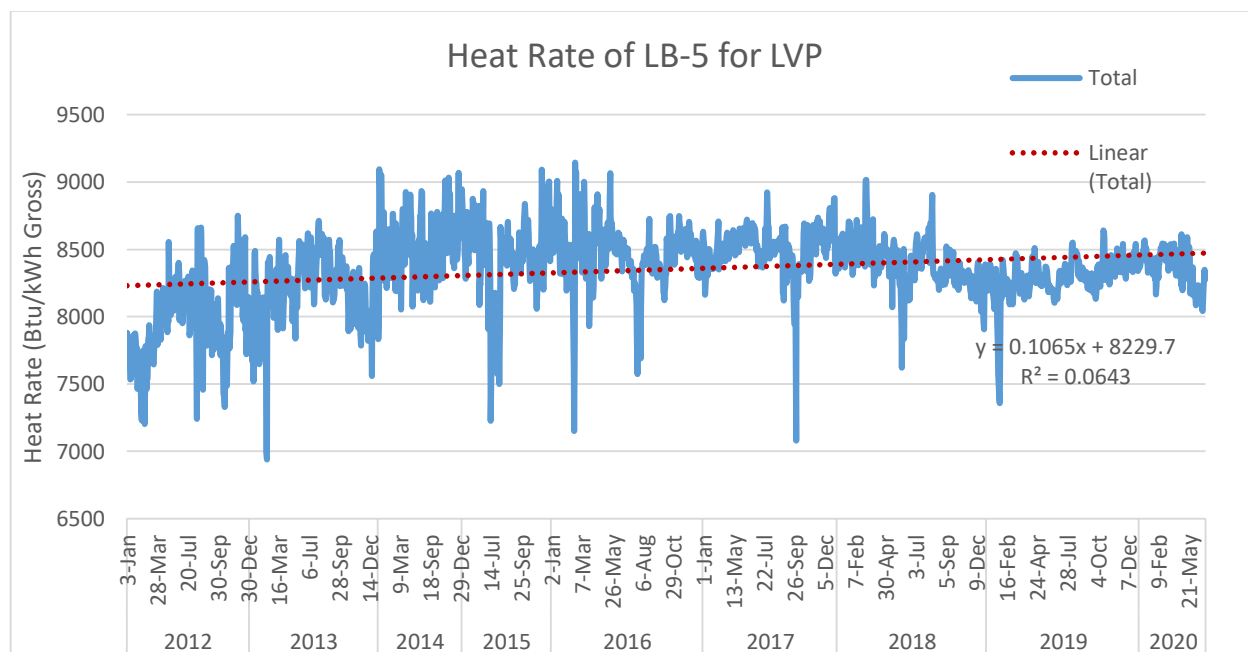


Figure 1: Chart of the Heat Rate of LB-5 for LVP

The trendline for Load Bin 5 indicates that the unit is degrading at a rate of 0.11 Btu/kWh for each operating day, which equates to an increase of 40 Btu/kWh on an annual basis. The other load bins are decaying at a higher rate than Load Bin 5, data for Load Bins 1 - 4 are presented in the following charts (see the increase of the slope of the predicted linear function for each bin).

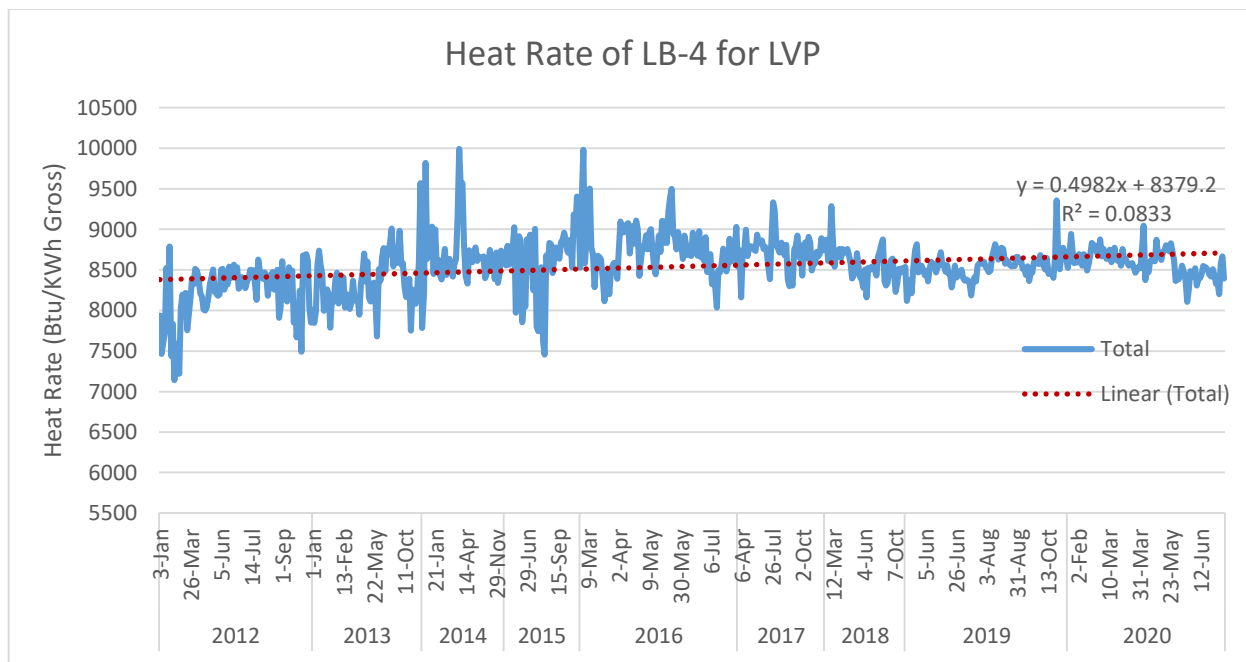


Figure 2: Chart of the Heat Rate of LB-4 for LVP

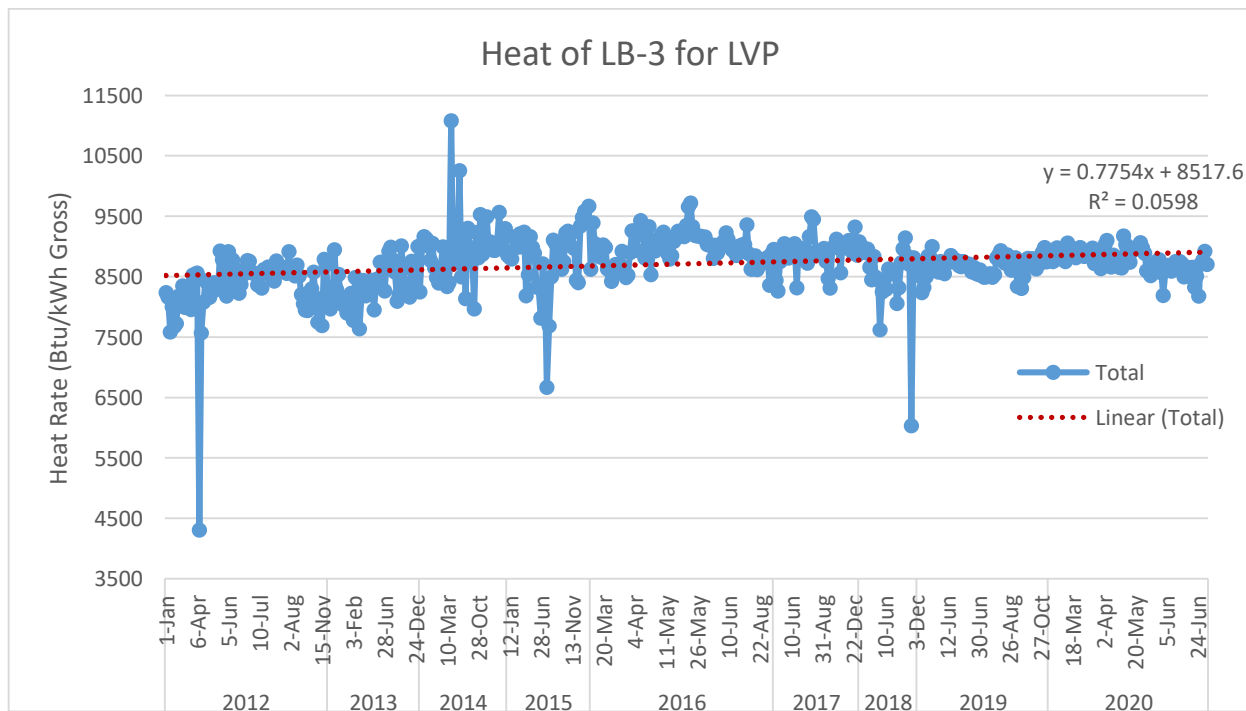


Figure 3: Chart of the Heat Rate of LB-3 for LVP

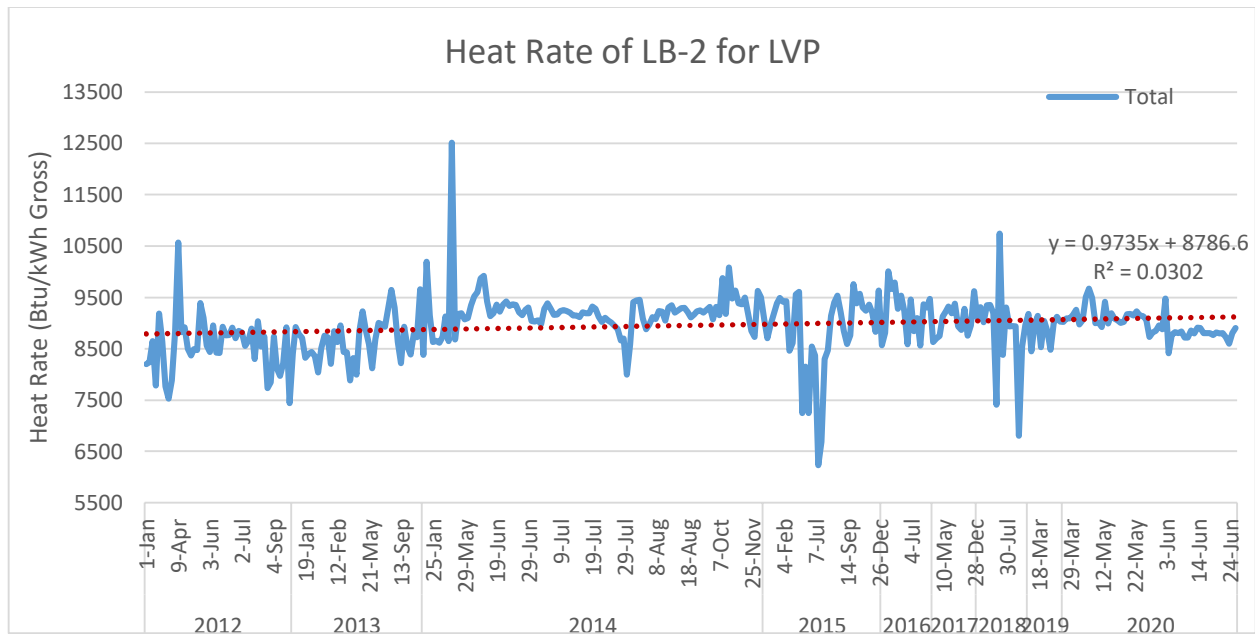


Figure 4: Chart of the Heat Rate of LB-2 for LVP

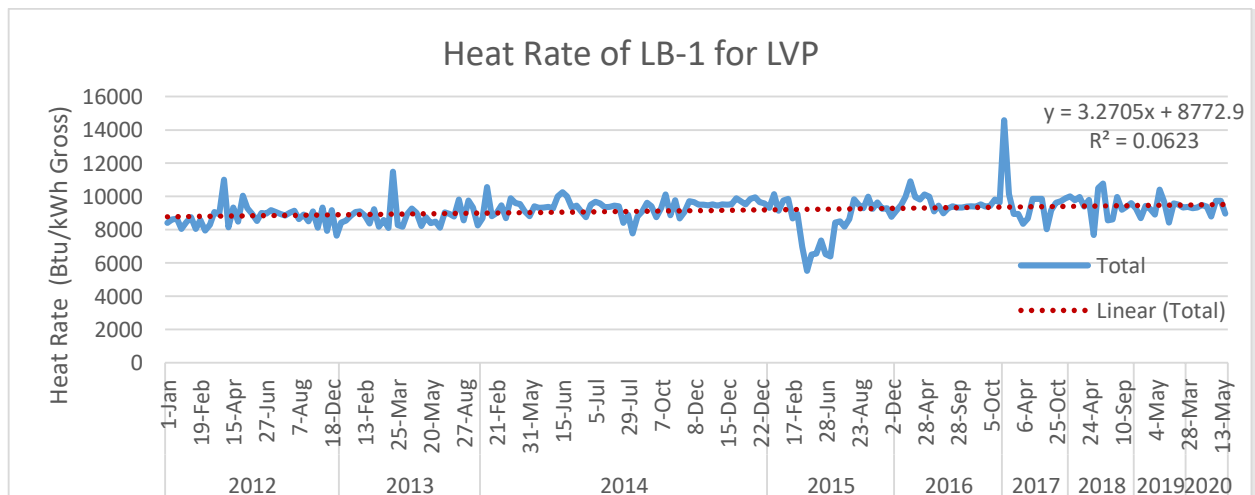


Figure 5: Chart of the Heat Rate of LB-1 for LVP

The proposed rate of 0.4% annually equates to approximately 35 Btu/kWh on an annual basis. These charts suggest that Longview Power will be required to find additional improvements to maintain compliance in the future or reduce the degradation rate by improving maintenance of equipment that affects the unit heat rate.

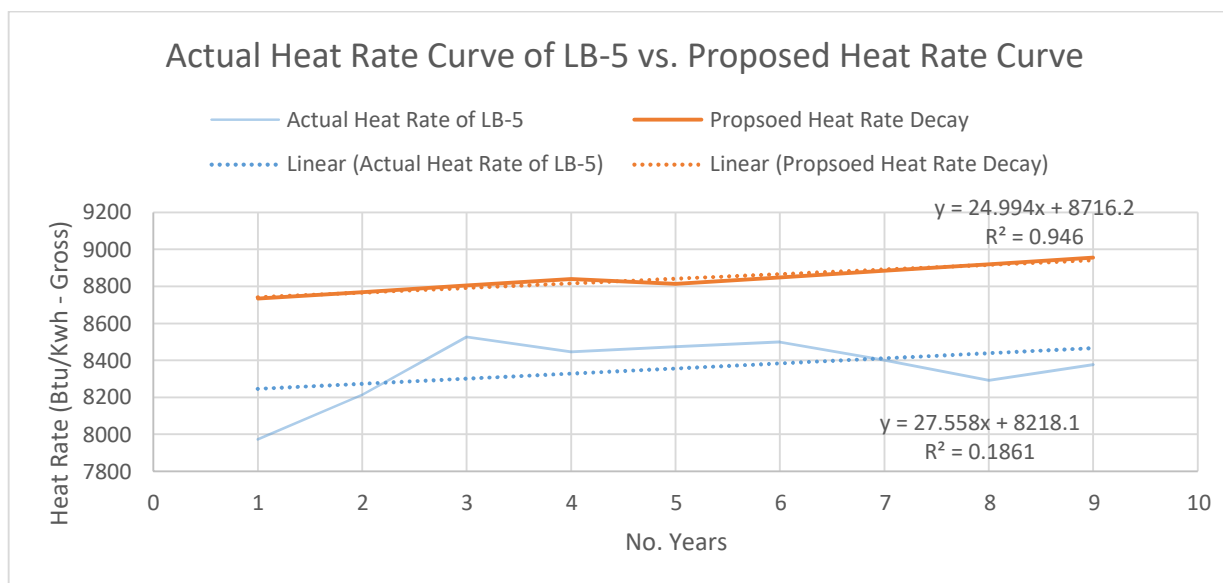


Figure 6: Actual Heat Rate Curve of LB-5 vs. Proposed Heat Rate Curve

This unit has been in service for less than ten years and most of the key pieces of equipment have not undergone a major maintenance outage. The unit will degrade (unit heat rate performance will decay) over time with or without implementing these HRI technologies. Lacking unit specific data, LVP proposed a decay and recovery rate less than the decay rate (decay curve) of similar units operating in the same regional transmission organization (PJM). The DAQ's detailed evaluation of the proposed decay and recovery curve are provided in Regulatory Applicability Section of the Engineering Evaluation. The U.S. EPA recognized degradation of equipment in its discussion of the BSER candidate technologies, such as the blade path upgrade discussion when it stated "(t)hese improvements in new turbines can also be utilized to improve the efficiency of older steam turbines whose efficiency has degraded over time."²⁵

It is always to the operator's economic advantage to operate in the most fuel-efficient manner possible, as fuel is the largest operational cost for any fossil fuel-fired EGU. Certain combinations of operating conditions may exist that compel an operator to temporarily operate in an inefficient manner, but these conditions are acutely transitory, unsustainable, unexpected, and would have little impact on the long-term average CO₂ emission rate. Longview is still a relatively new unit which has not experienced its first major maintenance outage. Over time the unit will degrade, even with all appropriate maintenance, similar to a new car which over time operates less efficiently, even with all scheduled maintenance.

Review of Figure 6 above indicates the rate of decay (slope) of the actual unit's heat rate is increasing faster than the proposed degradation rate set forth in the permit. From Figure 6, the DAQ expects that Longview Power will have to improve the unit's actual recovery rate order to

²⁵ 84 Fed. Reg. 32539 (July 8, 2019).

maintain compliance in the future (e.g., reduce the amount of heat rate that is lost due to equipment degradation) or implement additional HRI to offset the unit's degradation rate.

The DAQ reminds the reader that the UDAF includes both a degradation rate and a recovery rate, both of which are capped in 2046 and offers additional justification for the non-zero UDAF requested by the commenter. Coal-fired power plants conduct major outages to perform maintenance that cannot be performed while the EGU is in operation and must be done when the unit is out of service. These outages tend to be longer in duration, commonly lasting a few months. These outages are scheduled well in advance and are coordinated with the PJM RTO to ensure electrical grid reliability. Equipment degradation is observed between periods of major outages, with efficiencies gained following the tune-ups that occur during the major outages.

LVP has been in commercial operation less than ten years; therefore, the steam turbine for the unit has not gone through its first major outage and does not yet have any facility specific experience with how the equipment will respond following its first major outage and how much efficiency will be regained as a result of the major tune-up outage. For this reason, LVP conducted an extensive analysis of peer supercritical coal-fired plants in the PJM Interconnection to determine historical actual degradation rates over time to which the commenter refers.

When looking at unit degradation over time, fleet performance is a key indicator of what may be expected in terms of rate of decay, and in turn, CO₂ and heat rate performance degradation. While there are many factors that can influence this degradation, two critical issues are mechanical and thermal stress and corresponding decreased unit efficiency. These may be recovered in part through maintenance activities and repair/replacement of critical systems. Another factor that greatly influences unit degradation is the Capacity Factor (CF) of the unit. As units shift from traditional base-loaded operation to increased load swings, lower steady state loads, and are operated as peaking units (many startup/shutdown events), the lower efficiency inherent in units (as demonstrated by each unit's unique "Heat Rate Curve") at these lower loads and changing loads, will appear as degraded performance. While it may seem that capacity factor influence may be readily filtered out from the unit degradation due to thermal and physical stresses and associated inefficiencies, it cannot. Increased startup and shutdown (SUSD) operations, more and more radical load shifts, and increased operation at lower loads all increase physical stress, fatigue, creep, corrosion, and wear thus causing unit degradation above and beyond what may be accounted for in the observed unit efficiency reductions when operating in lower load bins.

Performance recovery after major outage work has been predicted for the LVP unit and is reflected in the degradation/recovery rate. These outages will occur in future years and while some level of performance enhancement is expected, it may not be analytically quantified at this time due to a lack of data. It should be noted that not all outage/maintenance work will sufficiently recover all damage as there are practical physical and economic limits to repair and replacements at every overhaul cycle.

The DAQ was reluctant to consider other plants data (heat rate) as a benchmark in developing the

standard or in specifically justifying Longview Power's degradation rate; however, it did so to address comments received. In a comparison of heat rates with Longview Power's unit, AEP's John W. Turk Plant in Arkansas is one of the best performing units in the U.S. Both units are comparable in age with less than a one-year difference. The Turk unit was designed to operate as an ultra-super critical unit, which is more efficient than a super critical unit. The Arkansas' Office of Air Quality provided the DAQ with heat rate data for the Turk Plant.

Before drawing any conclusions, the DAQ contacted AEP, the owner and operator of the Turk Plant, to identify key differences in the design of the Turk Plant with respect to the Longview Power Unit. The DAQ obtained and processed the Clean Air Markets Division (CAMD) data on the Turk Plant into load bins representing baseload operation in similar fashion to DAQ's approach in developing the bin limits for Longview Power.

The DAQ analyzed the heat rate data for the Turk Plant at its upper (baseload) operating bin, which is the upper one fifth of the unit's operating range²⁶. By calculating the heat rate of LB-5 using the reported hourly operating data and averaging the heat rate daily the DAQ estimated the degradation rate for this bin on an annualized basis. It should be noted that the Turk Plant operates at different steam pressures and temperatures than Longview Power. The Turk Plant consumes sub-bituminous coal as its primary fuel which has a lower heating value than the bituminous coal burned at Longview Power.²⁷ There are design and operating characteristics that make it difficult to compare these the two units.

The DAQ downloaded the CAMD data for 12 other units and processed these data sets in a similar manner. The DAQ selected these units by sorting the U.S. EPA National Electric Energy Data System (NEEDS) database of EGUs by plant type: steam coal; online year: 2003 and newer; capacity (MW): 500 or greater than; and, a heat rate (Btu/kWh): 9,773 or less. The DAQ focused on the units burning only bituminous coal and the comparable units were thus reduced to four units at three different facilities.

The DAQ analyzed the heat rate of each of these units using a moving (rolling) average of the actual heat rate on an interval of 12 months. The data clearly indicated a degradation rate higher than what Longview Power LLC proposed. It should be noted that the DAQ could not explain the heat rate curves for all of these best performing newer units and, therefore, did not rely on this analysis to justify the use of the proposed degradation rate in the UDAF in the State Plan. The DAQ has no means to determine or verify that maintenance practices for these other units are being implemented in a sound and timely manner in an effort to minimize the effects of unit degradation, because they are outside of the units regulated by the State of West Virginia. The DAQ does not have the in-depth knowledge of these units, as it does with the EGUs within its jurisdiction. There could be other changes or factors at these facilities that could be affecting the unit heat rate or CO₂

²⁶ John W. Turk Plant, ORRIS No. 56564, Reported Emissions data to U.S. EPA CAMD.

²⁷ Energy Information Administration, Form 923 for 2019, [Form EIA-923 detailed data with previous form data \(EIA-906/920\)](#).

emission rate which are unknown to the DAQ. Following this additional analysis, the DAQ confirmed its conclusion that the UDAF developed for LVP is reasonable.

Please also refer to the response to Comment 3 and 44.

Comment 19 (Commenters 2, 3)

The use of 2014-2018 data to calculate the average and Standard Deviation inflates the emissions because 2014 occurred before installation of certain HRIs, such as the Neural Network Upgrade (June 2015) and the Intelligent Combustion (Fall 2018). It certainly inflates the estimate of Standard Deviation because it includes higher rates from those years with lower rates in 2019-2020 in that calculation. Indeed, because of the increased Standard Deviation that results, the inclusion of the lower emission rates in 2017 and 2018 actually increases the proposed emission rate over what it would have been had only the pre-modification date (2014 to 2016) been employed. It is inappropriate to establish a standard for operation with HRIs by including emission data from years of operation without those HRIs. Yet the EE clearly states (page 22, repeated on page 23) that:

“the entire baseline period was used for developing the standards for all of the bins”.

The most appropriate approach would be to estimate the variability in emissions based solely on 2019 and 2020 data, because those are the only data for emissions with all HRIs in place. The mean and the variance can be estimated from the hourly emissions data from those years. Thus, the mean for all emissions in 2019 should be 1899 lbs/MWh or lower.

Response 19²⁸

The baseline period ultimately selected to calculate the standard is 2016 through the second quarter of 2020 because all BSER HRIs were installed prior to this timeframe, specifically so the standard was calculated after the BSER HRIs were implemented. The comment that 2014-2018 data was used to calculate the standard and the commenters assertion that the standard was inflated as a result are incorrect. Intelligent combustion HRI is not identified as a BSER candidate technology in the emission guidelines and therefore has no bearing on the selection of the baseline period.

The DAQ’s decision to retain the baseline period as 2016 through the second quarter of 2020 remains appropriate for the reasons previously identified in the State Plan, including Appendices C and F.

Please also refer to the response to Comments 17 and 20.

Comment 20 (Commenters 2, 3)

The 2019-2020 data represent a mean over hours of operation that include all of the operating loads. Figure 8 of the EE indicates that Longview operated at something less than 90 % of the time, and Figure 12 suggests that the plant was operating in Load Bin 0 (<40 % capacity)

²⁸ Majority of this response is copied from the Response to Comment #11 in the Final Determination.

approximately 50-100 hours in 2019 when would have the highest emissions rates, and had a significant number of operating hours in Load Bins 1-4 in 2019-2020. Table 4 (page 23 of the EE) implies that emissions limits were calculated using emissions data for the respective Load Bins, however, those means do not match the levels in the draft permit. It is inappropriate to establish a standard for operation with HRIs during periods of peak performance (full capacity loads) by including emissions data from hours of operation at lower unit loads, when emissions per MWh are higher.

Response 20²⁹

As noted by the commenter, 1st and 2nd Quarters of 2020 contains emissions data that increase the number of data point for the lower load bins. Longview Power and the DAQ added this additional time to the base period to increase the amount of data for the lower load bins which was needed to allow the use of a cumulative approach to refine the data with an acceptable standard deviation for each of the bins. This additional data by itself would not be sufficient in developing a limit for these lower bins, which will be explained in further detail in this response.

The use of load bins allows the DAQ to evaluate the unit's emission data and limit the variability to load bins. Furthermore, the standards or limits are weighted averages for each load bin based on the number of hours operated in a particular load bin and the established limit for that load bin. To clarify, if the unit operated in LB-5 (i.e., full capacity load range) 100% of the time, the lower load bin limits would have no effect on the LB-5 limit.

The DAQ was tasked in this review process to develop and establish a realistic performance standard that is both constraining and achievable. Looking at a shorter baseline period limits the amount of data (number of data points) to be considered in the lower load bins. Such data is needed for the approach that the DAQ used to develop the standard.

The following table was developed using CY 2019 unit data through 2nd Quarter 2020 unit data as suggested by the commenter.

²⁹ Majority of this response is copied from the Response to Comment #12 in the Final Determination

Table 2 Evaluating Longview Power Emissions Data from 2019 through 2nd Quarter of 2020³⁰		
	Shorten Baseline Period of 2019 to 2020 2nd Qtr.	Baseline Period of 2016 to 2020 2nd Qtr.
	CO₂ Rate (lb/MWh-net)	
Average Rate for LB-1	2140	2183
Count for LB-1	11	24
Standard Deviation of LB-1	96	22
Commenter's Suggested Limit for LB-1*	2333	2,231
Average Rate LB-2	2038	2050
Count for LB-2	11	25
Standard Deviation of LB-2	54	29
Commenter's Suggested Limit for LB-2*	2146	2108
Average Rate for LB-3	1993	1998
Count for LB-3	17	34
Standard Deviation of LB-3	36	26
Commenter's Suggested Limit for LB-3*	2065	2050
Average LB-4	1952	1966
Count for LB-4	18	38
Standard Deviation of LB-4	32	18
Commenter's Suggested Limit for LB-4*	2015	2002
Average Rate for LB-5	1893	1916
Count for LB-5	18	42
Standard Deviation of LB-5	21	21
Commenter's Suggested Limit for LB-5*	1935	1958

* The bin limit was calculated by adding the average for the bin to two times the standard deviation for the bin.

As shown in Table 2 above, for Load Bins 1-4, the commenter's suggested approach for calculating the standard is based on fewer data and results in a less stringent standard for those load bins. The average rate for each bin using the shorter period is lower than the average rate based on the selected baseline used to develop the proposed standards. This shorter period does not reduce or minimize the variability in the hourly rates by bin, which is indicated in the standard deviation in the above table except for Load Bin 5. The 95% confidence level of the data for the shorter period ranges from 10.4 for Load Bin 5 to 64.7 for Load Bin 1.

The 95% confidence level from the approach used in the permit ranges from 6.0 (for Load Bin 4) to 12.1 (for Load Bin 2). This approach gave the DAQ a reasonable level of confidence that future carbon dioxide emissions rates should comply with the permit over the whole normal operating

³⁰ Data Source used to determine the values in the table is Clean Air Markets Division of Longview Power, ORIS 56671, Quarter 1, 2, 3, 4 of 2019, and Quarter 1, 2, and 3 of 2020. U.S. EPA Field Audit Checklist Tool Version 1.6.0.3 was used to obtain these data set from CAMD.

range of the unit. The 95% confidence level for the shorter baseline period is almost nonexistent in the lower- to mid-operating ranges. For LB-1 with the shorter baseline period, the standard deviation was determined to be four times higher than the standard deviation determined using the four and half years of data for the baseline period with the DAQ approach.

Due to these low confidence levels using the data from the shorter baseline period, the method used to account for the whole or nearly the whole population of the data ($2*SD$) in the load bin limits would need to be revisited as well. Two times the standard deviation (critical value) would only account for the whole population of the data for Load Bin 5. $2*SD$ does not account for the highest rate from the population. To account for this issue, the individual bin limits for the normal operating range would be raised even higher than listed in the above table.

The processed data using the suggested shorter baseline does not minimize the variability in the data. The standard deviation from the shorter baseline period ranged from a low of 21 for LB-5 to a high of 96 for LB-1. The DAQ used a 12-month rolling average to refine the monthly data to yield a standard deviation that ranged from a low of 18 for LB-4 to a high of 29 for LB-2.

Another approach suggested by the commenter that might seem appropriate is the use of the highest reading from each bin using the reduced baseline period. These readings are presented in the following table.

Table 3. The Highest Rate by Load Bin from 2019 through 2nd Quarter of 2020³¹			
Load Bin No.	Commenter's Suggested Limit from Table 2	Highest Rate from 2019-2020 2nd Qtr	Highest Rate from 2016 to 2020 2nd Qtr
	lb/MWh- Net	lb/MWh- Net	lb/MWh- Net
Highest Reading for LB-1	2,333	2,373	2,229
Highest Reading for LB-2	2,146	2,093	2,096
Highest Reading for LB-3	2,065	2,038	2,036
Highest Reading for LB-4	2,015	2,031	1,998
Highest Reading for LB-5	1,935	1,920	1,942

The suggestion of only using the narrow period that indicates a better CO₂ performance from the unit is not a reasonable alternative for developing a limit or standard. This shorter baseline would raise another issue in establishing a compliance period that is representative of the developed standard. Load Bin 4 and 5 could be set on an 18-month basis because there were data in every month of the shorter baseline period for these two load bins. Load Bin 3 would only have 17 data points, which is not enough for developing an 18-month standard/limit. Bins 1 and 2 have less than 12 data points which is not enough to develop an annual standard. The method(s) used to

³¹ Data Source used to determine the values in the table is Clean Air Markets Division of Longview Power, ORIS 56671, Quarter 1, 2, 3, 4 of 2019, and Quarter 1, 2, and 3 of 2020. U.S. EPA Field Audit Checklist Tool Version 1.6.0.3 was used to obtain these data set from CAMD.

develop bin limits and/or standard(s) must be representative of the time frame for the compliance period.

By using 4.5 years of data, the baseline period contained enough data in each load bin to use a cumulative approach – taking the monthly data and determining a rolling 12-month average for each bin. Second, the DAQ approach did not exclude or omit any of the emissions data from the baseline period. In selecting an averaging period using the shorter baseline period, the compliance period would have to be on a quarterly basis.

The use of two times the standard deviation ($2*SD$) for each bin in establishing the bin limit uses the historical variability in the data to create the margin of compliance. The average plus $2*SD$ covers or accounts for the highest rates of each of the load bins without adding any additional margin of compliance. Thus, Longview Power cannot claim that the bin limits are not appropriate or do not account for the variability of the CO_2 emission rate by each bin.

The reduced baseline period would not result in a more constraining standard than the limit proposed in the permit, except for Load Bin 5. The bin limits developed in the draft permit are less than the limits from the shorter baseline period. The DAQ looked at several different approaches or other methods to develop either bin limits and/or the standard, which yielded nearly the same results as those developed using the shorter baseline period suggested by the commenter.

Tables of the monthly rates and descriptive statistics based on the unit's emission data from 2019 through 2nd Quarter 2020 can be found in Appendix A to the final determination, provided in Appendix I to the State Plan.

Comment 21 (Commenters 2, 3)

Section 4.4.b. (Partial Plan). The Longview Power Source Specific Demonstration establishes two levels of performance. Creation of Level 2 limits that apply during other than normal operations creates an incentive to continue operating even when repairs are needed. The provision that the plant can operate for up to 180 days at the Level 2 emissions limits, and “shall be deemed approved...” (draft permit) places the burden on WV-DEP to affirmatively verify if the incident qualifies as a Level 2 event and provides no means for the public to determine whether WV-DEP's determinations are correct or to challenge any WV-DEP determinations. The provisions give too much incentive to Longview to declare such events for relatively minor problems, problems that the O&M practices should prevent and too much of an administrative burden of WV-DEP. There is no limit in the draft permit on how often a Level 2 event might be declared, nor whether overlapping events might allow Longview to operate indefinitely with Level 2 limits. We recommend that the Partial Plan be modified so that the hours of Level 2 operation be restricted to less than 8 hours per event (to allow for shut down of the unit) to prevent unwarranted emissions from running at Level 2 indefinitely.

Response 21³²

The 180-day allowance for Level 2 events allows LVP to maintain critical grid-support operations in the event of major equipment failure should the unit be called upon by PJM to maintain operations. The purpose of the Level 2 limit is to encourage Longview Power to develop a plan, prepare for repairs, and coordinate with the RTO to minimize the time the unit operates at Level 2. Requiring the DAQ approval could prevent the unit from operating during times of critical load generation required by the RTO or require the RTO to call up less efficient unit(s) that would not normally operate to make up the difference in loss generation.

The Level 2 provisions should encourage LVP to identify these impaired operations timely and complete repairs in a timely fashion versus operating the unit impaired using the margin of compliance in hopes the unit can make it to the next major maintenance outage without resulting in an exceedance of the standard. Major maintenance outages are normally scheduled every 5 or 6 years.

The suggestion made by the commenter does not encourage operators to identify the issue that is impairing their unit operations. Instead, the suggestion would encourage the operator to fix the unit to point that the unit can be operated at an impaired performance level, not inform the DAQ of the impaired operations and make required repairs at the next planned major outage, which may be years down the road. The Level 2 provisions allow the unit to still generate revenue for the operator while waiting for resources to be made available to make the repairs.

After consideration, the DAQ determined that the suggested time frame of 8 hours for Level 2 (impaired operation) is unreasonable. For an annual compliance period, a single event of 8 hours would not affect compliance unless that impairment or damage increased the unit's heat rate by more than 10%. The suggestion of setting a maximum duration of operating at Level 2 was not adopted.

Comment 22 (Commenters 2, 3)

The Partial Plan has apparently uncritically accepted Longview's assertions regarding Heat Rate Improvement technologies. For example, it appears that the intelligent soot-blowing system performed better than EPA's estimated range would suggest. However, there is no evaluation as to whether the "intelligent combustion system" is a BSER-level of application of the technology. No data concerning the performance of the heaters and duct leakage was reviewed by DEP. Nor did DEP evaluate what technical improvements were available. DEP offers a number of general conclusions regarding O&M practices, but does not provide any specifics as to the nature and rigor of Longview's O&M practices, how they differ from those at other plants and why they are BSER. The list of practices that should be evaluated is lengthy, well beyond what Longview described in their application. We recommend that WV-DEP seek an independent analysis of HRI technologies.

³² Majority of this response is copied from the response to Comment #13 in the Final Determination.

Response 22³³

The U.S. EPA identified a list of “candidate technologies” of the BSER that included technologies, equipment upgrades, and operating and maintenance practices that were deemed most impactful because they can be applied broadly and are expected to provide significant HRI without limitations due to geography, fuel type, and other characteristics. Those candidate technologies must be evaluated in establishing a standard of performance for each affected source within the state boundary. “(S)ome existing EGUs will have already implemented some of the listed HRI technologies, equipment upgrades, and operating and maintenances practices. There will also be unit-specific physical or cost considerations that will limit or prevent full implementation of the listed HRI technologies and equipment upgrades.”³⁴ The list of candidate technologies include: neural network/intelligent sootblower, boiler feed pumps, air heater and duct leakage control, variable frequency drives, blade path upgrade (steam turbine), redesign/replace economizer, and improved operating and maintenance practices.³⁵ The “intelligent combustion system” was not identified by the U.S. EPA as a BSER candidate technology. Please refer to pages C-44 through C-58 of Section D, *Determination of Emission Limitation Achievable from Application of HRI BSER Candidate Technologies in §60.5740a(a)(1) and (2)*, of Appendix C to the State Plan for an in-depth discussion of the analysis conducted by the DAQ concerning these candidate technologies that is more comprehensive than the information provided in the permit application to which the commenter referred.

The emission guideline does not require that the applicant’s heat rate improvements be compared to other units or heat rate studies be conducted by independent firms.

The U.S. EPA determined that it would be best to allow the states to establish performance standards on an individual unit basis due to the differences in operating characteristics, designs, fuel types, and other factors. There are numerous factors that will affect a unit’s heat rate. To compare different units on a unit-by-unit basis, the actual design, operating mode, fuel, and maintenance plans would, at a minimum, need to be determined for both units.³⁶

The emission guidelines do not require the affected units to measure their improvements. Not all HRIs are measurable because they are small and are often within the variation of the measurement instrument’s margin of error. Therefore, the degree that a specific improvement makes on a unit’s heat rate is difficult to measure or quantify. One piece of the system could be degrading and hide an improvement in another part of the system. The unit’s heat rate may not improve because other downstream process equipment may not be capable of taking advantage of the improved efficiency of the upstream process. Additionally, some HRIs will only improve the heat rate on a net generation basis and cannot be observed on a gross generation basis.

³³ Majority of this response copied from the response to Comment #16 in the Final Determination.

³⁴ 84 Fed. Reg. 32537. (July 8, 2019).

³⁵ 84 Fed. Reg. 32536-32537. (July 8, 2019).

³⁶ U.S. EPA, Regulatory Impact Analysis for the Repeal of the Clean Power Plan, and the Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units, June 2019, page ES-14.

The baseline period used for Longview Power is representative of the HRIs already implemented which EPA determined to be BSER candidate technologies. The emission guidelines require, for those BSER candidate technologies which have not been implemented but are feasible to implement, the potential improvement of such candidate technology to be identified and applied to the actual standard. However, during the evaluation for LVP, no other HRIs were found that meet these criteria and, therefore, no adjustments were made.

It should be noted that the emission guidelines do not specify that a source must implement a particular HRI to achieve compliance.³⁷ The operator has a choice of which measures or technologies to implement to achieve compliance with the standard by the compliance date. The implemented HRI technologies may be different than the technologies that were identified as BSER candidate technologies.

Longview Power did have an independent firm evaluate the feasibility of the feed water pump, and variable frequency drives HRI candidates with respect to their unit.³⁸

Please also refer to the response to Comments 3 and 4 above.

Comment 23 (Commenters 2, 3)

WV-DEP has apparently accepted Longview's contention that they will continue to operate as a base load plant (page 48 of the EE), however, this ignores the abundant evidence of market realities in our region. Use of coal as a fuel for generating electricity is declining, and the Capacity Factor of plants is declining as well, as demonstrated in Figure 19 of the EE. Most projections show that this rate of decline will accelerate in coming years. That means it is realistic to expect an increased frequency of operations in Load Bins 1-4, and especially, an increase in Load Bin 0, as the plant shuts down more often. The goal of regulating greenhouse gas emissions is to prevent just such increases. We recommend that total emissions per year be capped in the Partial Plan, to prevent Longview from "gaming" the system and dramatically increasing greenhouse gas emissions by operating in inefficient Load Bins or engaging in excessive shut downs and start-ups. Furthermore, WV-DEP should require Longview to evaluate feasibility of additional Heat Rate Improvement technologies in these reduced unit Load Bins.

Response 23³⁹

Understanding the historic operating mode is important in processing the data. Market conditions and the unit's operating cost will determine how the unit will operate in the future. By establishing the limits on a bin basis and setting the standard on a weighted-average basis, the operating mode of the unit does not affect the unit's ability to comply with the standard. These bin limits are based on operating data within the selected base line period and, therefore, are representative of the unit's operating efficiency within the respective operating loads.

³⁷ 84 Fed. Reg. 32555 (July 8, 2019).

³⁸ Black & Vetch, Longview Unit 1 Heat Rate Study, July 31, 2020. (Appendix J to the State Plan).

³⁹ Majority of this response copied from response to Comment #17 in the Final Determination.

Capping mass emissions is not an option for states to use in establishing emission limits in accordance with the emission guidelines. The regulation is very clear that the standard must be performance-rate based relating the mass of carbon dioxide emitted per unit of energy.⁴⁰ The regulation prohibits a mass-based form for the performance standard.

The limits in Permit R13-3495 do not relieve LVP of the responsibility to comply with all of the requirements established in R14-0024G which includes a limit on the amount of heat energy that can be burned in their electric generating unit (EGU). This heat energy input limit indirectly caps Longview's carbon dioxide emissions on a mass basis. However, this indirect cap is not in the form of the CO₂ standard as set forth in the emissions guidelines⁴¹ and, therefore, is not acceptable as a limit in Permit R13-3495. Permit R13-3495 does not replace or increase this heat input restriction in Permit R14-0024G.⁴²

Comment 24 (Commenters 2, 3)

The legal authority to approve the voluntary permit for Longview is based on 45-CSR-13, (Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, Permission to Commence Construction, and Procedures for Evaluation). This state rule is for "Construction permits", and it is not clear that this is intended to authorize permits for greenhouse gas emissions for facilities in perpetuity. In fact, the proposed permit does not authorize ANY new construction, nor does it even require installation of any additional pollution control equipment. Yet this perpetual permit is what the Partial Plan appears to authorize. West Virginia would be on much firmer legal ground by delaying this until the WV legislature has a chance to act on the proposed rule, 45-CSR-44.

Response 24

The existing legal authority that the West Virginia DEP relied upon in the State Plan is enumerated in the implementation of emission guidelines and the legal authority sections (4.8 and 4.9 respectively) of the State Plan, the key points of which are provided below in regard to this comment:

- Voluntary permits are allowed under section 5.5 of 45 C.S.R. 13.
- Greenhouse gases meet the definition of a regulated air pollutant under §45-13-2.20.e because greenhouse gases are subject to a new source performance standard promulgated under CAA § 111 (including section 111(d)), in the form of CO₂.
- LVP submitted a voluntary permit application to the West Virginia DAQ on June 1, 2020 for the purpose of obtaining a carbon dioxide emission limit in accordance with the emission guidelines of 40 C.F.R. Part 60, Subpart UUUUa.
- West Virginia DAQ deemed the LVP permit application complete on July 29, 2020.

⁴⁰ 40 C.F.R. § 60.5755a(a)(1).

⁴¹ *Ibid.*

⁴² Permit R14-0024G, Condition 5.1.1.a.

- West Virginia DAQ went to public notice for Permit R13-3495 on October 9, 2020, held a public meeting on October 27, 2020, and concluded the public comment period on November 9, 2020.
- Permit R13-3495 was issued December 23, 2020 and is provided in Appendix I of this State Plan.
- Permit R13-3495 was issued to LVP under the authority of West Virginia Code § 22-5-11 by the West Virginia DAQ.
- Under West Virginia Code § 22-5-6, the violation of a permit is subject to the same enforcement remedies as the violation of a rule.
- Senate Bill 810, passed during the West Virginia Legislature's 2020 Regular Session and became effective June 2, 2020, amended § 22-5-20 of the West Virginia State Code relating to the development of a State Plan to implement the federal ACE rule. It requires the West Virginia DEP to submit a complete or partial State Plan to the U.S. EPA if one or more EGU facilities are voluntarily prepared to move forward with a compliance plan for one or more of their EGUs.

The DAQ permits issued under 45 C.S.R. 13 do not have expiration dates unless it is a temporary permit. If the source continues to operate under the terms and conditions of the permit and does not make physical or operational changes, the permit remains valid. Operating permits issued under 45 C.S.R. 30 (Title V) have expiration dates after five years. LVP will be required to incorporate the terms and conditions of R13-3495 into its Title V Operating Permit.

Comment 25 (Commenters 2, 3)

The Partial plan is incomplete, it is overly lax and authorizes excessive emissions (even under the very lax ACE rule), and it is an open-ended permit to pollute indefinitely. We recommend that the Partial Plan be delayed, and that more stringent pollution controls and heat rate Improvements be required.

Response 25

The State Plan is complete because the DEP demonstrated that all requirements established in the federal emission guidelines of 40 C.F.R. Part 60, Subpart UUUUa, *Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units*, and the federal implementing regulations of 40 C.F.R. Part 60, Subpart Ba, *Adoption and Submittal of State Plans for Designated Facilities*, are fully met for the LVP designated facility. Further details regarding the demonstrated requirements for the State Plan are provided in Section 4.0 of the State Plan and in the accompanying Appendices to the State Plan.

The standards of performance were determined in accordance with the above referenced federal requirements established by the U.S. EPA. The DEP does not consider the emission standards developed for LVP to be lax or excessive. Because a specific concern was not identified in the comment, the DEP directs the commenter to Appendix C of the State Plan, *Standards of Performance Demonstration*, for a detailed analysis and discussion concerning the development

of the standards of performance, to the *Final Determination for the Construction Permit of Longview Power LLC Maidsville Facility located in Maidsville, Monongalia County, West Virginia* for Permit R13-3495, provided in Appendix I of the State Plan, and the *Engineering Evaluation/Fact Sheet* for Permit R13-3495 provided in Appendix I of the State Plan, for additional explanation and justification regarding the standards of performance.

Permits issued under 45 C.S.R. 13 do not have expiration dates unless the permit is a temporary permit. If the source continues to operate under the terms and conditions of the permit and does not make physical or operational changes that would necessitate a revision, the permit remains valid. Operating permits issued under 45 C.S.R. 30 (Title V permits) have expiration dates of five years. LVP will be required to incorporate the terms of Permit R13-3495 into its Title V permit.

The State Plan submittal is required by West Virginia State Code⁴³ as previously mentioned and cannot be delayed, as requested by the commenter. There are no further heat rate improvements from BSER candidate technologies that can be implemented at LVP. Please refer to the response to Comment 4 above for additional explanation of the candidate technologies identified as BSER HRIs and to Appendix C to the State Plan for discussion regarding the analysis of the candidate technologies for LVP.

Comment 26 (Commenter 4)

The Greenhouse Gas problem on Earth has reached crisis level and action is urgent.

Response 26

No response required; there was no specific comment related to the proposed WV ACE State Plan.

Comment 27 (Commenters 4, 9)

Greenhouse Gases (GHG) have been accumulating in the Earth's atmosphere since the beginning of the industrial revolution; and now the concentration and continued accumulation is a crisis problem for the world. The United Nations has issued various warnings, as CO₂ has risen to over 400 ppm and continuing to increase.

Response 27

No response required; there was no specific comment related to the proposed WV ACE State Plan.

Comment 28 (Commenters 4, 9)

Scientific studies have now shown that worldwide damages and impacts are resulting including severe climate changes, growing-season alterations, melting of glaciers and the ice in polar regions, release of methane from bogs and other formations, general heating of the oceans, and of course we are aware of the resulting sea level rise,... etc. All these and other impacts are intolerable for the long-term future of mankind. GHG must be curtailed.

⁴³ W. Va. State Code § 22-5-20.

Response 28

No response required; there was no specific comment related to the proposed WV ACE State Plan.

Comment 29 (Commenters 4,9)

The West Virginia Department of Environmental Protection by law has a responsibility to preserve and protect our State from all environmental impacts and to advise and lead the government and the public fully about these, not to be serving of a specific industry. So it is with the GHG in the atmosphere, to prevent, to reduce, to control, and to advise regarding these GHG.

Response 29

The submittal of this State Plan by the DEP to the U.S. EPA is consistent with the declaration of policy and purpose for Air Pollution Control as provided in Section 1 of Article 5 of Chapter 22 of the West Virginia State Code which states:

It is hereby declared to be the public policy of this state and the purpose of this article to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

To these ends it is the purpose of this article to provide for a coordinated statewide program of air pollution prevention, abatement and control; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; to assure the economic competitiveness of the state by providing for the timely processing of permit applications and other authorizations under this article; and to provide a framework within which all values may be balanced in the public interest.

Further, it is the public policy of this state to fulfill its primary responsibility for assuring air quality pursuant to the “Federal Clean Air Act,”⁴⁴ as amended.

Section 20 of Article 5 of Chapter 22 of the West Virginia Code requires the West Virginia DEP to submit a complete or partial State Plan to the U.S. EPA by September 1, 2020 if one or more EGU facilities are voluntarily prepared to move forward with a compliance plan for one or more of their EGUs. As mentioned elsewhere in this response to comments document, Longview Power LLC submitted a voluntary permit application to the DAQ on June 1, 2020 to establish a carbon dioxide emission standard using the BSER provided in the emission guidelines of 40 C.F.R. Part 60, Subpart UUUUa for its pulverized coal-fired steam generating unit. The DAQ issued Permit R13-3495 in accordance with the West Virginia Air Pollution Control Act⁴⁵ and 45 C.S.R. 13 on December 23, 2020.

⁴⁴ 42 U.S.C.A. § 7401 et seq.

⁴⁵ West Virginia Code §§ 22-5-1 et seq.

For additional discussion regarding the existing legal authorities, please refer to the response to Comment 24.

Comment 30 (Commenters 4, 9)

So, in this case for the atmosphere we should be preventing emissions, reducing them, controlling them and advising others. It is unacceptable to establish standards for GHG emissions that allow more than the absolute minimum. Rather it is necessary that provisions in recommendations, standards and practices be to severely reduce and eliminate these gases and chemicals. No grace period is appropriate or tolerable because our problems are immediate, the impacts are here and now!

Response 30

The initial compliance period for the underlying Permit R13-3495 commences January 1, 2021 and concludes December 31, 2021. Subsequent compliance periods shall follow thereafter. The State is required to submit progress reports on plan enforcement to the U.S.EPA on an annual basis, commencing with the first full report period after approval of the State Plan, or after promulgation of a plan by the Administrator as discussed in section 4.7 of the State Plan. There is no grace period provided for in the State Plan.

Please also refer to the response to Comments 3 and 4 regarding the development of the standards of performance for LVP. It is also worth noting that West Virginia State Code § 22-5-4(4) prohibits any air quality program to be more stringent than any federal rule or program.

Comment 31 (Commenter 4)

The guidance of the WV-DEP must be the facts and the science. No political act can be allowed to substitute as justification for concerted action. The direction of GHG must be for less emissions, for greater reductions, for no temporary or intermittent increases.

Response 31

Actions taken by the West Virginia DEP are in accordance with state and federal regulatory requirements, are data driven decisions based on engineering analysis, and are consistent with the Clean Air Act, as amended. The State Plan meets fully the State Plan requirements for the emission guidelines provided under 40 C.F.R. Part 60, Subpart UUUUa and the implementation requirements provided under 40 C.F.R. Part 60, Subpart Ba for LVP.

The submittal of the State Plan to the U.S. EPA meets the intentions of West Virginia State Code § 22-5-20 that requires the DEP to submit a complete or partial State Plan to the U.S. EPA by September 1, 2020 in the event one or more EGU facilities voluntarily submit a permit application requesting emission standards in accordance with the federal emission guidelines. LVP submitted such voluntary application to the DEP on June 1, 2020. For additional discussion concerning the

permitting action, please refer to the final determination⁴⁶ and engineering evaluation⁴⁷ corresponding to LVP Permit R13-3495 issued December 23, 2020 and provided as Appendix I to this State Plan.

Please refer to the responses to Comments 3, 4, and 5 for further technical discussion regarding the development of the emission standards.

Comment 32 (Commenter 4)

Seaweed varieties have been discovered that when mixed with cattle feed will substantially reduce methane emissions from the cattle. WV-DEP should help in the evaluation and promotion of any GHG control methodologies, not in procedures to facilitate GHG emissions.

Response 32

No response required; there was no specific comment related to the proposed WV ACE State Plan.

Comment 33 (Commenter 4)

Strict limitations and controls need to be imposed upon the oil & natural gas industries to eliminate emissions of greenhouse gases, whatever their chemical identity. Leaks should be penalized, venting should be prevented and waste gas combustion should be both minimized and highly controlled. Combustion efficiency in all applications for fossil fuels is an area where limitations and controls must be increased.

Response 33

This State Plan is limited in scope to one designated facility in West Virginia to address the final action by the U.S. EPA, *Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations* at 84 Fed. Reg. 32520 (July 8, 2019) as it applies to Longview Power LLC (LVP) located in Maidsville, West Virginia.

Although no response is required because there was no specific comment related to the proposed WV ACE State Plan for GHG emissions from existing EGUs, the DEP wants to communicate that federal New Source Performance Standards (NSPS) that regulate oil and natural gas industries are incorporated by reference under 45 C.S.R. 16, *Standards of Performance for New Stationary Sources* and federal NSPS and emission guidelines resulting from the combustion of solid waste are adopted under 45 C.S.R. 18, *Control of Air Pollution From Combustion of Solid Waste*.

Several of the HRI that the U.S. EPA identified as BSER candidate technologies address the combustion efficiency in coal-fired EGUs. For additional discussion concerning these candidate technologies as they apply to LVP, please refer to the Response to Comment 4 above and Section D of the Appendix C to the State Plan.

⁴⁶ Final Determination for the Construction Permit of Longview Power LLC Maidsville Facility located in Maidsville, Monongalia County, West Virginia. Permit Application Number R13-3495.

⁴⁷ Engineering Evaluation/Fact Sheet for Permit Application Number R13-3495.

Comment 34 (Commenter 4)

Comment on this hearing process. A reasoned consideration leads us to believe that formal written submissions of presentations should be permitted up to three days following the hearing. This would permit telephone participants to mail their input after the hearing, by overnight mail if necessary. And, these three days would permit all participants an opportunity to extend and/or revise their input shortly following the hearing. Nothing substantive is gained by forcing the awkward deadline now prevailing that all input is due by the end of the public hearing date and time.

Response 34

Prior to the public hearing, the DEP did not receive any requests to extend the public comment period. The public hearing held December 1, 2020 complied with West Virginia law regarding public notice and comment⁴⁸, federal requirements,⁴⁹ and was consistent with the notice of public hearing and public comment period. The purpose of a public hearing was to accept comments concerning the proposed WV ACE partial State Plan. The DAQ is constrained by the West Virginia Air Pollution Control Act and the West Virginia Administrative Procedures Act and cannot allow written submissions dated post-public hearing.

The notice of the public hearing was published on October 30, 2020 as a Class 1 legal advertisement in the *Charleston Newspapers*, the *Dominion Post*, and in the *West Virginia State Register*, providing the required 30-day notice prior to the hearing held December 1, 2020. The notice was also e-mailed to all subscribers of the DEP Enhanced Mailing List on October 30, 2020. The notice along with the proposed State Plan and all appendices were made available on the DAQ website at <https://dep.wv.gov/daq/publicnoticeandcomment/Pages/default.aspx>.

Additional information concerning the public participation process for this State Plan is available in Section 4.6 of the State Plan and in Appendix E to the State Plan.

Comment 35 (Commenter 6)

Thank you for the opportunity to speak this evening regarding this critical program proposal. I am Jason Bostic, the vice-president of the West Coal Association, which represents the thousands of hard-working men and women that produce roughly one hundred million tons of the world's highest coal. At the outset, I think it's entirely to compliment and commend the work of the folks at the Division of Air Quality at the West Virginia Department of Environmental Protection for their timely and through technical work and exhaustive analysis that is required to develop the state's partial plan, which is a first of it's kind plan across the country to allow for implementation of the Affordable Clean energy rule.

⁴⁸ W. Va. Code 29A-1-1, et seq. and 22-5-1, et seq.

⁴⁹ 40 C.F.R. §§ 60.23a(c)-(g) and 60.5740a(a)(5).

Response 35

No response required.

Comment 36 (Commenter 6)

I would like to point out how appropriate it is that West Virginia is the first state to pursue a state compliance plan under the ACE rule. As others will no doubt mention before the evening is over, West Virginia is home to the most modern and efficient and cleanest burning coal- fired power plants in the nation. As a state, no other has as much at stake, as does West Virginia. In addition to the thousands of jobs associated with the in-state coal-fired generating plants, West Virginia is the second leading coal producer. A significant amount of that coal production is shipped to power plants in other states. So, it is entirely appropriate that West Virginia lead the way on the implementation of the ACE rule to demonstrate to the other states, several of which, are long-term coal customers, that compliance is feasible. Securing the future of those out-of-state coal burning power plants to the benefit of our coal miners and mining community.

Response 36

No response required.

Comment 37 (Commenter 6)

I think it's also worth mentioning for the record that West Virginia lead the charge to the legal challenges to the predecessor of the ACE rule, the clean power plant. Which was an illegal extension of the Federal Air Quality regulatory structure to the entire electricity supply chain from the power plant all the way to the individual household wall outlet.

Response 37

No response required.

Comment 38 (Commenter 6)

Unlike the Clean Power Plan, the ACE rule acknowledges the legal, technical, and physical realities of both the Air Quality regulations and the actual operation of the coal-fired power plants by setting initial reduction goals not on some arbitrary reduction determined by state or political jurisdiction based on the hopes that replacement megawatts would be available to stabilize the nation's energy grid, but on the practical demonstration of individual plant efficiency.

Response 38

No comment required.

Comment 39 (Commenter 6)

The ACE rule recognizes that each coal plant is different in size, capacity, fuel source and demand response and allows the individual generators to track real practical compliance in accordance with those factors that are unique to each individual plant. The ACE rule also recognizes that an air quality regulation cannot serve as the basis of or a component of a global climate emission, but must serve the practical function of addressing emissions from power plants within this

country's borders while observing the boundaries of the EPA's authority as in stalled by congress by the Federal Clean Air Act.

Response 39

No comment required.

Comment 40 (Commenter 6)

In closing, I would again like to complement Ms. Crowder and her technical staff here at the Air Quality Control Division of the DEP for their work on this very important, very important program proposal. Thank you.

Response 40

No response required.

Comment 41 (Commenter 7)

Thank you for the opportunity to provide comments this evening. My name is Angie D. Rosser. I am here representing the West Virginia Rivers Coalition. On behalf of our members we are generally concerned about the impact of greenhouse gas emissions and the facts that they are warming our planet and warming temperatures causing extreme weather events and other impacts that - - that, - - concerns about water quality and quantity issues and habitats and the eco system services.

Response 41

No response required.

Comment 42 (Commenter 7)

One of the things that strikes me about this process is the secrecy that seems odd or out of sorts that we are moving forward with the partial plan based on the voluntary permit from a single facility. It seems to me the regular order of business would be to go through the rule making process with the state program, through the legislative process and then begin the permitting.

Response 42

There is no secrecy involved with this process. All public notice regulatory requirements have been satisfied for both the permitting process and with the State Plan submittal process. Although the permitting process is a separate action from the State Plan process, both are summarized below for completeness.

- LVP provided public notice of the permit application July 17, 2020.
- DAQ provided public notice of the “intent to approve” October 9, 2020.
- The permit application, draft permit, engineering evaluation, and interim permit review file were made available on the DAQ website.
- Notice and information for a public meeting was announced with the “intent to approve” public notice October 9, 2020.

- The DAQ held a public meeting on the draft permit on October 27, 2020.
- The “intent to approve” public notice was sent to all subscribers of the DEP’s Enhanced mailing List on October 9, 2020.
- The public comment period on the draft permit concluded at 5:00 PM November 9, 2020.
- Public notice for the proposed State Plan was published October 30, 2020 which commenced the public comment period for the proposed State Plan.
- The public notice for the proposed State Plan was sent to all subscribers of the DEP’s Enhanced mailing List October 30, 2020.
- The public notice included information for the proposed State Plan public hearing.
- The public notice and the proposed State Plan were available on the DAQ website.
- The public hearing for the proposed State Plan was held December 1, 2020.
- The public comment period for the proposed State Plan ended at the conclusion of the public hearing December 1, 2020.

Although Section 20 of Article 5 to Chapter 22 of the West Virginia State Code requires the DEP to propose a legislative rule to implement the ACE rule in time for consideration during the 2021 legislative session, this section of the State Code, amended by Senate Bill 810 during the 2020 legislative session has additional requirements. The reason for moving forward with the partial State Plan based on the voluntary permit from a single facility is because the WV DEP is obligated to do so under this same section of the West Virginia State Code⁵⁰ that states, in pertinent part:

(n)otwithstanding any provision to the contrary, the agency shall submit a complete or partial state compliance plan to the federal Environmental Protection Agency no later than September 1, 2020, which may be comprised of one or more EGU facilities that are voluntarily prepared to move forward with a compliance plan for one or more of their EGUs.

The standards of performance for the remaining designated facilities are expected to be requirements established in permits issued under 45 C.S.R. 13 and in accordance with a finalized state rule,⁵¹ in addition to other legal authorities that will be documented in a future State Plan submittal for the remaining designated facilities within West Virginia.

Comment 43 (Commenter 7)

The questions that came up in the public hearing around the Longview permit about why the rush to permit Longview with a partial state plan instead waiting until the inventories are complete and not having one facility preempt the process. I know the question was raised in the permit hearing for the Longview, but at least our organization has not received a response to our comments and the questions posed in that hearing which actually would have been very helpful to have a response going into this hearing. So, again, why the rush in the process.

⁵⁰ W. Va. State Code § 22-5-20.

⁵¹ 45 C.S.R. 44, *Control of Greenhouse Gas Emissions from Existing Coal-Fired Electric Utility Generating Units*, proposed for consideration for the 2021 legislative session.

Response 43

All individuals and organizations that participated in the Longview permitting process during the development of Permit R13-3495 should have received a response to their comments from the either public comment period that concluded November 9, 2020 or the public meeting held October 27, 2020. An e-mail was sent by Ms. Nicole Ernest, NSR Permitting Secretary, on December 28, 2020 to all participants in the Longview permitting process that included the final permit determination with the response to comments, the final permitting action and the engineering evaluation associated with the draft permit.

The timing for the submittal of this State Plan and the issuance of the LVP Permit R13-3495 are directed by the West Virginia State Code. Although this process is perceived to be rushed by the commenter(s), in fact both actions have missed the requisite codified deadlines. In these separate yet related actions, the DEP, DAQ has attempted to fulfill the intentions of the State Code by completing each action as expeditiously as practicable to the intended time frames, given the complexity of each action.

The timeline to issue a permit under 45 C.S.R. 13 is ninety calendar days after the date the application is deemed complete; however, this time may be extended by thirty calendar days to allow for public comment⁵². LVP permit application R13-3495 was received by the DAQ on June 1, 2020 and was deemed complete by the DAQ on July 29, 2020. The statutory due date was October 27, 2020. The LVP permit was issued December 23, 2020.

The deadline to submit a full or partial plan to the U.S. EPA was September 1, 2020 in the event any owner or operator of a designated EGU voluntarily requested to comply with the federal emission guidelines⁵³. The U.S. EPA allows for the establishment of the standards of performance in the form of a permit, as it states in the preamble “state plan requirements must be fully adopted as a matter of state law, or issued as a permit, order, or consent agreement, before the plan is submitted to the EPA”⁵⁴.

The development and submittal of this partial State Plan will not preempt the State process. Each designated EGU in the statewide fleet is unique and will require an in-depth analysis of the data associated with that EGU, including a detailed review of the BSER candidate technologies. In its discussion about the selection of HRI as the BSER, the U.S. EPA addresses this uniqueness of EGUs by stating:

Heat rate improvement measures can be applied—and some measures have already been applied—to all existing EGUs (supporting the Agency's determination that HRI measures are the BSER). However, the U.S. fleet of existing coal-fired EGUs is a diverse group of units with unique individual characteristics that are spread

⁵² W. Va. State Code §22-5-11(d).

⁵³ W. Va. State Code §22-5-20.

⁵⁴ 84 Fed. Reg. 32553 (July 8, 2019).

across the country.⁵⁵ As a result, heat rates of existing coal-fired EGUs in the U.S. vary substantially. Thus, even though the variation in heat rates among EGUs with similar design characteristics, as well as year-to-year variation in heat rate at individual EGUs, indicate that there is potential for HRI that can improve CO₂ emission performance across the existing coal-fired EGU fleet, this potential may vary considerably at the unit level—including because particular units may not be able to employ certain HRI measures, or may have already done so.⁵⁶

Comment 44 (Commenter 7)

Our bottom-line concern remains that the Longview hearing is that we do not believe that permit or this partial plan that was based on this permit goes far enough. It does not go far enough in reducing greenhouse gas emissions as to address the climate crisis we are facing.

Response 44

This partial plan fully meets the federal ACE Rule and methodically demonstrates in detail how each of the requirements have been satisfied. In the Regulatory Impact Analysis (RIA) for the ACE Rule, U.S. EPA acknowledged that it is assumed that there is little to no potential for further HRI applying the BSER technologies from units currently operating with a heat rate of less than 9,773 Btu/kWh, identified as Group 1 units.⁵⁷ The U.S. EPA's data indicates that Longview Power's unit heat rate is below this Group 1 HR threshold and therefore is categorized as a Group 1 unit. In fact, review of the most recent HR data in the U.S. EPA's database indicates that LVP current operates with the lowest HR in the U.S. at 8,904 Btu/kWh⁵⁸. It is not surprising then, the DAQ did not identify any additional improvements based on the BSER candidate technologies that would provide any additional heat rate improvements for the Longview Power EGU. Furthermore, West Virginia State Code § 22-5-4(4) prohibits any air quality program to be more stringent than any federal rule or program.

Please also see the response to Comment 3.

Comment 45 (Commenter 7)

We would urge the State to set the bar higher in terms of reducing emissions, not lower as this partial state plan seems to do.

Response 45

Please refer to the response to Comments 3 and 44.

⁵⁵ For example, the current fleet of existing fossil fuel-fired EGUs is quite diverse in terms of size, age, fuel type, operation (e.g., baseload, cycling), boiler type, etc. Moreover, geography and elevation, unit size, coal type, pollution controls, cooling system, firing method, and utilization rate are just a few of the parameters that can impact the overall efficiency and performance of individual units.

⁵⁶ 84 Fed. Reg. 32535 (July 8, 2019).

⁵⁷ U.S. EPA, Regulatory Impact Analysis for the Repeal of the Clean Power Plan, and the Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units, June 2019, Page 1-16.

⁵⁸ Nation Electric Energy Data System v6, https://www.epa.gov/sites/production/files/2020-10/needs_v620_10-05-20_0.xlsx, October 5, 2020.

Comment 46 (Commenter 8)

My name is James Kotson, I serve as the chair of the Conservation Committee for the West Virginia Chapter of the Sierra Club. I earlier - - about an hour ago I filed written comments with your agency and have not yet received any confirmation that those were received. If there is a chance to confirm that, I won't resend those, otherwise I'm going to do that to make sure you get them.

Response 46

A confirmation e-mail was sent to Mr. Kotson during the public hearing acknowledging his written comments were received.

Comment 47 (Commenter 8)

I want to add to those written comments, a few more commentary and echo some of the earlier speakers who want to know what is the rush. Why are we in such a hurry to do this?

Response 47

Please refer to the response to Comment 43 above.

Comment 48 (Commenter 8)

I recognize that Senate Bill 810 authorizes DEP to submit a partial plan of the EPA. But it is abundantly clear since the November elections that this whole process is obsolete. President-elect Biden's whole climate proposal was a major issue in the campaign. Clearly, I believe that is a factor in him getting as many votes as he did. His plan is to have the electric utility industry be carbon neutral by 2035. Yet, the proposed partial plan authorizes emissions to 2046, and beyond, as if none of that matters. Again, why the rush?

Response 48

Please refer to the response to Comment 43 above.

Comment 49 (Commenter 8)

The DEP submitted this draft partial plan to the EPA back in October even before the comment period ended on Longview's draft permit application, before there was any response to comments, before any rule was finalized, before even a permit for Longview has been finalized. Before we even finished the comment on it. That seems to be a totally rushed exercise that is entirely out of proper order for any logical or legal comment period.

It makes no sense to propose a draft permit plan when everything from the draft permit to the rules on which it might be based on a draft. For DEP to contrive a legal fiction that this can be authorized under 45 C.S.R. 13, really seems to be stretching that; 45 C.S.R. 13 is for construction permits. Longview proposes no construction, they are not even planning to install any new pollution control equipment or any new heat rate improvements. There does not seem to be any justification for this rule under Reg 13.

Response 49

As previously mentioned, the permitting action and the submittal of the State Plan to the U.S. EPA are two separate actions. The public notice requirements for both actions have been satisfied as discussed in more detail in response to previous comments. Permit R13-3495 was issued to Longview Power LLC on December 23, 2020 and became effective upon issuance.

Please also refer to the responses to Comments 13, 14 and 43 above.

Comment 50 (Commenter 8)

I would like to add that if this proposed partial plan actually challenges the means for controlling cost for the power plant against the need of West Virginia citizens to control their greenhouse gas costs, their climate change impacts, the flooding and fires and droughts, an higher air conditioning cost and so on, the increased disease accessibility, all of those impacts that real West Virginians are facing, and we are left with a climate plan that actually allows increased emissions? This to me seems to be entirely irresponsible and a failure on the Department of Environmental Protection to actually protect the health and welfare and the environment of West Virginia citizens.

Response 50

On July 8, 2019, the U.S. EPA published the Affordable Clean Energy rule consisting of emission guidelines for greenhouse gas emissions from existing EGUs under the CAA, section 111(d) at 84 Fed. Reg. 32520. The U.S. EPA promulgated the ACE regulation under 40 C.F.R. Part 60, Subpart UUUUa, *Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units* and the implementing regulations under 40 C.F.R. Part 60, Subpart Ba, *Adoption and Submittal of State Plans for Designated Facilities*. The federal emission guidelines inform states on the development, submittal, and implementation of State Plans to establish performance standards for GHG emissions from certain coal fired EGUs. The U.S. EPA determined that HRI is the BSER for reducing GHG, specifically carbon dioxide (CO₂) emissions from existing coal fired EGUs meeting the applicability criteria.

The State Plan addresses the final action by the U.S. EPA, *Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations* at 84 Fed. Reg. 32520 (July 8, 2019) as it applies to Longview Power LLC (LVP) located in Maidsville, West Virginia. The State Plan demonstrates the implementation of the emission guidelines of 40 C.F.R. Part 60, Subpart UUUUa, *Emission Guidelines from Existing Electric Utility Generating Units* in accordance with the implementation regulations of 40 C.F.R. Part 60, Subpart Ba, *Adoption and Submittal of State Plans for Designated Facilities*.

The submittal of the State Plan by the DEP to the U.S. EPA satisfies the DEP's obligation under West Virginia State Code § 22-5-20 and is consistent with the authority provided under § 22-5-4(4) that prohibits any air quality program to be more stringent than any federal rule or program.

Comment 51 (Commenter 8)

I'm really disappointed in you-all. I recognized that you are faced with a very challenging legal and political climate, but this does not have to happen. I would urge DEP to delay their final implementation until we have a logical, well thought out, scientifically valid, legal process for developing a climate plan in a greenhouse gas plant.

Response 51

Please refer to response to Comment 24 that outlined the existing legal authority for this State Plan and response to Comment 43 that explained the statutory requirements and deadlines to issue the underlying permit and to submit the State Plan to the U.S. EPA.

Comment 52 (Commenter 9)

My name is Duane Nichols, D-u-a-n-e, N-i-c-h-o-l-s, representing the Mon Valley Clean Air Coalition. Our address is here in Morgantown, West Virginia. I want first to endorse and agree with the submissions proceeding me by Angie Rosser of the West Virginia Rivers Coalition. She has made some outstanding points in this discussion. I'm also endorsing the representation of James Kotson of the West Virginia Chapter of the Sierra Club. He has pointed out that we have an irrational process going on here that has not been justified. I can't imagine how somebody can defend this before a body of overseers.

Response 52

No response required.

Comment 53 (Commenter 9)

I want to emphasize the concept of environmental justice. Here in the Mon Valley we already have the Fort Martin Power Plant with perhaps eleven hundred and 70 mega watts of capacity coal-fired (electrical generation). We also have this Longview Power Plant that was added on into the valley. So, we are suffering already what you would call the environmental justice. If you think about what this current issue is it is a case of environmental justice not for the Mon Valley but for the earth as a whole. The entire earth is at risk here.

Response 53

The U.S. EPA defines environmental justice as follows:

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. This goal will be achieved when everyone enjoys:

- The same degree of protection from environmental and health hazards, and

- Equal access to the decision-making process to have a healthy environment in which to live, learn, and work.⁵⁹

The ACE Rule that encompasses the emission guidelines to which the State Plan was developed to demonstrate compliance with applies equally to all designated EGU units meeting the applicability of this rule across the state of West Virginia and across the United States of America. The preamble to the ACE Rule addresses environmental justice by stating:

(t)he EPA believes that this action is unlikely to have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The EPA believes that this action will achieve CO₂ emission reductions resulting from implementation of these final guidelines, as well as ozone and PM_{2.5} emission reductions as a co-benefit, and will further improve environmental justice communities' health as discussed in the RIA.⁶⁰

The permitting rule 45 C.S.R. 13⁶¹ provides the same degree of protection from environmental and health hazards to all persons in West Virginia by regulating all applicable sources subject to this rule within West Virginia.

Equal access was provided for the meaningful involvement of all people to the decision-making process for the State Plan development, as evidenced by the opportunity to provide comment. Accommodations were made for participation in the public hearing by telephone for those that did not have access to the internet. Additionally, alternative accommodations were offered in the public notice for anyone that did not have internet capability to view the proposed partial State Plan. A copy of the public notice is provided in Appendix I to this State Plan.

West Virginia is one of only sixteen states nationwide to be in attainment with all national ambient air quality standards that the U.S. EPA establishes for criteria air pollutants to provide public health protection, including protecting the health of “sensitive” populations such as asthmatics, children, and the elderly and provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings⁶².

The DAQ's jurisdiction is limited to West Virginia. The U.S. EPA's jurisdiction is limited to the United States of America.

⁵⁹ U.S. EPA website <https://www.epa.gov/environmentaljustice>.

⁶⁰ 84 Fed. Reg. 32574 (July 8, 2019).

⁶¹ *Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, Permission to Commence Construction, and Procedures for Evaluation.*

⁶² <https://governor.wv.gov/News/press-releases/2020/Pages/Gov.-Justice-announces-entire-state-of-West-Virginia-now-meeting-national-air-quality-standards-first-time-since-1978.aspx>.

Comment 54 (Commenter 9)

Finally, I want to comment on the process here. A recent consideration leads us to believe that formal written submissions should be permitted up to three days following the hearing. It should be permitted to submit documents up to three days after the hearing permitting telephone people to over-night or otherwise submit and this three-day period would permit the others to revise or extend their comments.

Response 54

Please refer to the response to Comment 34.

Comment 55 (Commenter 10)

I'm Chris Hamilton for the West Virginia Coal Association. We appreciate the opportunity to participate in today's hearing in support of DEP's proposed partial state plan. For the record, we whole-heartily support this plan according to the full compliance with the US Environmental Protection Plan for the Clean Energy rule.

Response 55

No response required.

Commenter 56 (Commenter 10)

We also compliment DEP for advancing this plan to comply with the Affordable Clean Energy rule. EPA's ACE rule is designed to reduce greenhouse gasses, CO₂ in particular, and purports to achieve that by imposing a series of regulatory options for every coal-fired plant based on its specific design and operational characteristics in a lawful manner utilizing available technologies and controls.

Response 56

No response required.

Comment 57 (Commenter 10)

We believe that the agency's ACE rule more than adequately addresses all concerns and potential impacts of greenhouse gasses. We're also pleased that the Longview Power application was the first application in the system. Longview Power is one of the plants within the State of West Virginia and has earned the reputation as the cleanest most efficient plant in the country, if not in the world.

Response 57

Although no response is required, the DAQ confirms that LVP has the lowest HR in the U.S. at 8,904 Btu/kWh.⁶³

⁶³ Nation Electric Energy Data System v6, https://www.epa.gov/sites/production/files/2020-10/needs_v620_10-05-20_0.xlsx, October 5, 2020.

Comment 58 (Commenter 10)

Hopefully, the Longview application, like the proposed partial plan, meets with the EPA's approval without unnecessary delay. Not only is the Longview plant among the nation's best, but it should be observed that West Virginia's remaining fleet is also fully compliant with all EPA requirements and are one hundred percent compliant with the EPA Ambient Air Quality Standards and were recognized as such by the EPA.

Response 58

No response required.

Comment 59 (Commenter 10)

The advancement of the Longview application and of the formulation and advancement of the partial plan is a major accomplishment for the State of West Virginia and for good reason. When you look at the combined total economic impact of coal mining and the operation of coal-fired plants to the State of West Virginia coal overall generates a combined output impact of nearly 13 billion dollars; a total employment impact of 39 thousand West Virginia jobs; total employee compensation impacts of 2.5 billion dollars and more than 650 million dollars in state and local tax revenues. Extraordinarily beneficial for all state residents.

Response 59

No response required.

Comment 60 (Commenter 10)

Again, we complement Longview Power's management teams and all state officials, particularly DEP's Air Quality Division, all the permit writers and technical staff who devoted countless hours of time and resources towards this effort. The State of West Virginia is the nation's first state to advance a state ACE plan for EPA's approval.

Simply put, this is very significant for our state and serves to highlight our state's reliance on coal-fired electricity and coal mining. And how West Virginia is a shining example of, not only having a strong fossil energy industrial base, and not only having clean air and a great environment, but now are also leading the way in our nation's quest for lower CO₂ output.

Response 60

No response required.

Comment 61 (Commenter 10)

We fully support the proposed plan as authorized and directed by Senate Bill 810, which passed the legislature and was signed into statutory law by Governor Justice this year. Several commenters have commented on the process. We believe that DEP has completely followed the care to the completion dates and the process that was outlined in Senate Bill 810, which again passed earlier this year.

I might also observe that Senate Bill 810 may have been a little too ambitious that set forth timelines where a lot of this for the applications were supposed to be filed back in September.

Response 61

Senate Bill 810 that amended West Virginia State Code § 22-5-20 stipulates that a complete or partial State Plan must be submitted to the U.S. EPA by September 1, 2020 in the event that it receives a voluntary permit application for any affected EGU in West Virginia requesting compliance with the federal ACE emission guidelines. The DAQ received such voluntary permit application on June 1, 2020. As the commenter acknowledged, the DEP made its best efforts to meet this timeline as soon as practicable after September 1, 2020.

Comment 62 (Commenter 10)

Again, I want to be very complimentary for all the work and dedication to the task at hand by DEP and their representatives.

Response 62

No response required.

Comment 63 (Commenter 11)

I thought there was only supposed to be one representative per organization for comments.

Response 63

There is no state or federal requirement that prohibits more than one representative per organization. A request was made at the onset of the hearing for the sake of timely proceedings, and when this question arose in the proceedings, the additional commenter for the organization voluntarily suggested that he be moved to the end of the scheduled commenters and that was agreed upon. At the conclusion of pre-scheduled commenters, the floor was then open to any commenter wishing to speak that had not pre-registered so that all were provided the opportunity to speak, if they wished.

Comment 64 (Commenter 12)

Chris wants to save the best for last.

Response 64

No response required.

Comment 65 (Commenter 12)

Good point James, why the rush?

Response 65

Please refer to the response to Comment 43 above.

Comment 66 (Commenter 12)

West Virginia should have a way to offset pollution particulates with renewable energy credits as soon as possible.

Response 66

This comment is not germane to the State Plan. No response required.

Comment 67 (Commenter 12)

Great comment James!

Response 67

No response required.

Comment 68 (Commenter 11)

Thank you, Dr. Kotcon.

Response 68

No response required.

Comment 69 (Commenter 12)

Thank YOU, Duane Nichols.

Response 69

No response required.

Comment 70 (Commenter 12)

Thank YOU, Angie Rosser.

Response 70

No response required.

Comment 71 (Commenter 12)

Thank YOU, Alex Cole.

Response 71

No response required.

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ORIGINAL

1

BEFORE THE WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

In re: Proposed Clean Air Act section 111(d) State
Plan for the Control of Greenhouse Gas
Emissions from Existing Coal-Fired Electric
Utility Generating Units

Transcript of proceedings had at a public
hearing in the above-styled matter taken virtually via
Microsoft TEAMS from the West Virginia Department of
Environmental Protection, Division of Air Quality,
Conference Room, 601 57th Street, S. E., Charleston, West
Virginia, commencing at 6:03 p.m., on the 1st day of
December 2020, pursuant to notice.

MISSY L. YOUNG, C.C.R.
POST OFFICE BOX 13622
SISSONVILLE, WEST VIRGINIA 25360
304-539-6192

P R O C E E D I N G S

MR. FLETCHER: Good evening. My name is Terry Fletcher and I am with the West Virginia Department of Environmental Protection's Public Information Office. Welcome to the public hearing for the DEP's Clean Air Act section 111(d) partial State Plan for the Control of Greenhouse Gas Emissions from Existing Coal-Fired Electric Utility Generating Units.

With me this evening are members of the DEP's Division of Air Quality, including - Stephanie Hammonds, an Environmental Resource Specialist with the Compliance and Enforcement Section, Laura Jennings, a Technical Analyst with the Planning Section, and Administrative Professionals Sandie Adkins and Pam Kindrick, as well as Christina Richmond from the WVDEP's Business & Technology Office. Court reporter Missy Young is also in attendance.

The purpose of this public hearing is to receive comments on the record concerning the proposed West Virginia ACE partial State Plan. This public hearing is being recorded and a court report is in attendance so that the comments you share can be taken into consideration and entered into the public record. Because the purpose of the public hearing is to listen to your comments and make them

1 public record, it is not a forum to engage the DEP in open
2 discussion or debate about the proposed Plan.

3 Please note that everyone has been muted upon
4 entry into the meeting. This is to ensure we are not
5 interrupting others or trying to talk over one another,

6 Everyone was requested to pre-register for this
7 public hearing so that we have a public record of the
8 hearing participants, as required under these federal air
9 quality regulations.

10 Anyone wishing to speak, was instructed to pre-
11 register in advance and will be called upon by Stephanie
12 Hammonds when it is their turn. When called upon, you will
13 be unmuted, and told to go ahead with your comment. Please
14 state clearly your name and indicate if you are
15 representing any groups or organization. Please keep the
16 comments on topic and limit the comments to 5 minutes each.
17 Please specify when your comment is finished, so we can re-
18 mute you. All comments received will be addressed in a
19 formal response to comments document that will be part of
20 the official partial State Plan record.

21 Christina Richmond and I, along with other DAQ
22 staff, will be monitoring the Microsoft TEAMS chat during
23 the duration of the public hearing to assist with technical

1 issues or questions. All chat communications also become
2 part of the public record.

3 We ask that everyone be respectful and
4 considerate of each other by: refraining from using foul
5 language; refraining from name calling; refraining from
6 interrupting others while they are speaking; and keeping
7 your comments on the topic so that our time together is
8 used efficiently.

9 Now that the introductory remarks have been made,
10 I am turning this over to Laura Jennings with the Division
11 of Air Quality. Laura.

12 MS. JENNINGS: Thank you, Terry. The public
13 hearing for the West Virginia DEP's proposed Clean Air Act
14 section 111(d) partial State Plan for the Control of
15 Greenhouse Gas Emissions from Existing Coal-Fired Electric
16 Utility Generating Units will now come to order on this 1st
17 day of December 2020, held virtually to prevent the spread
18 of COVID-19 in accordance with the West Virginia DEP COVID-
19 19 Policy.

20 Comments and testimony will be accepted until the
21 close of this hearing and will be made part of the
22 rulemaking - - will be made part of the record. Any
23 questions regarding this proposed partial State Plan should

1 be included with your comments, and any such question will
2 be addressed as part of the response to comments.

3 The purpose of this public hearing is to accept
4 comments on the proposed Clean Air Act section 111(d)
5 partial State Plan for the Control of Greenhouse Gas
6 Emissions from Existing Coal-Fired Electric Utility
7 Generating Units, or EGUs, that will be submitted to the
8 United States EPA, upon finalization. This partial State
9 Plan was developed in response to the U.S. EPA promulgation
10 of 40 C.F.R. Part 60, Subpart, UUUUa, titled *Emission*
11 *Guidelines for Greenhouse Gas Emissions from Existing*
12 *Electric Utility Generating Units*; the implementation
13 regulations under 40 C.F.R. Part 60, Subpart Ba, titled
14 *Adoption and Submittal of State Plans for Designated*
15 *Facilities*; and the voluntary air quality permit
16 application submitted to the DAQ by Longview Power LLC on
17 June 1, 2020. The U.S. EPA published the Affordable Clean
18 Energy Rule, also referred to as ACE, consisting of
19 emission guidelines for greenhouse gas emissions from
20 existing EGUs, under section 111(d) of the Clean Air Act at
21 Volume 84 of the Federal Register, beginning on page 32,520
22 on July 8, 2019.

23 Section 111(d) of the Clean Air Act requires all

1 states to submit a plan to the U.S. EPA which establishes
2 standards of performance for any existing source for any
3 air pollutant to which a standard of performance would
4 apply if the existing source were a new source and provides
5 for the implementation and enforcement of such standards of
6 performance. Such plans are commonly referred to as State
7 Plans.

8 This partial State Plan applies to Longview Power
9 LLC that owns and operates one existing coal fired EGU
10 located in Maidsville, West Virginia. This proposed State
11 Plan will establish the standard of performance for
12 Longview Power LLC and will provide for the implementation
13 and enforcement of such standard of performance.

14 Stephanie, has anyone pre-registered to provide
15 comment or testimony? If so, please unmute their line and
16 call on then now. Please ask them to state clearly their
17 name and any affiliation. As a reminder, please limit
18 testimony to one witness for each organization and limit
19 testimony to 5 minutes for each witness. Thank you.

20 MS. HAMMONDS: Thanks, Laura. Good evening
21 everyone. Let me share my screen. Cross examination of
22 commenters is not allowed. As Laura stated, DAQ will not
23 be responding to comments tonight. If you are joining us

1 online, we will call your name and unmute your line. If you
 2 are joining us by telephone, please unmute your line by
 3 pressing *6 when your name is called and press *6 again at
 4 the end of your comment to re-mute your line. If we do not
 5 hear from you when called upon, we will proceed to the next
 6 commenter and call on you again at the end. I apologize in
 7 advance if I pronounce anyone's name incorrectly. I going
 8 to call two names, the first will be the person who is up
 9 for commenting and the next commenter so that they can get
 10 ready.

11 So, our first commenter tonight is Alex Cole. Mr.
 12 Cole, are you with us?

13 MR. COLE: I am. Do I open video, as well,
 14 or just audio; does it matter?

15 MS. HAMONDS: It's totally up to you.

16 MR. COLE: All right, the Internet access is
 17 slow, so I'll just do audio.

18 MS. HAMMONDS: Okay.

19 MR. COLE: My name is Alec Cole and I'm with
 20 the Ohio Valley Environmental Coalition. Can you hear me?

21 COURT REPORTER: Yes, just keep your voice
 22 up, please.

23 MR. COLE: Yes. Please, accept the following

statement on behalf of the Ohio Valley Environmental Coalition, we are many organizations concerned with addressing the serious threats to our climate imposed by greenhouse gas emissions by fossil fuels. The comments below are offered in response to the information provided in the West Virginia CAA 111 partial State Plan for Greenhouse Gas Emissions from Existing Electric Utility Generation Units.

According to the West Virginia Affordable Clean Energy partial State Plan is one of - - one or more Existing Coal-Fired EGUs meeting the definition of designated facility that commenced construction on or before January 8, 2014 that wouldn't be effected by this State Plan to implement the emissions guidelines in 40 C.F.R. Part 60, Subpart EEUA, emissions guidelines for Greenhouse Gas Emissions from Existing Electrical Utility Units at Longview Power LLC.

The Standard of performance based on the calculations provided at Longview Power LLC and a permit that was issued to the facility prior to West Virginia submitting this state plan to the USEPA for approval would allow two percent greater emissions than occurred in 2014, before heat rate improvements were installed at Longview.

1 The nearly 80 percent higher than the current - -
2 the nearly 80 percent higher than the current performance.
3 Therefore, instead of seeking improvements in the
4 performance and reductions in the emissions the limits
5 imposed by the permit will allow significant increases in
6 greenhouse emissions.

7 While the US EPA proposes affording states wide
8 latitude in determining whether their individual coal
9 plants should pursue HRIs plans that protect plants from
10 the costs of new regulations precedent not enough to
11 overcome the decline of coal due to dismal economics
12 compared to other energy sources.

13 The precedent that would be established by this
14 plan as it applies to the designated facilities ignores the
15 net societal costs of increased greenhouse gas emissions on
16 our health and on our environment in favor of an industry
17 in terminal decline as evidenced by the consistent downward
18 trend in the amount of coal consumed by the electric power
19 sector since 2015.

20 The steady decrease in coal production in the
21 United States to increase competitiveness of the cost of
22 renewable energy. According to the International Energy
23 Agency in their annual report on global energy trends

1 energy production by solar panels is now cheaper now than
2 that produced by coal or gas power plants in most nations.

3 This is a critical consequential time for the
4 energy sector and for the urgent global response to climate
5 change.

6 The Ohio Valley Environmental Coalition strongly
7 apposed any guidelines or plans for implementation that due
8 not fully weigh the costs of increased greenhouse gas
9 emissions or other impacts of coal-fired power plants
10 including Longview Power LLC or other designated
11 facilities. That is all.

12 MS. HAMMONDS: Thank you, Mr. Cole. Next up
13 we have Jason Bostic. Jason, are you with us?

14 MR. BOSTIC: Can you hear me?

15 MS. HAMMONDS: Yes, we can hear you, go
16 ahead with your comment, please.

17 MR. BOSTIC: Yes, ma'am, can you hear me
18 now?

19 MS. HAMMONDS: Yes, I can hear you.

20 MR. BOSTIC: Okay, if you are ready, I can
21 go right ahead.

22 MS. HAMMONDS: Okay, go right ahead. Please.

23 MR. BOSTIC: Thank you for the opportunity

1 to speak this evening regarding this critical program
2 proposal. I am Jason Bostic, the vice-president of the
3 West Coal Association, which represents the thousands of
4 hard-working men and women that produce roughly one hundred
5 millions tons of the worlds highest coal.

6 At the outset, I think it's entirely to compliment
7 and commend the work of the folks at the Division of Air
8 Quality at the West Virginia Department of Environmental
9 Protection for their timely and through technical work and
10 exhaustive analysis that is required to develop the state's
11 partial plan, which is a first of it's kind plan across the
12 country to allow for implementation of the Affordable Clean
13 energy rule.

14 I would also like to point out how appropriate it
15 is that West Virginia is the first state to pursue a state
16 compliance plan under the ACE rule. As others will no doubt
17 mention before the evening is over, West Virginia is home
18 to the most modern and efficient and cleanest burning coal-
19 fired power plants in the nation. As a state, no other has
20 as much at stake - - excuse me, as does West Virginia.

21 In addition to the thousands of jobs associated
22 with the in-state coal-fired generating plants, West
23 Virginia is the second leading coal producer. A

1 significant of that coal production is shipped to power
2 plants in other states.

3 So, it is entirely appropriate that West Virginia
4 lead the way on the implementation of the ACE rule to
5 demonstrate to the other states, several of which, are
6 long-term coal customers, that compliance is feasible.
7 Securing the future of those out-of-state coal burning
8 power plants to the benefit of our coal miners and mining
9 community.

10 I think it's also worth mentioning for the record
11 that West Virginia lead the charge to the legal challenges
12 to the predecessor of the ACE rule, the clean power plant.
13 Which was an illegal extension of the Federal Air Quality
14 regulatory structure to the entire electricity supply chain
15 from the power plant all the way to the individual
16 household wall outlet.

17 Unlike the clean power plant the ACE rule
18 acknowledges the legal technical and physical realities of
19 both the Air Quality regulations and the actual operation
20 of the coal-fired power plants by setting initial reduction
21 goals not on some arbitrary reduction determined by state
22 or political jurisdiction based on the hopes that
23 replacement mega watts would be available to stabilize the

1 nations energy grid, but on the practical demonstration of
2 individual planned efficiency.

3 The ACE rule recognizes that each coal plant is
4 different in size, capacity, fuel source and demand
5 response and allows the individual generators to track real
6 practical compliance in accordance with those factors that
7 are unique to each individual plant. The ACE rule also
8 recognizes that a air quality regulation can not serve as
9 the basis of or a component of a global climate emission,
10 but must serve the practical function of addressing
11 emissions from power plants within this countries borders
12 while observing the boundaries of the EPA's authority as in
13 stalled by congress by the Federal Clean Air Act.

14 In closing, I would again to complement Ms.
15 Crowder and her technical staff here at the Air Quality
16 Control Division of the DEP for their work on this very
17 important, very important program proposal. Thank you.

18 MS. HAMMONDS: Thank you, very much. Next
19 up we have, Chris Hamilton, and then Angie Rosser. Mr.
20 Hamilton.

21 MR. HAMILTON: Yes. At the outset, if I
22 may, you indicated only one person per organization should
23 take on and speak this evening. I represent the West

1 Virginia Coal Association as well. I would oblige by
2 simply indicating that I'll submit written comments, if
3 that pleases the court.

4 MS. HAMMONDS: Okay. Thank you, very much.
5 Angie Rosser.

6 MS. JENNINGS: Okay. If I may just chime in
7 for a moment because today is the end of the public comment
8 period. So, any written comments must be received prior to
9 the conclusion of this public hearing in order for them to
10 be excepted.

11 MS. HAMMONDS: Mr. Hamilton, did you hear
12 what Laura said?

13 MR. HAMILTON: Yes, and with that said,
14 would it be proper for me to speak of is there a rule that
15 limits participants per organization?

16 MS. JENNINGS: There is no rule that
17 specifies that, it was a clear request.

18 MR. HAMILTON: Well, I'll go ahead and
19 speak then if it's appropriate to do so or I can wait to
20 the end of all speakers for the sake of time allotment.

21 MS. HAMMONDS: Okay. Let's do that, okay?

22 MR. HAMILTON: Okay.

23 MS. HAMMONDS: Thank you so much. Angie

1 Rosser.

2 COURT REPORTER: I'm sorry, can you spell
3 the name, please?

4 MS. ROSSER: R-o-s-s-e-r.

5 MS. HAMMONDS: Angie, are you with us?

6 MS. ROSSER: I am. Is my audio coming
7 through?

8 MS. HAMMONDS: Yeah, we can hear you. You
9 can start your comment when you are ready.

10 MS. ROSSER: Very Good. Well, thank you for
11 the opportunity to provide comments this evening. My name
12 is Angie D. Rosser. I am here representing the West
13 Virginia Rivers Coalition. On behalf of our members we are
14 generally concerned about the impact of greenhouse gas
15 emissions and the facts that they are warming our planet
16 and warming temperatures causing extreme weather events and
17 other impacts that - - that, - - concerns about water
18 quality and quantity issues and habitats and the eco system
19 services.

20 So, you know, the one thing - - one of the things
21 that strikes me about this process is the secrecy that
22 seems odd or out of sorts that we are moving forward with
23 the partial plan based on the voluntary permit from a

1 single facility. It seems to me the regular order of
2 business would be to go through the rule making process
3 with the state program, through the legislative process and
4 then begin the permitting.

5 So, you know, the questions that came up in the
6 public hearing around the Longview permit about, you know,
7 why the secrecy, and why the rush to permit Longview with a
8 partial state plan instead waiting until the inventories
9 are complete and not having one facility preempt the
10 process. I know the question was raised in the permit
11 hearing for the Longview, but at least our organization has
12 not received a response to our comments and the questions
13 posed in that hearing which actually would have been very
14 helpful to have a response going into this hearing. So,
15 again, why the rush in the process.

16 Our bottom-line concern remains that the Longview
17 hearing is that we do not believe that permit or this
18 partial plan that was based on this permit goes far enough.
19 It does not go far enough in reducing greenhouse gas
20 emissions as to address the climate crisis we are facing.

21 We would urge the State to set the bar higher in
22 terms of reducing emissions, not lower as this partial
23 state plan seems to do.

1 That concludes my comments this evening. Thanks
2 again for the opportunity.

3 MS. HAMMONDS: Thank you very much. Up next
4 we have James Kotson, and then after Mr. Kotson, we have
5 Duane Nichols. Mr. Kotson, are you with us?

6 MR. KOTSON: Yes, I am.

7 MS. HAMMONDS: Okay, you can begin your
8 comments when you are ready.

9 MR. KOTSON: All right, can you hear me
10 now?

11 MS. HAMMONDS: Yes, we can hear you.

12 MR. KOTSON: Yes, can you hear me now?

13 MS. HAMMONDS: Yes, we can hear you.

14 MR. KOTSON: Hello. My name is James
15 Kotson, I serve as the chair of the Conservation Committee
16 for the West Virginia Chapter of the Sierra Club. I
17 earlier - - about an hour ago I filed written comments with
18 your agency and have not yet received any conformation that
19 those were received. If there is a chance to confirm that,
20 I won't resend those, otherwise I'm going to do that to
21 make sure you get them.

22 I want to add to those written comments, a few
23 more commentary and echo some of the earlier speakers who

1 want to know what is the rush. Why are we in such a hurry
2 to do this?

3 I recognize that Senate Bill A10 authorizes
4 partial plan of the EPA. But it is abundantly clear since
5 the November elections that this whole process is obsolete.
6 President-elect Biden's whole climate proposal was a major
7 issue in the campaign. Clearly, I believe that is a factor
8 in him getting as many votes as he did.

9 His plan is to have the electric utility industry
10 become literal by 2035. Yet, the proposed partial plan
11 authorizes emissions to 2046, and beyond, as if none of
12 that matters. Again, why the rush?

13 The DEP submitted this draft partial plan to the
14 EPA back in October even before the comment period ended on
15 Longview's draft permit application, before there was any
16 response to comments, before any rule was finalized, before
17 even a permit for Longview has been finalized. Before we
18 even finished the comment on it. That seems to be a totally
19 rushed exercise that is entirely out of proper order for
20 any logical or legal comment period.

21 It makes no sense to propose a draft permit plan
22 when everything from the draft permit to the rules on which
23 it might be based on a draft. For DEP to contrive a legal

1 fiction that this can be authorized under 45 C.S.R. 13,
 2 really seems to be stretching that; 45 C.S.R. 13 is for a
 3 construction permits. Longview proposes no construction,
 4 they are not even planning to install any new pollution
 5 control equipment or any new heat rate improvements. There
 6 does not seem to be any justification for this rule under
 7 Reg 13.

8 Finally, I would like to add that if this
 9 proposed partial plan actually challenges the means for
 10 controlling cost for the power plant against the need of
 11 West Virginia citizens to control their greenhouse gas
 12 costs, their climate change impacts, the flooding and fires
 13 and droughts, an higher air conditioning cost and so on,
 14 the increased disease accessability, all of those impacts
 15 that real West Virginians are facing, and we are left with
 16 a climate plan that actually allows increased emissions?
 17 This to me seems to be entirely irresponsible and a failure
 18 on the Department of Environmental Protection to actually
 19 protect the health and welfare and the environment of West
 20 Virginia citizens.

21 I'm really disappointed in you-all. I recognized
 22 that you are faced with a very challenging legal and
 23 political climate, but this does not have to happen. I

1 would urge DEP to delay their final implementation until we
2 have a logical, well thought out, scientifically valid,
3 legal process for developing a climate plan in a greenhouse
4 gas plant. Thank you.

5 MS. HAMMONDS: Thank you very much, Mr.
6 Kotson. Mr. Duane Nichols, are you with us?

7 MR. NICHOLLS: Yes, I'm here.

8 MS. HAMMONDS: Okay. You can begin comments
9 whenever you are ready.

10 MR. NICHOLS: Thank you very much. My name
11 is Duane Nichols, D-u-a-n-e, N-i-c-h-o-l-s, representing
12 the Mon Valley Clean Air Coalition. Our address is here in
13 Morgantown, West Virginia. I want first to endorse and
14 agree with the submissions proceeding me by Angie Rosser of
15 the West Virginia Rivers Coalition. She has made some
16 outstanding points in this discussion.

17 I'm also endorsing the representation of James
18 Kotson of the West Virginia Chapter of the Sierra Club. He
19 has pointed out that we have an irrational process going on
20 here that has not been justified. I can't imagine how
21 somebody can defend this before a body of overseers.

22 In my own case I want to emphasize the concept
23 of environmental justice. Here in the Mon Valley we

1 already have the Fort Martin Power Plant with perhaps
2 eleven hundred and 70 mega watts of capacity coal-fired.
3 We also have this Longview Power Plant that was added on in
4 to the valley. So, we are suffering already what you
5 would call the environmental justice. If you think about
6 what this current issue is it is a case of environmental
7 justice not for the Mon Valley but for the earth as a
8 whole. The entire earth is at risk here.

9 Greenhouse gasses have been accumulating in
10 the atmosphere since the beginning of the industrial
11 revolution and the concentrations has now exceeded to one
12 hundred part per million and is increasing. Scientific
13 studies have shown that worldwide damages and impacts are a
14 resulting from this. It is causing sever climate changes,
15 growing season alterations, melting glaciers, melting polar
16 ice caps, releases of methane from peat bogs and other
17 formations. It's causing a general heating of the oceans
18 and of course we are aware of the resulting sea level rise.

19 All of these impacts are intolerable for the long
20 track. The West Virginia DEP, by law, has a responsibility
21 to preserve and protect our state. Not to be serving of a
22 specific industry. They have a responsibility to advise and
23 lead our government and the public in a quality

1 environment.

2 So, in this case for the atmosphere we should be
3 preventing emissions, reducing them, controlling them and
4 advising others. So, it is unacceptable to establish
5 standards for greenhouse emissions that allow more than an
6 absolute minimum. Rather it is necessary that provisions
7 involve recommendations, standards and practices that
8 severely reduce and eliminate these.

9 So, another grace period should be allowed or no
10 special provision should be given to a specific industry.

11 Finally, I want to comment on the process here.
12 A recent consideration leads us to believe that horrible
13 written submissions should be permitted up to three days
14 following the hearing. It should be permitted to submit
15 documents up to three days after the hearing permitting
16 telephone people to over-night or otherwise submit and this
17 three day period would permit the others to revise or
18 extend their comments. My time is up.

19 MS. HAMMONDS: Thank you very much, Mr.
20 Nichols. Okay, next we will go back to Mr. Hamilton. Mr.
21 Hamilton, are you still with us? Hello.

22 MR. HAMILTON: Thank you. I'm Chris
23 Hamilton for the West Virginia Coal Association. We

1 appreciate the opportunity to participate in today's
2 hearing in support of DEP's proposed partial state plan.
3 For the record, we whole-heartily support this plan
4 according to the full compliance with the US Environmental
5 Protection Plan for the Clean Energy rule.

6 We also compliment DEP for advancing this plan to
7 comply with the Affordable Clean Energy rule. EPA's ACE
8 rule is designed to reduce greenhouse gasses, CO2 in
9 particular, and purports to achieve that by imposing a
10 series of regulatory options for every coal-fired plant
11 based on it's specific design and operational
12 characteristics in a lawful manner utilizing available
13 technologies and controls.

14 We believe that the agency's ACE rule more than
15 adequately addresses all concerns and potential impacts of
16 greenhouse gasses. We're also pleased that the Longview
17 Power application was the first application in the system.
18 Longview Power is one of the plants within the State of
19 West Virginia and has earned the reputation as the cleanest
20 most efficient plant in the country, if not in the world.

21 Hopefully, the Longview application, like the
22 proposed partial plan, meets with the EPA's approval
23 without unnecessary delay. Not only is the Longview plant

1 among the nations best, but it should be observed that West
2 Virginia's remaining fleet is also fully compliant with all
3 EPA requirements and are one hundred percent compliant with
4 the EPA Ambient Air Quality Standards and were recognized
5 as such by the EPA.

6 The advancement of the Longview application and
7 of the formulation and advancement of the partial plan is a
8 major accomplishment for the State of West Virginia and for
9 good reason. When you look at the combined total economic
10 impact of coal mining and the operation of coal-fired
11 plants to the State of West Virginia coal overall generates
12 a combined output impact of nearly 13 billion dollars; a
13 total employment impact of 39 thousand West Virginia jobs;
14 total employee compensation impacts of 2.5 billion dollars
15 and more than 650 million dollars in state and local tax
16 revenues. Extraordinarily beneficial for all state
17 residents.

18 Again, we complement Longview Power's management
19 teams and all state officials, particularly DEP's Air
20 Quality Division, all the permit writers and technical
21 staff who devoted countless hours of time and resources
22 towards this effort. The State of West Virginia, it is the
23 nation's first state to advance a state ACE plan for EPA's

1 approval.

2 Simply put, this is very significant for our
3 state and serves to highlight our state's reliance on coal-
4 fired electricity and coal mining. And how West Virginia
5 is a shining example of, not only having a strong fossil
6 energy industrial base, and not only having clean air and a
7 great environment, but now are also leading the way in our
8 nation's quest for lower CO2 output.

9 We fully support the proposed plan as authorized
10 and directed by Senate Bill A10, which passed the
11 legislature and was signed into statutory law by Governor
12 Justice this year. Several Con members have commented on
13 the process. We believe that DEP has completely followed
14 the care to the completion dates and the process that was
15 outlined in Senate Bill A10, which again passed earlier
16 this year.

17 I might also observe that Senate Bill A10 may
18 have been a little too ambitious that set forth time lines
19 where a lot of this for the applications were supposed to
20 be filed back in September.

21 Again, I want to be very complimentary for all
22 the work and dedication to the task at hand by DEP and
23 their representatives. Thank you very much for the

1 opportunity to address this proposed partial plan.

2 MS. HAMMONDS: Thank you. If you did not
3 register to comment but would like to comment on the
4 records at this time, please use the "raise your hand"
5 feature to comment in the chat and we will recognize you to
6 provide your comments. Anyone wanting to comment? Okay.

7 Laura, I'm not seeing any hands raised or any
8 commenters. I think that's everyone.

9 MS. JENNINGS: Okay, Stephanie. I'd like to
10 thank everybody for their interest and for their comments
11 this evening in this process. All of the comments will be
12 taken into consideration and a response to comment document
13 will be developed. I'd like to wish everybody a good
14 evening.

15 There being no requests for additional comments,
16 this public hearing is now concluded. Thank you.

17 (WHEREUPON, the hearing was
18 concluded.)

19

20

21

22

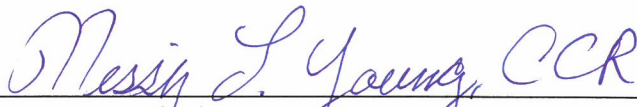
23

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

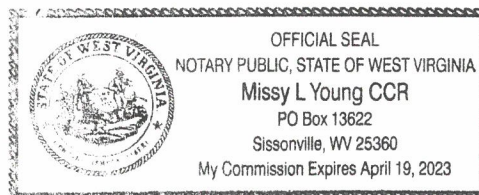
I, the undersigned, Missy L. Young, a
Certified Court Reporter and Notary Public within and for
the State of West Virginia, duly commissioned and
qualified, do hereby certify that the foregoing, was taken
to the best of my skill and ability, a true and accurate
transcript of all the proceedings had in the aforementioned
matter.

Given under my hand and official seal this
5th day of December, 2020.



Certified Court Reporter
Notary Public for the State of West Virginia

My commission expires April 19, 2023.



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ID	Start time	Completion time	First Name	Last name	Email Address	Organization (if not affiliated with a group, type "Self")	Street Address	City, State and Zip Code	Do you wish to provide oral comments on the record?
1	10/30/20 8:47:30	10/30/20 8:48:55	Edward	Andrews	edward.s.andrews@wv.	WVDEP - Division of Air Quality	601 57th Street, SE	Charleston, WV 25304	No
2	10/30/20 10:11:30	10/30/20 10:12:02	Kaitlin	Meszaros	meszaros@pinyon-env.	Pinyon Environmental, Inc.	3222 S. Vance Street, Su	Lakewood, CO 80227	No
3	10/30/20 10:25:28	10/30/20 10:26:56	Beverly	McKeone	beverly.d.mckeone@wv	WVDEP/ DAQ	601 57th Street SE	Charleston, WV 25304	No
4	10/31/20 22:30:53	10/31/20 22:31:48	Todd	Shrewsbury	todd.h.shrewsbury@wv	WVDEP-DAQ	601 57th Street SE	Charleston, WV 25304	No
5	11/3/20 17:59:28	11/3/20 18:00:40	Breanna	Bukowski	bukowskib@michigan.g	Michigan Department of Environment, Great Lakes, and E	525 West Allegan Street	Lansing, MI 48909	No
6	11/10/20 13:47:42	11/10/20 13:48:39	Rex	Compston	Rex.e.compston@wv.go	DEP DAQ	601 57th ST SE	Charleston, WV 25304	No
7	11/12/20 15:38:44	11/12/20 15:39:47	Alex	Cole	alex@ohvec.org	Ohio Valley Environmental Coalition	6230 Dunlavy Rd	Pliny, WV 25082	Yes
8	11/17/20 14:31:02	11/17/20 14:32:02	Marie	Brown	brownmf@dhec.sc.gov	SC DHEC	2600 Bull Street	Columbia, SC 29201	No
9	11/20/20 16:36:41	11/20/20 16:39:49	Ingrid	Setzler	isetzler@bpu.com	Kansas City Board of Public Utilities	300 North 65th Street	Kansas City, KS 66103	No
10	11/23/20 9:37:06	11/23/20 9:40:41	Tiffany	Le	tle@bpu.com	self	300 N 65th Street	Kansas City, KS 66102	No
11	11/25/20 14:12:00	11/25/20 14:12:45	Jason	Bostic	jbostic@wvcoal.com	West Virginia Coal Association	200 Association Drive	Charleston, WV 25311	Yes
12	11/25/20 14:12:48	11/25/20 14:13:26	Chris	Hamilton	chamilton@wvcoal.com	West Virginia Coal Association	200 Association Drive St	Charleston, WV 25311	Yes
13	11/25/20 14:49:31	11/25/20 14:50:29	Angie	Rosser	arosser@wvrivers.org	West Virginia Rivers Coalition	3501 MacCorkle Ave. SE	Charleston, WV 25304	Yes
14	11/27/20 14:07:41	11/27/20 14:13:59	Paul	Entwistle	entwistle.paul@epa.gov	EPA Region 3	1650 Arch Street	Philadelphia, PA, 19103	No
15	11/30/20 9:57:50	11/30/20 9:59:45	Rory	Davis	rory.davis@illinois.gov	Illinois Environmental Protection Agency	1021 North Grand Aven	Springfield, IL 62704	No
16	11/30/20 10:00:29	11/30/20 10:02:22	Marissa	Stegman	stegmanm1@michigan.	Michigan Department of Environment, Great Lakes, and E	525 W Allegan St.	Lansing, MI 48933	No
17	11/30/20 10:29:49	11/30/20 10:32:41	Ed	Maguire	Edward.F.Maguire@wv.	DEP	601 57th street S.E.	Charleston, WV, 25304	No
18	11/30/20 10:51:52	11/30/20 10:54:07	Mike	Nasi	mnasi@jw.com	Jackson Walker LLP	100 Congress ave, suite	Austin, Texas 78701	No
19	12/1/20 10:55:58	12/1/20 10:57:04	Cassandra	Turner	Cassandra.jobe@ky.gov	Kentucky DAQ	300 Sower Boulevard	Frankfort, Kentucky 406	No
20	12/1/20 11:21:31	12/1/20 11:24:41	Lisa	Jones	Lisa.C.Jones@ky.gov	Kentucky Division for Air Quality	300 Sower Blvd., 2nd Fl	Frankfort, KY 40601	No
21	12/1/20 12:18:10	12/1/20 12:18:57	Terry	Fletcher	Terry.A.Fletcher@wv.go	WVDEP	601 57th St. SE	Charleston, WV 25304	No
22	12/1/20 13:02:10	12/1/20 13:03:00	James	Kotcon	jkotcon@gmail.com	WV Chapter of Sierra Club	414 Tyrone Avery Road	Morgantown, WV 2650	Yes
23	12/1/20 13:23:58	12/1/20 13:24:47	Stephen	Nelson	snelson@longviewpowe	Longview Power	1375 Ft. Martin Road	Maidsville, WV 26541	No
24	12/1/20 13:31:34	12/1/20 13:32:38	Sarah	Cross	scross@wvrivers.org	WV Rivers Coalition	3330 Horseshoe Rd	Keyser, WV 26726	No
25	12/1/20 13:40:38	12/1/20 13:41:34	Adrienne	Epley	adrienne_epley@yahoo	Sierra Club	112 Sun Valley	Morgantown, WV 2650	No
26	12/1/20 14:18:25	12/1/20 14:20:25	Duane	Nichols	duane330@aol.com	Mon Valley Clean Air Coalition	330 Dream Catcher Circl	Morgantown, WV 2650	Yes
27	12/1/20 16:10:45	12/1/20 16:12:22	John	Christensen	john@mtvsolar.com	Citizens Climate Lobby LLC	11500 Valley Rd.	Berkeley Springs, WV 25	No
28	12/1/20 16:23:11	12/1/20 16:24:33	Betsy	Lawson	bjaegerart@gmail.com	Sierra Club	1213 Gallus Road	Morgantown, WV 26501	No

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Appendix E – Public Participation
Public Comments Received (Written)

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Jennings, Laura M

From: Sarah Carballo <sarah@ohvec.org>
Sent: Tuesday, December 1, 2020 11:19 AM
To: Jennings, Laura M
Subject: [External] WV ACE State Plan Comments
Attachments: WV ACE State Plan Comments.pdf

CAUTION: External email. Do not click links or open attachments unless you verify sender.

Hello Ms. Jennings,

Please see attached comments regarding the WV ACE State Plan on behalf of the Ohio Valley Environmental Coalition located in Huntington, WV. Thank you for your time and attention.

Respectfully,



Sarah Carballo, Communications Specialist

OVEC – Ohio Valley Environmental Coalition

She/Her/Hers

Cell (304) 266-6531 | Office (304) 522-0246

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Ohio Valley Environmental Coalition
Empowered Communities Since 1987

Supporting Organized Voices and

P.O. Box 6753

Huntington, WV 25773-6753

olvec.org

Ph. 304-522-0246

December 1, 2020

Laura Jennings
West Virginia Department of Environmental Protection
Division of Air Quality
601 57th Street, SE
Charleston, WV 25304
Via e-mail to: Laura.M.Jennings@wv.gov

RE: WV ACE State Plan Comments

Dear Ms. Jennings:

Please accept the following statement on behalf of the Ohio Valley Environmental Coalition, one of many organizations concerned with addressing the serious threats to our climate posed by greenhouse gas emissions from fossil fuels. The comments below are offered in response to the information provided in the *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)*.

According to the West Virginia Affordable Clean Energy (ACE) Partial State Plan, West Virginia has one or more existing coal fired EGUs meeting the definition of a designated facility that commenced construction on or before January 8, 2014 that would be affected by this State Plan to implement the emission guidelines of 40 C.F.R. Part 60, Subpart UUUUa, *Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units*, at Longview Power LLC.

The standard of performance, based on the calculation provided by Longview Power LLC in a permit that was issued to the facility prior to West Virginia submitting this State Plan to the U.S. Environmental Protection Agency (U.S. EPA) for approval, would allow 2 percent greater emissions than occurred in 2014, before heat-rate improvements (HRIs) were installed at Longview, and nearly 8 percent higher than the current performance. Therefore, instead of seeking improvements in performance and reductions in emissions, the limits imposed by the permit would allow significant increases in greenhouse gas emissions.¹

While the U.S. EPA proposes affording states wide latitude in determining whether their individual coal plants should pursue HRIs, plans that protect plants from the costs of new regulations are not enough to overcome the decline of coal due to dismal economics compared to other energy sources. The precedent that

would be established by this plan as it applies to designated facilities ignores the net societal cost of increased greenhouse gas emissions on our health and our environment in favor of an industry in terminal decline, as evidenced by the consistent downward trend in the amount of coal consumed by the electric power sector since 2015 and the steady decrease in coal production in the United States due to increased competitiveness of the cost of renewable energy.² According to the International Energy Agency (IEA) in their annual report on global energy trends, “energy produced by solar panels is now cheaper than that produced by coal- or gas-powered plants in most nations.”

This is a critically consequential time for the energy sector and for the urgent global response to climate change. The Ohio Valley Environmental Coalition strongly opposes any guidelines or plans for implementation that do not fully weigh the cost of increased greenhouse gas emissions or other impacts of coal-fired power plants, including Longview Power LLC or other designated facilities.

Respectfully submitted,



Vivian Stockman
Executive Director
Ohio Valley Environmental Coalition

Sarah Carballo
Communications Specialist
Ohio Valley Environmental Coalition

Dani Parent
Communications Specialist
Ohio Valley Environmental Coalition

¹ Source: Comments on draft permit # R13-3495, Longview Power greenhouse gas permit submitted by the West Virginia Chapter of Sierra Club

² Source: U.S. Energy Information Administration Annual Coal Report 2019

³ Source: www.iea.org/reports/world-energy-outlook-2020

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Jennings, Laura M

From: Hammonds, Stephanie E
Sent: Tuesday, December 1, 2020 6:53 PM
To: Jennings, Laura M
Subject: FW: [External] DAQ public hearing comments attached
Attachments: Longview greenhouse gas-DEP Partial Plan-comments-12-1-2020.docx

From: John Christensen <john@mtvsolar.com>
Sent: Tuesday, December 1, 2020 6:51 PM
To: Hammonds, Stephanie E <Stephanie.E.Hammonds@wv.gov>
Subject: [External] DAQ public hearing comments attached

CAUTION: External email. Do not click links or open attachments unless you verify sender.

Thank you for accepting my comments per the new air quality rules imposed by DEP when there weren't any needed.

I concur with all the speakers on the hearing except for Jason Bostic and Chris Hamilton who represent the coal industry lobbying organization in WV. All the other speakers were very well versed in the issue and I agree with them wholeheartedly. Alex Cole, Angie Rosser, James Kotcon, and Duane Nichols expressed my beliefs in their entirety. I am a member of Sierra Club and wholeheartedly endorse Jim Kotcon's comments therein. As attached.

John Christensen

--

John Christensen
Government Relations and Advocacy
Mountain View Solar
410-499-4873 cell
304-258-4733 office
www.mtv-solar.com

When the sun shines my meter runs in a positive direction! How about yours?



**SIERRA
CLUB**

Sierra Club

West Virginia Chapter

P.O. Box 4142
Morgantown, WV 26504

Dec. 1, 2020

Laura M. Jennings
West Virginia Department of Environmental Protection
Division of Air Quality
601 57th Street, SE
Charleston, WV 25304
Via e-mail to: Laura.M.Jennings@wv.gov

RE: Comments on WV ACE State Plan

Dear Ms. Jennings:

Please accept the following comments on behalf of the approximately 2600 members of the West Virginia Chapter of Sierra Club. We recognize that this is a partial State Plan being developed solely for Longiew Power, LLC, and that the rules for greenhouse gas limits (45-CSR-44) have not yet been approved in final form by the Legislature. This Partial Plan appears to be mandated by Senate Bill 810, but nothing in that bill requires a Partial Plan to be as lax and ineffective as is being proposed here. We hope you will consider these comments as this Partial Plan incorporates language almost verbatim the first proposed draft permit of its kind in West Virginia and therefore may set precedents for other permits that follow when rules are finalized.

The Sierra Club is among many organizations challenging the EPA's Affordable Clean Energy rule as it is inadequate to address the serious threats to our climate posed by greenhouse gas emissions from fossil fuels. If that rule is overturned, we expect much more stringent emissions reductions would be required. Likewise the state rule, 45-CSR-44, is similarly inadequate and may yet be modified by the Legislature. The comments below are offered to assist your review and should not be construed as the Sierra Club's position on this or other permits if the current rules change.

The specific comments below reiterate many points ion our comments on Longview's draft permit, and demonstrate that the draft permit is a faulty basis for this Partial Plan. We urge WV-DEP to go back to the drawing board, and respond to these issues before submitting a partial plan to US-EPA. Specific comments on the Partial Plan include:

Section 4. State Plan Requirements.

This section states that the proposed Plan satisfies requirements for the Longview Power permit. However, that permit, like the 45-CSR-44 rule, is still "draft". No response to our detailed comments and objections of Nov. 9, 2020 has yet been filed, and the permit does not yet appear in final form. It is inappropriate to base a State Plan on a draft permit that may yet be subject to change.

Section 4.1. Source Inventory

Subpart UUUUa - Identification of Designated Facilities, requires that the State identify the designated facilities covered by its plan “and all designated facilities in the State that meet the applicability criteria in §60.5775a.” This Partial Plan does not comply as it lists only the Longview facility. A Partial Plan can not and should not be approved without a complete inventory, even if that Plan covers a more limited number of facilities. Failure to include a complete inventory means that this Partial plan may inadvertently preclude future options by requiring other plants to meet more stringent requirements to make up for the lax requirements expected of Longview. Defaulting to a draft rule and a draft permit is by no means an adequate inventory of remaining facilities, as this Partial Plan attempts to do.

Section 4.2 Emissions Inventory

Longview’s draft permit proposes several “Load Bins” to specify emissions limits at various operating loads (Partial Plan Table 4.2). One of the most effective means of limiting emissions from plants that were designed as base load units is to ensure that operators limit operations to those periods when the plant can operate at optimal design loads, rather than as load-following units that would operate a significant proportion of the time in less efficient, higher-emitting Load Bins. We are concerned that the draft permit would therefore likely result in an even greater increase in emissions as the plant ages and becomes less competitive in the market, just at the time when significant reductions are needed.

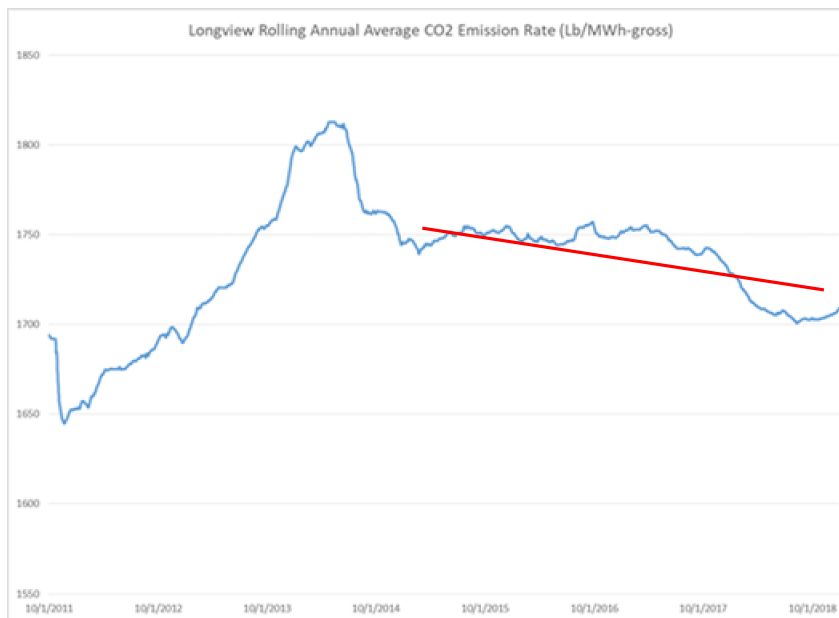
Specific issues with incorporation of emissions limits from the draft Longview permit into the Partial Plan include:

1) The Engineering Evaluation (EE) for the draft Longview permit indicates that the limits were established using annual emissions averages, plus two Standard Deviations. Nothing in the federal ACE rule nor in the proposed 45-CSR-44 state rule requires that a 2-Standard Deviation variation be considered. Incorporation of statistical variability is appropriate to reflect random, uncontrollable variability in the production process or in measurement of the emission rate, but not for controllable variability. Because the proposed standard is based on annual average emissions, variations over shorter time periods are irrelevant. The annual average emission rates at Longview are a compilation of thousands of individual measurements over the year and so, address random variability over shorter time frames. The variation in annual performance over time largely reflect matters, such as technology upgrades, ongoing maintenance schedules and operating loads that are within the control of the operator and are not random events. Other variables, such as variation in annual average cooling water temperature, that are not in LVP’s control and could theoretically affect the annual average emission rate are ordinarily quite small and have not been separately determined by WVDEP. The historic emission rates at Longview (as measured and reported by the operator to EPA) demonstrate that the plant, even at 10 years of age, has sustained and maintained rolling annual average emission rates below 1750 lb/MWh (gross) or 1925 lb/MWh (net).

2) The inclusion of a Unit Degradation Adjustment Factor (page 11 of the Partial Plan) is based on the assumption of degraded performance as the plant ages (Table 4.4.b.3 of the Partial Plan), yet this assumption is contrary to observed facts. Longview’s own data (See Figure One, below) also show that, after initial startup issues were resolved, the emission rate improved over time (as some – but by no means all - of the recommended HRI technologies were adopted)

rather than degrading. It should also be understood that these rates include operation in all Load Bins and were achieved at a time when Longview's operator was under no obligation to maintain a specific emission limitation and may have found it to be economically rewarding to operate in a fuel-inefficient manner. Thus, instead of seeking improvements in performance and reductions in emissions, the proposed limits in the draft Partial Plan would allow significant increases in greenhouse gas emissions. **Including emissions rates and UDAFs for plants that have not implemented the needed O&M is inappropriate.** The UDAF also allows the emissions rate increases to compound year-over-year, thus allowing much larger annual increases in later years. There does not appear to be any evidence to justify this, where it does occur, it shows a linear, not logarithmic, increase (even in plants not required to implement Heat Rate Improvements). **Since the goal is to limit greenhouse gas emissions, we recommend that the Partial Plan use lower rates for UDAF, provide better justification for any non-zero UDAF, and apply them only to the base year, rather than using a compound interest approach as currently proposed.**

Figure One. Longview Rolling Annual Average Emission Rates¹



3) The use of 2014-2018 data to calculate the average and Standard Deviation inflates the emissions because 2014 occurred before installation of certain HRIs, such as the Neural Network Upgrade (June 2015) and the Intelligent Combustion (Fall 2018). It certainly inflates the estimate of Standard Deviation because it includes higher rates from those years with lower rates in 2019-2020 in that calculation. Indeed, because of the increased Standard Deviation that results, the inclusion of the lower emission rates in 2017 and 2018 actually increases the proposed emission rate over what it would have been had only the pre-modification date (2014 to 2016) been employed. **It is inappropriate to establish a standard for operation with HRIs by**

¹ Source: emissions data reported by Longview to USEPA www.ampd.epa.gov.

including emission data from years of operation without those HRIs. Yet the EE clearly states (page 22, repeated on page 23) that:

“the entire baseline period was used for developing the standards for all of the bins”.

The most appropriate approach would be to estimate the variability in emissions based solely on 2019 and 2020 data, because those are the only data for emissions with all HRIs in place. The mean and the variance can be estimated from the hourly emissions data from those years. Thus, the mean for all emissions in 2019 should be 1899 lbs/MWh or lower.

4) Furthermore, the 2019-2020 data represent a mean over hours of operation that include all of the operating loads. Figure 8 of the EE indicates that Longview operated at something less than 90 % of the time, and Figure 12 suggests that the plant was operating in Load Bin 0 (<40 % capacity) approximately 50-100 hours in 2019 when would have the highest emissions rates, and had a significant number of operating hours in Load Bins 1-4 in 2019-2020. Table 4 (page 23 of the EE) implies that emissions limits were calculated using emissions data for the respective Load Bins, however, those means do not match the levels in the draft permit. **It is inappropriate to establish a standard for operation with HRIs during periods of peak performance (full capacity loads) by including emissions data from hours of operation at lower unit loads, when emissions per MWh are higher.**

5) Section 4.4.b. (Partial Plan). The Longview Power Source Specific Demonstration establishes two levels of performance. Creation of Level 2 limits that apply during other than normal operations creates an incentive to continue operating even when repairs are needed. The provision that the plant can operate for up to 180 days at the Level 2 emissions limits, and “shall be deemed approved...” (draft permit) places the burden on WV-DEP to affirmatively verify if the incident qualifies as a Level 2 event and provides no means for the public to determine whether WV-DEPs determinations are correct or to challenge any WV-DEP determinations. The provisions give too much incentive to Longview to declare such events for relatively minor problems, problems that the O&M practices should prevent and too much of an administrative burden of WV-DEP. There is no limit in the draft permit on how often a Level 2 event might be declared, nor whether overlapping events might allow Longview to operate indefinitely with Level 2 limits. **We recommend that the Partial Plan be modified so that the hours of Level 2 operation be restricted to less than 8 hours per event (to allow for shut down of the unit) to prevent unwarranted emissions from running at Level 2 indefinitely.**

6) The Partial Plan has apparently uncritically accepted Longview’s assertions regarding Heat Rate Improvement technologies. For example, it appears that the intelligent soot-blowing system performed better than EPA’s estimated range would suggest. However, there is no evaluation as to whether the “intelligent combustion system” is a BSER-level of application of the technology. No data concerning the performance of the heaters and duct leakage was reviewed by DEP. Nor did DEP evaluate what technical improvements were available. DEP offers a number of general conclusions regarding O&M practices, but does not provide any specifics as to the nature and rigor of Longview’s O&M practices, how they differ from those at other plants and why they are BSER. The list of practices that should be evaluated is lengthy, well beyond what Longview described in their application. **We recommend that WV-DEP seek an independent analysis of HRI technologies.**

7) WV-DEP has apparently accepted Longview's contention that they will continue to operate as a base load plant (page 48 of the EE), however, this ignores the abundant evidence of market realities in our region. Use of coal as a fuel for generating electricity is declining, and the Capacity Factor of plants is declining as well, as demonstrated in Figure 19 of the EE. Most projections show that this rate of decline will accelerate in coming years. That means it is realistic to expect an increased frequency of operations in Load Bins 1-4, and especially, an increase in Load Bin 0, as the plant shuts down more often. The goal of regulating greenhouse gas emissions is to prevent just such increases. **We recommend that total emissions per year be capped in the Partial Plan, to prevent Longview from "gaming" the system and dramatically increasing greenhouse gas emissions by operating in inefficient Load Bins or engaging in excessive shut downs and start-ups. Furthermore, WV-DEP should require Longview to evaluate feasibility of additional Heat Rate Improvement technologies in these reduced unit Load Bins.**

Finally, the legal authority to approve the voluntary permit for Longview is based on 45-CSR-13, (Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, Permission to Commence Construction, and Procedures for Evaluation). This state rule is for "Construction permits", and it is not clear that this is intended to authorize permits for greenhouse gas emissions for facilities in perpetuity. In fact, the proposed permit does not authorize ANY new construction, nor does it even require installation of any additional pollution control equipment. Yet this perpetual permit is what the Partial Plan appears to authorize. West Virginia would be on much firmer legal ground by delaying this until the WV legislature has a chance to act on the proposed rule, 45-CSR-44.

In summary, the Partial plan is incomplete, it is overly lax and authorizes excessive emissions (even under the very lax ACE rule), and it is an open-ended permit to pollute indefinitely. We recommend that the Partial Plan be delayed, and that more stringent pollution controls and heat rate Improvements be required.

Thank you for the opportunity to comment.

Sincerely,



James Kotcon
Conservation Chair

Jennings, Laura M

From: James Kotcon <jkotcon@gmail.com>
Sent: Tuesday, December 1, 2020 6:42 PM
To: Jennings, Laura M
Subject: [External] Re: [External] Comments on WV ACE State Partial Plan
Attachments: Longview greenhouse gas-DEP Partial Plan-comments-12-1-2020.docx

CAUTION: External email. Do not click links or open attachments unless you verify sender.

Thank you for the reply. I am attaching a slightly revised version that corrects two spelling errors. There are no other substantive changes. My apologies for the earlier errors.

Jim Kotcon

On Tue, Dec 1, 2020 at 6:26 PM Jennings, Laura M <Laura.M.Jennings@wv.gov> wrote:

Thank you Mr. Kotcon. I received your written comments.

Regards,

Laura M. Jennings

Technical Analyst, Planning

WV Dept. of Environmental Protection

Division of Air Quality

(304)926-0499 x 41266 (NOTE: new extension)

(304) 414-1266 (Direct Dial)

Laura.M.Jennings@wv.gov

From: James Kotcon <jkotcon@gmail.com>
Sent: Tuesday, December 1, 2020 5:41 PM
To: Jennings, Laura M <Laura.M.Jennings@wv.gov>
Subject: [External] Comments on WV ACE State Partial Plan

CAUTION: External email. Do not click links or open attachments unless you verify sender.

See attached. I will discuss additional points tonight.

Jim Kotcon



**SIERRA
CLUB**

Sierra Club

West Virginia Chapter

P.O. Box 4142
Morgantown, WV 26504

Dec. 1, 2020

Laura M. Jennings
West Virginia Department of Environmental Protection
Division of Air Quality
601 57th Street, SE
Charleston, WV 25304
Via e-mail to: Laura.M.Jennings@wv.gov

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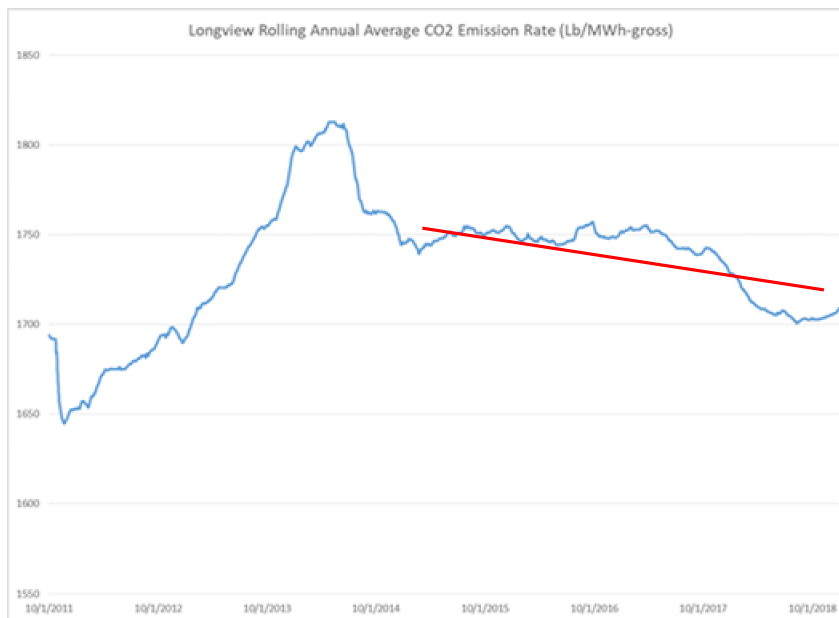
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Thank you for the opportunity to comment.

Sincerely,



James Kotcon
Conservation Chair

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Jennings, Laura M

From: Duane Nichols <nichols330@gmail.com>
Sent: Tuesday, December 1, 2020 5:17 PM
To: Jennings, Laura M
Subject: [External] "WV ACE State Plan Comments"

CAUTION: External email. Do not click links or open attachments unless you verify sender.

Email to Laura.M.Jennings@wv.gov regarding the "WV ACE State Plan Comments"

The Greenhouse Gas problem on Earth has reached crisis level and action is urgent.

1. Greenhouse Gases (GHG) have been accumulating in the Earth's atmosphere since the beginning of the industrial revolution; and, now the concentration and continued accumulation is a crisis problem for the world. The United Nations has issued various warnings, as CO2 has risen to over 400 ppm and continuing to increase.
2. Scientific studies have now shown that world wide damages and impacts are resulting including severe climate changes, growing-season alterations, melting of glaciers and the ice in polar regions, release of methane from bogs and other formations, general heating of the oceans, ... etc. All these and other impacts are intolerable for the long term future of mankind. GHG must be curtailed.
3. The West Virginia Department of Environmental Protection by law has a responsibility to preserve and protect our State from all environmental impacts and to advise and lead the government and the public fully about these. So it is with the GHG in the atmosphere, to prevent, to reduce, to control, and to advise regarding these GHG.
4. It is unacceptable to establish standards for GHG emissions that allow more than the absolute minimum. Rather it is necessary that provisions in recommendations, standards and practices be to severely reduce and eliminate these gases and chemicals. No grace period is appropriate or tolerable because our problems are immediate, the impacts are here and now!
5. The guidance of the WV-DEP must be the facts and the science. No political act can be allowed to substitute as justification for concerted action. The direction of GHG must be for less emissions, for greater reductions, for no temporary or intermittent increases.
6. Seaweed varieties have been discovered that when mixed with cattle feed will substantially reduce methane emissions from the cattle. WV-DEP should help in the evaluation and promotion of any GHG control methodologies, not in procedures to facilitate GHG emissions.
7. Strict limitations and controls need to be imposed upon the oil & natural gas industries to eliminate emissions of greenhouse gases, whatever their chemical identity. Leaks should be penalized, venting should be prevented and waste gas combustion should be both minimized and highly controlled. Combustion efficiency in all applications for fossil fuels is an area where limitations and controls must be increased.

COMMENT ON THIS HEARING PROCESS: A reasoned consideration leads us to believe that formal written submissions of presentations should be permitted up to three days following the hearing. This would permit telephone participants to mail their input after the hearing, by overnight mail if necessary. And, these three days would permit all participants an opportunity to extend and/or revise their input shortly following the hearing. Nothing substantive is gained by forcing the awkward deadline now prevailing that all input is due by the end of the public hearing date and time.

Submitted by,

Duane G. Nichols, Co-ordinator, Mon Valley Clean Air Coalition,
330 Dream Catcher Circle, Morgantown, WV 26508

304-216-5535, Nichols330@gmail.com

Chat from WV Partial State Plan Public Hearing December 1, 2020

[12/1 6:16 PM] Sarah Cross (Guest)

I thought there was only supposed to be one representative per organization

[12/1 6:16 PM] Sarah Cross (Guest)

for comments

[12/1 6:19 PM] Richmond, Christina L

To Hammonds, Stephanie E - Sarah has a question

[12/1 6:20 PM] Sarah Cross (Guest)

Thank you

[12/1 6:23 PM] John Christensen (Guest)

Chris wants to save the best for last

[12/1 6:28 PM] John Christensen (Guest)

Good point James, why the rush?

[12/1 6:30 PM] John Christensen (Guest)

WV should have a way to offset pollution particulates with renewable energy credits as soon as possible

[12/1 6:30 PM] John Christensen (Guest)

Great comment James!

[12/1 6:30 PM] Sarah Cross (Guest)

Thank you, Dr. Kotcon

[12/1 6:31 PM] John Christensen (Guest)

Thank YOU Duane Nichols

[12/1 6:32 PM] John Christensen (Guest)

Thank YOU Angie Rosser

[12/1 6:32 PM] John Christensen (Guest)

Thank YOU Alex Cole

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WV ACE Partial State Plan
Appendix E – Public Participation
Correspondence

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west virginia department of environmental protection

Division of Air Quality
601 57th Street, SE
Charleston, WV 25304

Austin Caperton, Cabinet Secretary
dep.wv.gov

October 29, 2020

Ms. Cristina Fernandez, Director
Mr. Cosmo Servidio, Administrator
Air Protection Division
U.S. EPA, Region 3
1650 Arch Street (3AP00)
Philadelphia, PA 19103-2029

Via email: Fernandez.Critina@epa.gov
R3_RA@epa.gov

Re: Proposed West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)

Dear Director Fernandez and Administrator Servidio:

The West Virginia Department of Environmental Protection (DEP), Division of Air Quality (DAQ) respectfully requests your review of the enclosed proposed West Virginia partial State Plan to implement the Affordable Clean Energy (ACE) rule: *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)*.

Section 111(d)(1) of the CAA requires all states to submit to the U.S. Environmental Protection Agency (EPA) a plan which establishes standards of performance for any existing source for any air pollutant to which a standard of performance would apply if such existing source were a new source and provides for the implementation and enforcement of such standards of performance. This proposed State Plan will establish the standards of performance for Longview Power LLC, an existing source located in West Virginia, and will provide for the implementation and enforcement of such standard of performance. Once finalized, the *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)* will be submitted to the U.S. EPA for approval. The WV DEP commits to submit the full State Plan to the U.S. EPA as required under the *Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations* at 84 Fed. Reg. 32520 (July 8, 2019).

A copy of the proposed partial State Plan, supporting documentation and public notice are enclosed for your review, and may be viewed electronically on the Division of Air Quality website under the public

notice and comment section: www.dep.wv.gov/daq/. The public comment period commences October 30, 2020 and concludes with a public hearing at 6:00 p.m. on Tuesday, December 1, 2020, held virtually due to COVID-19 as described in the enclosed public notice. Send written comments to be included in the formal record to Laura M. Jennings, Division of Air Quality, at the address above or via e-mail to laura.m.jennings@wv.gov with "WV ACE State Plan Comments" in the subject line.

If you or your staff have any questions regarding this matter, please contact Laura Jennings at (304) 414-1266.

Sincerely,

**Laura M.
Crowder**

Laura M. Crowder
Director



Digitally signed by: Laura M. Crowder
DN: CN = Laura M. Crowder email =
Laura.M.Crowder@wv.gov C = US O =
West Virginia Department of Environmental
Protection OU = Division of Air Quality
Date: 2020.10.29 10:43:34 -04'00'

LMC/lmj
Enclosures

cc: Edward Andrews, DAQ
Mike Gordon, USEPA/3AP10
Laura Jennings, DAQ



west virginia department of environmental protection

Division of Air Quality
601 57th Street, SE
Charleston, WV 25304-2345
Phone: 304 926 0475 \$ Fax: 304 926 0479

Austin Caperton, Cabinet Secretary
www.dep.wv.gov

October 29, 2020

Mr. Cosmo Servidio
Regional Administrator
U.S. Environmental Protection Agency, Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

Via email: R3_RA@epa.gov

Regarding: Proposed *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)* Request for Parallel Processing

Dear Administrator Servidio:

EPA last year published the Affordable Clean Energy (ACE) rule consisting of emission guidelines for greenhouse gas (GHG) emissions from existing electric utility generating units (EGUs). See 84 FED. REG. 32,520 (July 8, 2019). EPA also finalized new implementing regulations that apply to the ACE rule and any other future emission guidelines promulgated under Clean Air Act (CAA) § 111(d). EPA promulgated the ACE rule as 40 C.F.R. Part 60, Subpart UUUUa, *Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units* and the implementing regulations as 40 C.F.R. Part 60, Subpart Ba, *Adoption and Submittal of State Plans for Designated Facilities*.

Any state with one or more designated EGUs that commenced construction on or before January 8, 2014 is subject to ACE and is required to submit a “State Plan” to EPA that implements the emission guidelines of 40 C.F.R. Part 60, Subpart UUUUa. While granting broad discretion, the federal emission guidelines inform states on the development, submittal, and implementation of

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State Plans. West Virginia has one or more designated facilities and has developed the above referenced Proposed Partial State Plan for implementation of ACE at Longview Power LLC (LVP). West Virginia provided a transmittal letter dated October 29, 2020 to Director Fernandez and Administrator Servidio from Director Crowder of the Division of Air Quality. The transmittal letter is being submitted with the proposed State Plan to EPA through EPA's Central Data Exchange SPeCS system.

In order to implement a process that is both efficient and reflects the extensive technical consultation between our agencies to date on LVP's permit application and our corresponding ACE Partial State Plan, DEP respectfully requests that EPA parallel process the proposed State Plan. Parallel processing is appropriate in cases such as this in which DEP and EPA worked together in development of the State Plan and the permit incorporated into the State Plan. I very much appreciate the cooperation and input and the time EPA regional and headquarters staff have devoted to working with DEP program staff in developing this Partial State Plan.

In a parallel process, a state is to submit a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA is then to review the proposed state action and prepares a notice of proposed rulemaking to approve the plan. EPA's notice of proposed rulemaking is published in the FEDERAL REGISTER during the same time frame that the state is holding its public hearing. The state and EPA then provide for public comment periods on both the state action and EPA action using concurrent/overlapping comment periods at the state and federal level. *See*, EPA, SIP Processing Manual § 6.A.2.c. (Attached as **Appendix 1**); *see also* EPA, Options and Efficiency Tools for EPA Action on State Implementation Plan (SIP) Submittals (Oct. 31, 2011)(Attached as **Appendix 2**).

Parallel processing is a common means of EPA approval of similar state implementation plans ("SIPs") under Section 110 of the Clean Air Act. As noted in the ACE rule, EPA in approving State Plans "shall establish a *procedure similar to that provided by CAA section 110* of this title under which each State shall submit to the [EPA] a plan' The Agency's interpretation of this cross-reference is that it focuses on the *procedure* under which states shall submit plans to the EPA." 42 FED. REG. at 32,557 (emphasis in original) (quoting 42 U.S.C. § 7411(d)(1)). There are numerous examples of EPA and state agencies that have used and continue to use parallel processing. Provided is a short list of examples showing how states from across the country, governed by both political parties have made parallel processing requests that have led to efficient state plan processing by multiple EPA regions in multiple federal administrations:

CALIFORNIA

Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District; Reasonably Available Control Technology Demonstration. 83 Fed. Reg. 41,006 (Aug. 17, 2018) (Attached as **Appendix 3**);

CONNECTICUT

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Approval and Promulgation of implementation Plans; Connecticut; Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision. 76 Fed. Reg. 26,933 (May 10, 2011) (Attached as **Appendix 4**).

NEW MEXICO

Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP) for Albuquerque-Bernalillo County' Prevention of Significant Deterioration (PSD) Permitting. 80 FED. REG. 52,401 (Aug. 31, 2015) (Attached as **Appendix 5**);

OHIO (& WEST VIRGINIA)

Approval of Air Quality Implementation Plans; Ohio and West Virginia; Attainment Plans for the Steubenville Ohio-West Virginia 2010 Sulfur Dioxide Nonattainment Area. 84 FED. REG. 56,385 (Oct. 22, 2019)(Attached as **Appendix 6**); *see also*, Letter from Laurie A. Stevenson, Director, Ohio EPA to Cathy Stepp, Regional Administrator US. EPA Region 5, requesting parallel processing of Ohio's attainment demonstration and revisions to the Ohio Administrative Code (Mar. 25, 2019) (Attached as **Appendix 7**); and

TEXAS

Approval and Promulgation of Implementation Plans; Texas; Revisions to Emissions Banking and Trading Programs for Area and Mobile Sources. 82 FED. REG. 57,677 (Dec. 7, 2017) (Attached as **Appendix 8**),

On October 9, 2020, DEP provided notice to the public of its preliminary determination to issue permit R13-3495 to LVP. A public meeting was held October 27, 2020 and written comments on the permit are due on November 9, 2020. Public notice regarding this Partial State Plan (which incorporates permit R13-3495 as the mechanism for federal enforceability) will commence on October 30, 2020 with written comments due on December 1 and a public hearing scheduled for December 1.

Again, DEP respectfully requests that EPA immediately institute parallel processing in light of the efficiency gains of that process and the extensive technical consultation between our agencies to date on LVP's application and our corresponding ACE State Plan. Based on the extensive progress made during the consultations between our agencies, I trust that EPA has a comfort level with the State Plan such that it can immediately commence the public notice and comments steps required of it so that approval of the State Plan may be expedited under the longstanding parallel processing procedures.

I appreciate the cooperation and input EPA staff have devoted thus far to enable DEP to be in a position to submit this State Plan. We are available to continue working with your staff to ensure a smooth parallel processing of this State Plan and its ultimate approval by EPA and DEP in the very near future.

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If you have any questions or need additional information, please contact Laura Crowder of my staff at (304) 414 - 1253.

Sincerely,

A handwritten signature in blue ink that reads "Austin Caperton". The signature is fluid and cursive, with the first name "Austin" and last name "Caperton" clearly distinguishable.

Austin Caperton
Cabinet Secretary
West Virginia Department of Environmental Quality

Enclosures

cc: Laura Crowder, WVDEP DAQ
Cristina Fernandez, EPA Region 3 (via email: Fernandez.Cristina@epa.gov)

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Appendix 1: EPA SIP Processing Manual

SIP Processing Manual

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Chapter 6 EPA Decision Options

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Parallel Process Actions

Parallel processing refers to a concurrent state and federal proposed rulemaking action. Under this procedure, the Regional Office works closely with the state agency while the state is developing new or revised regulations/requirements. In this process, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action, and prepares a notice of proposed rulemaking (approval or disapproval). EPA's notice of proposed rulemaking is published in the [Federal Register](#) during the same time frame that the State is holding its public hearing. The State and EPA then provide for concurrent public comment periods on both the state action and Federal action.

After the state submits the formal SIP revision request, EPA prepares a final rulemaking notice. If the state's formal SIP submittal contain changes which occur after EPA's notice of proposed rulemaking, such changes must be described in EPA's final rulemaking action. If the state's changes are significant, then EPA must decide whether it needs to re-propose the State's action.

Advantages- This process saves total processing time

Disadvantages- This process may increase processing time in situations where State must revise proposed action in response to public hearing testimony. In this case, EPA will have to repropose action on the State rule.

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Appendix 2: Options and Efficiency Tools for EPA Action on State Implementation Plan (SIP)
Submittals (Oct. 31, 2011)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 31 2011

OFFICE OF
AIR AND RADIATION

SUBJECT: Options and Efficiency Tools for EPA Action on State Implementation Plan (SIP) Submittals

FROM: Janet McCabe, Deputy Assistant Administrator *JGM*
Office of Air & Radiation

Rebecca Weber, Director *Rebecca Weber*
Air & Waste Management Division, Region 7

TO: Air Division Directors, Regions 1-10 & ECOS/NACAA

The purpose of this memorandum is to transmit the document entitled "Options and Efficiency Tools for EPA Action on State Implementation Plan (SIP) Submittals." This document was prepared as part of the Region 7 SIP Kaizen event to explore possible efficiencies available for SIP and air quality planning through enhancements of the current processes. The Kaizen participants included representation from EPA Region 7, Region 6, Region 4, and Headquarters, as well as the Iowa Department of Natural Resources, the Kansas Department of Health and Environment, the Missouri Department of Natural Resources, the Nebraska Department of Environmental Quality, and the Mid-America Regional Council.

It became evident to participants of the Kaizen event as the group mapped the SIP process that, in some cases, there were multiple options for EPA action on SIP submissions. The Kaizen participants thought it was important to review existing *Federal Register* action options and explore any new options and then better understand how these could be used to move SIPs forward more efficiently. The participating states thought it would be helpful to all states if EPA outlined these options for action, and explained the pros and cons of these options. As a result, a workgroup was convened and the document entitled "Options and Efficiency Tools for EPA Action on State Implementation Plan (SIP) Submittals," was developed.

The attached document was vetted through the SIP Kaizen participants, all EPA Regions, and the ECOS/NACAA SIP Reform Workgroup for review and comment. Nothing in this document is intended to require changes to the Clean Air Act, or to supersede existing guidance for SIP processing. Rather, the intent of the document is to highlight viable avenues for EPA action along with the pros and cons of the option, and to identify some additional tools for increased efficiency for the SIP process. In addition, we hope this document encourages discussion among regions and states to ensure they are utilizing the most efficient option available to them. State and local air agencies should consider the attached document for informational purposes and should consult with the applicable EPA regional office to discuss the most appropriate efficiency option for taking action on a particular SIP submission.

cc: Regional Air Division Directors
Regional Air Program Managers
Regional Counsels for Air
OAR Office Directors in OAQPS, OTAQ, and OAP
OGC Air Office
Region 7 SIP Kaizen Team

Options and Efficiency Tools for EPA Action on State Implementation Plan (SIP) Submittals

Region 7 SIP Kaizen Workgroup

A goal of the Region 7 SIP Kaizen Workgroup was to develop tools and resources that lead to fully approvable SIP submittals by the state. However, participants recognized that full approval was not always appropriate due to legal, technical, or policy considerations and other options may be available in specific situations to move the process forward. This document highlights 1) the viable avenues for EPA *Federal Register* action on SIPs along with the pros and cons, and 2) identifies additional tools for increased efficiency in the SIP process.

The avenues for action are:

- Full Approval
- Partial Approval/Disapproval
- Limited Approval/Limited Disapproval
- Conditional Approval
- Disapproval

The potential tools for efficiency are:

- Technical Support Document (TSD) Efficiencies
- Early Development of Checklist
- Early development of *Federal Register* template (well before SIP submittal required)
- Early Collaboration
- Parallel Processing
- Letter Approval
- Direct Final Rulemaking
- Proposing Alternatives

Avenues of Action

Full Approval

This option is the preferred option and will be used when the submittal meets all applicable requirements of the Clean Air Act (CAA or Act) statute and regulations¹.

Pros:

- Allows completion of the SIP process and puts federally-enforceable state requirements in place.
- Conserves EPA and state resources to be used for other priority SIPs because, in contrast with other actions listed below, follow-up action would not be required. Provides regulatory certainty.

Cons:

- None.

References: Section 110(k)(3) of the CAA, 42 U.S.C. § 7410(k)(3); General Preamble for implementation of title I of the CAA Amendments April 16, 1992 (57 FR 13498).

Partial Approval/Disapproval

This option may be used when some portions of the submittal meet all applicable requirements of the CAA, and other portions do not. The portions must be separable (i.e., independent from one another) because EPA's disapproval action cannot change the stringency of the portion of the submittal it approves.² For example, EPA cannot approve a revision to an emission limit and disapprove the underlying test method. However, where a state submits several rules addressing reasonable available control technology (RACT), EPA can approve some and disapprove others as long as the disapproved rules are not interrelated with the approved rules. Approval/Disapproval of the separable portions should occur concurrently.

Pros:

¹ To the extent that the state provides an organized submission that clearly demonstrates that it meets the applicable requirements of CAA § 110, EPA will be able to process these submissions more quickly. While EPA will still process demonstrations that are not as clear and organized, it will likely take more time for EPA to determine that the demonstration meets the applicable requirements and prepare the submission for approval.

² Bethlehem Steel Corporation v. Gorsuch, 742 F.2d 1028 (7th Cir. 1984)

- Allows completion of the SIP process for the portions which are approvable.
- Lessens the impact of inability to timely resolve issues relating to portions of the submittal.
- Provides regulatory certainty for at least part of the submittal (the portions approved are federally enforceable).

Cons:

- Partial disapproval starts the federal implementation plan (FIP) clock (and sanctions clock for nonattainment SIPs) for the disapproved portion.
- “Separable” requirement limits the use of this option.

References: General Preamble for implementation of title I of the CAA Amendments April 16, 1992 (57 FR 13498)

Limited Approval/Disapproval

Limited approval may be an option where some provisions of the submittal meet the requirements of the CAA and other, non-separable, provisions do not. If, overall, the submittal strengthens the SIP, limited approval may be used. Unlike a partial approval, this action approves the entire rule, but with a limitation. In conjunction with the limited approval, the limited disapproval is also for the entire rule, but only relates to whether the submittal meets all of the requirements of the Act. The disapproval does not affect the inclusion of the rule in the SIP. If the statutory deadline for acting on the SIP submittal has not yet passed, it may be possible, in specific factual situations, to promulgate the limited approval and temporarily withhold action on the limited disapproval. For example, it might be possible to approve an underlying control strategy SIP while the state is correcting defects in the attainment demonstration. If the deficiencies are corrected, this might result in a full approval as the final action by EPA.

Pros:

- Makes the state submittal federally enforceable, thus enhancing the SIP’s ability to achieve emissions reductions.
- Allows progress toward goal of SIP approval.
- Can be used in more situations than partial approval/disapproval.
- Can be used where the state is unable to make a specific commitment to fix, by a date certain, the deficiency causing the disapproval (i.e., does not meet the “conditional approval” criteria described below).

Cons:

- Limited approval does not discharge EPA’s duty to act on SIP, so limited disapproval is a necessary component.

- Limited disapproval starts FIP clock (and sanctions clock for nonattainment SIPs) for promulgation of FIP or approval by EPA of SIP which corrects the deficiency leading to the limited disapproval.

References: General Preamble, cited above under Partial Approval

Conditional Approval

This option can be used in limited circumstances where the submittal contains one or more deficiencies, and the state has made a commitment to adopt specific enforceable measures to address the deficiency, by a date certain within one year approval of the SIP submission. This option cannot be used where the submission consists solely of a commitment to submit a SIP in the future, i.e. a “committal SIP”, nor can it be used where the SIP has so many deficiencies that the entire SIP is defective. The amount of detail in the commitment (e.g., description of the specific measures to be adopted and time line for adoption of the measures) generally depends on the complexity of the necessary corrective measures. The conditional approval reverts to a disapproval if the state does not meet the commitment.

Pros:

- Makes the state submittal federally enforceable, thus strengthening the SIP.
- Conditional approval discharges EPA duty to act on submittal and does not immediately start a FIP clock (or sanction clock for nonattainment submittals).
- Moves the approval process forward and sets a specific schedule (date certain) for producing a fully approvable SIP submittal.

Cons:

- Cannot be used where the state is unable to commit to corrective measures by a date certain (or when corrective measures will take more than one year to develop).
- May provide incentives to delay resolution of issues which could lead to full approval of the submittal.
- If the issues are not resolved within one year, the approval reverts to an automatic disapproval, including starting FIP and sanctions clocks.
- Since a conditional approval is not a full approval, it cannot be used to replace a portion of a SIP that is fully approved.

References: General Preamble; *Natural Resources Defense Council, Inc. v. EPA*, 22 F.3d 1125, 1133-34 (D.C.Cir.1994)

Disapproval

This option can be used in situations where the state provides a submission that does not meet statutory and regulatory requirements; and the state is unable to make changes to provide a submission that does meet applicable requirements.

Pros:

- Leads to decisions on issues rather than avoidance and delay.
- Provides clarity on what the state or EPA must do to correct the deficiency.
- A state may then be able to make the necessary changes to correct the deficiency.

Cons:

- Generally not preferred by our state partners³.
- EPA may have to use resources, including potentially 105 funding, to implement FIPs.
- Depending on the type of SIP that is disapproved, states may face sanctions as a result.

References: Section 110(k)(3) of the CAA, 42 U.S.C. § 7410(k)(3); General Preamble for implementation of title I of the CAA Amendments April 16, 1992 (57 FR 13498).

Tools for Efficiency

Collaboration on Technical Support Information

States are already tasked with the responsibility of developing the technical support information to support their actions and EPA also has to develop this supporting information. The more that EPA can rely on the state's documentation, the more efficient the process will be. To this goal, collaboration between EPA and the state during the development of the state's technical support information is an important tool to avoid duplication. If the state and EPA work together early in the process to coordinate the technical basis for the SIP revision, this will avoid duplication of effort and therefore avoid back-end delays. It may also be advantageous for the early development of a technical support document template for boundary recommendations so that states could be informed regarding how EPA will consider the factors for designations, and thus could foster early agreement between the states and EPA on boundaries for potential nonattainment areas. An example of where this may be advantageous is for the upcoming designations for ozone and sulfur dioxide.

Pros:

- Will provide consistency between information that is being used at the state and federal level to implement air quality programs and make air quality planning decisions.

³ Based on experience and discussions with states, states would prefer some form of approval.

- Although EPA is still obligated to explain how the state's submittal demonstrates the technical requirements of the rule, resources may be saved by referencing the state's technical documentation and docket rather than re-writing significant portions of the state's information.
- May maximize the efficiencies at both the federal and state level and leverage staff and technical resources in a more effective way.
- Avoid back-end delays.

Cons:

- It can be challenging for states and EPA to agree on the analysis necessary to meet statutory and regulatory requirements, thus there may be times where collaboration on technical analyses, and use of the states technical work, may not be feasible.

Use of National SIP Submittal Checklists

This option involves the use of a national checklist for critical elements of a SIP revision well in advance of the anticipated date of a submission from states. The goal behind the checklist is that, to the extent possible, it would include the minimum requirements for states to include in their submissions to address requirements. States would be provided these checklists in advance and EPA Regions would use the checklists to review state submissions. Some examples of submissions for which early checklists could be developed include infrastructure submissions; attainment demonstrations; maintenance plans; reasonable further progress (RFP) plans; and RACT submissions.

Pros:

- Consistency, because regions would be able to use the checklist as a guide to identify what basic elements are needed for an approvable SIP. Although there is great effort to include requirements in implementation guidance, the level of detail in general guidance is not always adequate.
- More efficient EPA processing of submissions because submissions will more likely meet all the necessary requirements if all elements of the checklist are addressed.
- Could be used as a tool for the states and a tool to guide new staff on what is absolutely critical for a submission.

Cons:

- The checklist may not cover all situations and the checklist would have to be detailed so that it captures everything that is statutorily required. Checklist could become outdated if there are changes to regulations, guidance or policy based on legal challenges.
- Obtaining resource commitments from Regions and HQ may be challenging.
- It may be difficult to obtain consensus across the Regions and EPA Headquarters for specific checklist language.

References: Not applicable, although checklists have been developed for previous submissions such as the PM_{2.5} attainment demonstrations and regional haze.

Early development of Federal Register template (well before SIP submittal)

This option involves the development of *Federal Register* action templates (e.g., approval; disapproval; partial approval and conditional approval) and associated TSDs, if necessary, in advance of the anticipated date of a submission from states for major EPA actions for which we know that rulemaking or other action in the *Federal Register* will be required. Some examples include infrastructure submissions; attainment demonstrations; maintenance plans; RFP plans; RACT submissions and others.

Pros:

- More efficient EPA processing of submissions because Regions would be in a position to take action on submissions upon receipt, and EPA Regions and Headquarters could focus reviews and efforts on substantive legal, technical and policy considerations related to submitted SIPs versus focusing on logistics of getting buy-in on development of the *Federal Register* and TSDs post SIP submission.
- Consistency in regional actions because all regions will have a role in developing the template versus one region or another taking action potentially without input from interested regions.

Cons:

- Obtaining resource commitments from Regions and Headquarters may be challenging.
- It may be difficult to obtain consensus across the Regions and EPA Headquarters for specific template language.

References: <http://intranet.epa.gov/adplibrary/adp-milestones/fedreg.htm#handbook>;
http://www.epa.gov/ttncaaa1/t1/memoranda/evm_ievm_g.pdf;
http://www.epa.gov/ne/topics/air/sips/Revised2_SIP_TIMELINE.pdf;
[http://yosemite.epa.gov/r10/airpage.nsf/webpage/Region+10+SIP+Process+Improvement+Project+\(SIP-PIP\)](http://yosemite.epa.gov/r10/airpage.nsf/webpage/Region+10+SIP+Process+Improvement+Project+(SIP-PIP))

Early Collaboration

Early collaboration between the state and EPA allow for the early review, discussion and resolution of problematic/approval issues in a draft SIP submittal package. This is the primary focus of the new R7 SIP Kaizen process. Beginning discussions and sharing complete or near-complete draft SIP submittals as early as possible in the process provides the state and EPA the opportunity to identify expectations and problematic issues up front. This allows for these issues to be resolved early in the process, when changes are more easily made to any draft rules or legal agreements, and time is maximized for any additional needed technical analysis. This also allows for EPA to provide a more complete set of comments, so the state and EPA may address any possible issues with the SIP submittal as early as possible.

Pros:

- Addresses problematic/approvability issues, and sets expectations up front.
- Full set of comments provided on a full draft SIP submittal package earlier in process.
- Allows for early collaboration when draft regulatory requirements are more easily changed to address comments.
- Allows for maximum time for additional technical analysis, if needed.
- For attainment demonstration, maintenance plans and reasonable further progress plans, the state and EPA may work together early in the process to develop a submittal including the motor vehicle emissions budgets (MVEBs), which may facilitate availability of the MVEBs for transportation conformity use upon receipt of the state's final submission and an adequacy finding or approval by EPA.

Cons:

- Lack of resources may make it difficult for states to justify early work on SIP submittals given competing priorities.
 - Early collaboration, setting of expectations and resolution of issues may be difficult if implementation rule and guidance are delayed.
-

Parallel Processing

Administrative parallel processing refers to a concurrent state and federal proposed rulemaking action. Under this procedure, EPA works closely with the state while the state is developing new or revised regulations/requirements. In this process, the state submits a copy of the proposed regulation or other SIP revisions to EPA before conducting its public hearing. EPA reviews this proposed state action, and prepares a notice of proposed rulemaking. EPA's notice of proposed rulemaking is published in the *Federal Register* during the same time frame that the state is holding its public hearing. The state and EPA then provide for independent public comment periods on both the state action and federal action. After the state submits the formal SIP revision request, EPA prepares a final rulemaking notice. If the state's final rule contains changes which were not described in EPA's notice of proposed rulemaking, and if the state's changes are substantive, EPA must re-propose the state's action.

Pros:

- If there are no substantive changes made to the SIP submittal following EPA's notice of proposed rulemaking, this process saves total processing time.

Cons:

- In complex or controversial actions, it is more likely the state will need to revise its proposed action in response to public comments/hearing. In those cases, EPA would need to re-propose action on the state rule adding additional time and resources to the process. This may also confuse the record.

Letter Approvals

This option can be used to approve SIP revisions that are only administrative in nature and do not change the substance of the rule in any way. Administrative has been defined in very strict terms, e.g. correction of typos, erroneous section references. If a state is making administrative SIP revisions for which this option would be appropriate, at the time the state public notices the revisions it may request a letter approval from EPA.

Pros:

- Provides a quick way to approve administrative SIP revisions.

Cons:

- Very limited use and cannot be used for the submissions that are backlogged or have a potential of being backlogged due to approvability issues.

References: The McCabe SIP Consistency Memo signed April 6, 2011 provides additional detail in Attachment D on the use of letter notices.

Direct Final Rulemaking

If a SIP revision is considered noncontroversial, and EPA does not expect adverse or critical comments, the initial EPA action can be published as a concurrent proposed and final rule. The final rule would consist of a detailed notice published in the Rules and Regulations section of the *Federal Register*, while the proposed rule would consist of a short informational notice published simultaneously in the Proposed Rules section of the *Federal Register*. The purpose of the proposal notice is to inform the public of the direct final rulemaking action, and indicate that if adverse written comments are received during the public comment period, then a notice to withdraw the final action will be published in the *Federal Register*. If such comments are received, then 1) the direct final document serves as the detailed basis for the proposal, and the adverse comments will be addressed in the final notice; and 2) EPA must publish the withdrawal notice before the effective date of the final Agency action. If no adverse comments are received, then no further Agency activity is necessary, and the action would become effective automatically as of the date established in the direct final rulemaking action, generally 45 to 60 days.

Pros:

- For routine, noncontroversial SIP changes, this process saves total processing time.

Cons:

- If EPA receives adverse comments, EPA must prepare and publish in the *Federal Register* a notice withdrawing the final rule before the effective date of the action (45-60 days after the direct final rulemaking). EPA must then respond to comments and promulgate a final rule. If EPA receives adverse comments and does not prepare and publish the notice of withdrawal prior to the effective date (45-60 days after the direct final rulemaking action), EPA additionally must propose to withdraw the original rulemaking.
 - Stakeholders may perceive that EPA is “cutting corners” on public participation.
-

Proposing alternatives

This proposed option could be used in circumstances where EPA has some discretion regarding approval or disapproval, and would benefit from additional public input. A number of SIP submissions are on “hold” due to policy or unclear guidance considerations that have yet to be decided although contemplated for a number of months and in some cases years. The Agency believes that there are limited circumstances where this option could be used (i.e., only appropriate where requirements, or EPA guidance is not clear) and does not anticipate use of this to allow clear requirements to be waived.

Pros:

- Without making a firm commitment to one alternative or another, EPA could develop *Federal Register* actions and take comment to help inform a decision on a policy or guidance issue through rulemaking action.
- EPA would be able to process a SIP submission potentially without long delays to consider a policy or guidance issue, and would give EPA the benefit of public comment for a policy or guidance issue.
- May minimize litigation on EPA final actions because the public would have already weighed in and in the event of litigation, EPA might be in a better position to defend the action.

Cons:

- May create additional workload for responding to comments on the alternatives.
- Closer attention would have to be paid among regions and by EPA Headquarters because these actions could set precedent.
- While EPA has done alternative notices in the past, the basis for each option (approval or disapproval) must be individually laid out and can take additional staff resources. These notices have the potential to raise more legal/policy concerns than a traditional notice of approval or disapproval, as well as attract more comments, to which EPA must respond, causing delays.

Appendix

Example for Options and Efficiency Tools for EPA Action on State Implementation Plan (SIP) Submittals¹

The following are examples of some of the actions where the options and efficiency tools have been used in the past. The purpose of this listing is illustrative and does not relate to the technical or legal analyses of the individual action. The substantive issues discussed in the notices may or may not be applicable to a particular action, which would be case and fact specific.

Partial Approval/Disapproval

- Approval and Promulgation of Implementation Plans; South Carolina; Prevention of Significant Deterioration and Nonattainment New Source Review Rules. Partial approval, disapproval and conditional approval of changes to South Carolina's Prevention of Significant Deterioration Program. See 73 FR 31368, June 2, 2008.
- Approval and Promulgation of Implementation Plans; State of Missouri; partial approval and partial disapproval of revisions to the Restriction of Emission of Sulfur Compounds rule in the Missouri SIP. See 71 FR 12623, March 13, 2006.
- Clean Air Act Approval and Promulgation of State Implementation Plan; Wyoming; Revisions to Air Pollution Regulations; Direct final action partially approving and partially disapproving revisions. See 67 FR 5485, February 6, 2002.

Limited Approval/Limited Disapproval

- Approval and Promulgation of Air Quality Implementation Plans; State of California; Interstate Transport of Pollution; Interference with Prevention of Significant Deterioration Requirement. See 76 FR 48002, August 8, 2011.
- Revisions to the California State Implementation Plan, Sacramento Metropolitan Air Quality Management District. Limited approval and limited disapproval of permitting rules. See 76 FR 43183, July 20, 2011.
- Approval and Promulgation of Air Quality Implementation Plans; Montana; Billings/Laurel Sulfur Dioxide State Implementation Plan. See 68 FR 27908, May 22, 2003.

Conditional Approval

- Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Utah.

¹ There is a large volume of examples of where EPA has either taken approval or direct final action to approve a SIP revision so those types of examples are not listed in this document. For a comprehensive listing of examples of these types of actions and the types of actions provided in this Appendix, please visit the SIP Processing Manual, currently accessible at <http://mapsweb.rtpnc.epa.gov/sipman/>.

Approving and conditionally approving submission from Utah for 1997 8-hour ozone infrastructure requirements. See 76 FR 43898, July 22, 2011.

- Approval and Promulgation of Air Quality Implementation Plans; Ohio; Final Approval and Promulgation of State Implementation Plans; Carbon Monoxide and Volatile Organic Compounds. Disapproval of VOC regulations and conditional approval of Ohio's SIP revision. See 75 FR 50711, August 17, 2010.
- Approval and Promulgation of Air Quality Implementation Plans; Michigan; PSD Regulations. Conditionally approving into Michigan's state Implementation Plan specified revisions to add prevention of significant deterioration (PSD) construction permit program to meet New Source Review requirements. See 73 FR 53366, September 16, 2008.

Disapproval

- Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review State Implementation Plan (SIP); Nonattainment NSR (NNSR) for the 1-Hour and the 1997 8-Hour Ozone Standard, NSR reform, and a Standard Permit. Disapproval of Submittals to Revise the Texas Major and Minor NSR SIP. See 75 FR 56423, September 15, 2010.
- Approval and Promulgation of Air Quality Implementation Plans; Ohio; Final Approval and Promulgation of State Implementation Plans; Carbon Monoxide and Volatile Organic Compounds; disapproving an Ohio regulation revision pertaining to volatile organic compound (VOC) limits for high performance architectural coatings contained in Ohio Administrative Code (OAC) 3745-21-09(U)(1)(h). See 75 FR 50711, August 17, 2010.
- Disapproval of California State Implementation Plan Revisions, Monterey Bay Unified Air Pollution Control District; disapproval for opacity standards related to multiple pollutants, including particulate matter (PM) emissions, from a wide variety of sources. See 75 FR 37727, June 30, 2010.

Parallel Processing

- Approval and Promulgation of Implementation Plans; South Carolina: Prevention of Significant Deterioration and Nonattainment New Source Review; Fine Particulate Matter and Nitrogen Oxides as a Precursor to Ozone. See 76 FR 36875, June 23, 2011.
- Approval and Promulgation of Implementation Plans; Connecticut: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision. See 76 FR 26933, May 10, 2011.
- Approval and Promulgation of Implementation Plans; Alaska: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision. See 76 FR 7116, February 9, 2011.

Letter Approval

- Approval of Transportation Control Measure Substitution for Conversion of High Occupancy Vehicle (HOV) lanes to High Occupancy Toll (HOT) lanes; Georgia; Letter from EPA Region 4 to State of Georgia. November 5, 2009.²

Proposing Alternatives³

- Approval and Promulgation of Implementation Plans: Alabama: Proposed Approval of Revisions to the Visible Emissions Rule and Alternative Proposed Disapproval of Revisions to the Visible Emissions Rule. See 74 FR 50930, October 3, 2009.
- Clean Air Act Finding of Attainment and Alternative Finding of Nonattainment and Reclassification to Serious; California-Imperial Valley Planning Area; Particulate Matter of 10 microns or less (PM-10). See 66 FR 42187, August 10, 2001.
- Approval and Promulgation of Implementation Plans; Illinois and Missouri; Ozone; Proposing to Approve the St. Louis 1-Hour Ozone Attainment Demonstration and Alternatively Proposing to Disapprove the St. Louis 1-Hour Ozone Attainment Demonstration. See 65 FR 20404, April 17, 2000.

² This letter is provided as an example that the Letter Approval approach has been used. This example is not addressing TCM substitutions specifically. Not all TCM substitutions can be addressed through letter notice.

³ For this example, only the proposed action is included to illustrate the situation of proposing alternatives. The final actions for these examples do not include alternatives but rather takes a final action on one of the alternatives that was proposed.

Appendix 3: California: Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District; Reasonably Available Control Technology Demonstration. 83 Fed. Reg. 41,006 (Aug. 17, 2018)

apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (b) (concentration set at 1.0%), and (c).

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1) (irritation), (photosensitization), (g)(2)(i), (ii), (iii), (v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

[FR Doc. 2018-17348 Filed 8-16-18; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2018-0272; FRL-9981-09-Region 9]

Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District; Reasonably Available Control Technology Demonstration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or “District”) portion of the California State

Implementation Plan (SIP). These revisions concern the District’s 2014 demonstration regarding Reasonably Available Control Technology (RACT) requirements for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). We are also taking final action to approve into the California SIP the following documents that help support the District’s RACT demonstration: SJVUAPCD’s supplement to its 2014 RACT SIP demonstration, which contains SJVUAPCD’s negative declarations where the District concludes it has no sources subject to certain Control Techniques Guidelines (CTG) documents and relevant permit conditions to implement RACT level requirements for J.R. Simplot’s Nitric Acid plant in Helm, California (CA); and SJVUAPCD’s 2016 Ozone Plan for the 2008 8-Hour Ozone Standard—Chapter 3.4 and Appendix C only. We are approving local SIP revisions to demonstrate that RACT is implemented as required under the Clean Air Act (CAA or the “the Act”).

DATES: This rule will be effective on September 17, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2018-0272. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, EPA Region IX, (415) 947-4122, tong.stanley@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to the EPA.

Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Proposed Action

On May 17, 2018 (83 FR 22908), the EPA proposed to approve SJVUAPCD’s “2014 Reasonably Available Control

Technology (RACT) Demonstration for the 8-Hour Ozone State Implementation Plan (SIP)” (*2014 RACT SIP*), submitted to the EPA by the California Air Resources Board (CARB) on July 18, 2014,¹ for approval as a revision to the California SIP.

In addition to the *2014 RACT SIP*, our May 17, 2018 proposed rule was also based on our evaluation of the public draft version of SJVUAPCD’s “Supplement to the 2014 Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) for the 2008 8-hour Ozone Standard” (*Supplement to the 2014 RACT SIP*) that was transmitted by CARB on May 4, 2018, along with a request for parallel processing.² The District’s *Supplement to the 2014 RACT SIP* contained relevant RACT permit conditions in a permit to operate for J.R. Simplot’s Nitric Acid plant in Helm, CA, and negative declarations where the District concluded it had no sources subject to the following CTG source categories: Surface coating of insulation of magnetic wire; manufacture of synthesized pharmaceutical products; manufacture of pneumatic rubber tires; leaks from synthetic organic chemical polymer and resin manufacturing equipment; volatile organic compound (VOC) emissions from manufacture of high-density polyethylene, polypropylene and polyester resins; VOC emissions from air oxidation processes in synthetic organic chemical manufacturing industry (SOCMI); VOC emissions from reactor processes and distillation operations in SOCMI; and surface coating operations at shipbuilding and ship repair facilities.³ We indicated that we would not take final action on the *Supplement to the 2014 RACT SIP* until CARB submitted the final adopted version to the EPA as a SIP revision. On June 21, 2018, the SJVUAPCD held a public hearing and adopted the *Supplement to the 2014 RACT SIP*.⁴ On June 29, 2018, CARB

¹ The SJVUAPCD adopted its *2014 RACT SIP* on June 19, 2014.

² CARB’s May 4, 2018 transmittal letter contained a public draft version of the *Supplement to the 2014 RACT SIP* along with a request that the EPA provide parallel processing of the documents concurrently with the state’s public process. See footnote 1 in our May 17, 2018 proposed rule.

³ See *Supplement to the 2014 RACT SIP*, Appendix B.

⁴ On June 21, 2018, the SJVUAPCD Governing Board adopted “Revision to the State Implementation Plan (SIP) to Address Federal Clean Air Act Requirements for Reasonably Available Control Technology (RACT)”. Appendix A: “J.R. Simplot Permit Conditions” and Appendix B: “Negative Declarations”, as contained in the adopted document, are substantially similar to the versions contained in the District’s parallel processing request which the EPA proposed to

submitted the *Supplement to the 2014 RACT SIP* to the EPA for approval as a revision to the California SIP.⁵ The final adopted version of the *Supplement to the 2014 RACT SIP* includes non-substantive changes from the public draft version that was the basis for our May 17, 2018 proposed rule. These changes include streamlining J.R. Simplot's introductory section listing the plant's major equipment to just state "Nitric Acid Plant"; restoring a permit condition that EPA Reference Method 7 will be used to determine compliance with oxides of nitrogen (NO_x) limits; and removing reference citations to a local rule and federal regulations that were inadvertently left in the permit. The NO_x emission limits remain unchanged from the version of the permit included in our May 17, 2018 proposed rule. In addition, when comparing the public draft version included in our May 17, 2018 proposed rule and the final version adopted by the District on June 21, 2018, we noted minor editorial changes in the text preceding the list of negative declarations. The primary substance of the District's negative declarations, that is, recertification of three prior negative declarations, and the adoption of five new negative declarations, remain unchanged. We therefore consider these editorial changes to also be non-substantive. On July 11, 2018, we found the *Supplement to the 2014 RACT SIP*, including the relevant operating permit conditions to implement NO_x RACT for J.R. Simplot's Nitric Acid Plant in Helm, CA, and several negative declarations, met the completeness criteria in 40 CFR part 51, appendix V.

We are also approving portions of SJVUAPCD's "2016 Ozone Plan for the 2008 8-Hour Ozone Standard" (*2016 Ozone Plan*), which help to supplement the District's *2014 RACT SIP*. The plan was adopted by the District on June 16, 2016, and submitted by CARB to the EPA on August 24, 2016, as a revision to the California SIP. Specifically, as discussed in our May 17, 2018 proposed rule, Chapter 3.4 of the *2016 Ozone Plan* states that "the District updated the RACT evaluation and included VOC sources in the evaluation in Appendix

C." Appendix C of the *2016 Ozone Plan*, which is titled, "Stationary and Area Source Control Strategy Evaluations," includes evaluations of individual rules for RACT. We are only approving Chapter 3.4 and Appendix C of the *2016 Ozone Plan* in order to demonstrate VOC RACT for all applicable sources for the 2008 NAAQS.

As discussed in our proposed rule, the District's *2014 RACT SIP* contains its analysis of NO_x RACT for the 2008 NAAQS. For more background information and a more extensive discussion of the *2014 RACT SIP*, the *Supplement to the 2014 RACT SIP*, Chapter 3.4 and Appendix C of the *2016 Ozone Plan*, and our evaluation of them for compliance with CAA RACT requirements, please see our proposed rule and related technical support document.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received one anonymous comment that was outside the scope of this rulemaking. The comment was not germane to our evaluation of the submitted SJVUAPCD documents to demonstrate that the District's stationary sources are subject to RACT requirements.

III. EPA Action

No comments were submitted that change our assessment of the submitted documents as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving the following documents into the California SIP: SJVUAPCD's *2014 RACT SIP*; the *Supplement to the 2014 RACT SIP* including relevant permit conditions for J.R. Simplot's Nitric Acid Plant in Helm, CA and negative declarations for the CTG source categories: Surface coating of insulation of magnetic wire; manufacture of synthesized pharmaceutical products; manufacture of pneumatic rubber tires; leaks from synthetic organic chemical polymer and resin manufacturing equipment; VOC emissions from manufacture of high-density polyethylene, polypropylene and polyester resins; VOC emissions from air oxidation processes in SOCM; VOC emissions from reactor processes and distillation operations in SOCM; and surface coating operations at shipbuilding and ship repair facilities; and the *2016 Ozone Plan*—only Chapter 3.4 and Appendix C.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of certain permit conditions for the J.R. Simplot Nitric Acid Plant in Helm, CA and described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

approve on May 17, 2018. We will reference the District's June 21, 2018 adopted document as "*Supplement to the 2014 RACT SIP*" to maintain consistency with how this action was referenced in our May 17, 2018 proposed rulemaking.

⁵ As explained in our May 17, 2018 proposed rulemaking, the EPA is following its regulatory procedures for parallel processing. See 40 CFR part 51, appendix V. These procedures allow the EPA to approve a state's submittal, following parallel state and federal comment periods, provided the final provision adopted at the state level has no significant changes from the proposal.

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

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 October 16, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 12, 2018.

Michael Stoker,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(449)(ii)(D), (c)(496)(ii)(B), and (c)(507) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(449) * * *

(ii) * * *

(D) San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD).

(1) SJVUAPCD “2014 Reasonably Available Control Technology (RACT)

Demonstration for the 8-Hour Ozone State Implementation Plan (SIP),” dated June 19, 2014, as adopted by the SJVUAPCD on June 19, 2014.

* * * * *

(496) * * *

(ii) * * *

(B) San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD).

(1) SJVUAPCD “2016 Ozone Plan for 2008 8-Hour Ozone Standard,” dated June 16, 2016, Chapter 3.4 and Appendix C only, as adopted by the SJVUAPCD on June 16, 2016.

* * * * *

(507) New regulations for the following APCD were submitted on June 29, 2018 by the Governor’s designee.

(i) *Incorporation by reference.* (A) San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD).

(1) Permit #C-705-3-19, J.R. Simplot Company, Nitric Acid Plant, Helm, CA, adopted by the SJVUAPCD, Resolution No.18-06-14, June 21, 2018.

(ii) *Additional materials.* (A) San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD).

(1) SJVUAPCD “Appendix B Negative Declarations For Proposed Revision to the State Implementation Plan (SIP) to Address Federal Clean Air Act Requirements for Reasonably Available Control Technology (RACT) June 21, 2018,” containing negative declarations, as adopted by the SJVUAPCD on June 21, 2018.

■ 3. Section 52.222 is amended by adding paragraph (a)(8)(iii) to read as follows:

§ 52.222 Negative declarations.

(a) * * *

(8) * * *

(iii) The following negative declarations for the 2008 NAAQS were adopted by the San Joaquin Valley Unified Air Pollution Control District on June 21, 2018, and submitted to the EPA on June 29, 2018.

NEGATIVE DECLARATIONS FOR THE 2008 OZONE NAAQS

CTG document No.	Title
EPA-450/2-77-033	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume IV: Surface Coating of Insulation of Magnet Wire.
EPA-450/2-78-029	Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products.
EPA-450/2-78-030	Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires.
EPA-450/3-83-006	Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.
EPA-450/3-83-008	Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins.
EPA-450/3-84-015	Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry.
EPA-450/4-91-031	Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry.

NEGATIVE DECLARATIONS FOR THE 2008 OZONE NAAQS—Continued

CTG document No.	Title
EPA-453/R-94-032	Alternative Control Technology Document—Surface Coating Operations at Shipbuilding and Ship Repair Facilities
61 FR 44050 8/27/96	Control Techniques Guidelines for Shipbuilding and Ship Repair Operations (Surface Coating).

* * * * *

[FR Doc. 2018-17714 Filed 8-16-18; 8:45 am]

BILLING CODE 6560-50-P

**GENERAL SERVICES
ADMINISTRATION****48 CFR Parts 6101 and 6102****[CBCA Case 2018-61-1; Docket No. 2018-0006; Sequence No. 1]****RIN 3090-AK02****Civilian Board of Contract Appeals;
Rules of Procedure for Contract
Disputes Act Cases****AGENCY:** Civilian Board of Contract Appeals; General Services Administration (GSA).**ACTION:** Final rule.

SUMMARY: The Civilian Board of Contract Appeals (Board) amends its rules of procedure for cases arising under the Contract Disputes Act, and for disputes between insurance companies and the Department of Agriculture's Risk Management Agency in which decisions of the Federal Crop Insurance Corporation are brought before the Board under the Federal Crop Insurance Act. The Board's current rules were issued in 2008 and were last amended in 2011. After considering the one responsive comment received, the Board now promulgates its final rules of procedure.

DATES: September 17, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. J. Gregory Parks, Chief Counsel, Civilian Board of Contract Appeals, 1800 M Street NW, Suite 600, Washington, DC 20036; at 202-606-8787; or email at greg.parks@cbca.gov, for clarification of content. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite BCA Case 2018-61-1.

SUPPLEMENTARY INFORMATION:**A. Background**

The Board was established within GSA by section 847 of the National Defense Authorization Act for Fiscal Year 2006, Public Law 109-163. Board members are administrative judges

appointed by the Administrator of General Services under 41 U.S.C. 7105(b)(2). Among its other functions, the Board hears and decides contract disputes between Government contractors and most civilian Executive agencies under the Contract Disputes Act, 41 U.S.C. 7101-7109, and its implementing regulations, and disputes pursuant to the Federal Crop Insurance Act, 7 U.S.C. 1501 *et seq.*, between insurance companies and the Department of Agriculture's Risk Management Agency (RMA) involving actions of the Federal Crop Insurance Corporation (FCIC).

The Board's rules of procedure for Contract Disputes Act cases and Federal Crop Insurance Act cases were adopted in May 2008 (73 FR 26947) and were last amended in August 2011 (76 FR 50926). The Board published in the **Federal Register** at 83 FR 13211, March 28, 2018, proposed, amended rules of procedure along with a notice inviting comments on those rules. This notice announced the intention to promulgate final rules, following the Board's review and consideration of all comments.

The period for comments closed on May 29, 2018. The Board has considered all comments received, revising the proposed rules, in part, as explained in part B below, and now promulgates its final rules of procedure. These rules simplify and modernize access to the Board by establishing a preference for electronic filing, increase conformity between the Board's rules and the Federal Rules of Civil Procedure, streamline the wording of the Board's rules, and clarify current rules and practices. In addition, the time for filing is amended from 4:30 p.m. to midnight Eastern Time, and the stated monetary limitations for electing the accelerated and small claims procedures are deleted and replaced with references to the requirements stated in the Contract Disputes Act.

B. Comments and Changes

The Board received comments from two commenters. Commenters included one attorney from a Federal agency and one anonymous source. Comments from the anonymous source concerned matters wholly unrelated to the proposed rule, and the concerns noted

by the attorney were already addressed in the proposed rule. The Board carefully considered the comments but has not revised its proposed rule based on issues the commenters raised. The final rule incorporates minor, non-substantive corrections to the proposed rule. The corrections are addressed below.

Part 6101

Sections 6101.1, 6101.3, 6101.4, 6101.12, and 6101.23 are amended to correct spelling, grammatical, or spacing errors; include a cross-reference; and clarify a phrase.

C. Regulatory Flexibility Act

GSA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 602 *et seq.*, and the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, because the final rule does not impose any additional costs on small or large businesses.

D. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply because this final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget.

E. Congressional Review Act

The final rule is exempt from Congressional review under Public Law 104-121 because it relates solely to agency organization, procedure, and practice and does not substantially affect the rights or obligations of non-agency parties.

F. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of

Appendix 4: Connecticut: Approval and Promulgation of implementation Plans; Connecticut; Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision. 76 Fed. Reg. 26,933 (May 10, 2011)

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0143 to read as follows:

§ 165.T07–0143 Safety Zone; Second Annual Space Coast Super Boat Grand Prix, Atlantic Ocean, Cocoa Beach, FL.

(a) *Regulated area.* The following regulated area is a safety zone: all waters of the Atlantic Ocean located east of Cocoa Beach, FL and encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 28°22'16" N, 80°36'04" W; thence west to Point 2 in position 28°22'15" N, 80°35'39" W; thence south to Point 3 in position 28°19'47" N, 80°35'55" W; thence east to Point 4 in position 28°19'47" N, 80°36'22" W; thence north back to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Jacksonville in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Jacksonville or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Jacksonville by telephone at 904–564–7511, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or his designated representative.

(3) The Coast Guard will provide notice of the regulated area through advanced notice via Local Notice to Mariners, Broadcast Notice to Mariners, and by on-scene designated representatives.

(d) *Effective date and enforcement period.* This rule is effective from 10 a.m. on May 21, 2011 through 5:30 p.m. on May 22, 2011. The regulated area will be enforced from 10 a.m. until 4 p.m. on May 21, 2011, and 9 a.m. until 5:30 p.m. on May 22, 2011.

Dated: April 29, 2011.

C.A. Blomme,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 2011–11341 Filed 5–9–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2010–0996, A–1–FRL9286–4]

Approval and Promulgation of Implementation Plans; Connecticut: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the State Implementation Plan (SIP), submitted by Connecticut Department of Environmental Protection (DEP) to EPA on December 9, 2010, for parallel processing. DEP submitted the final version of this SIP revision on February 9, 2011. The SIP revision, which incorporates updates to DEP’s air quality regulations, includes two significant changes impacting the regulation of greenhouse gases (GHG) under Connecticut’s New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. First, the revision provides Connecticut with authority to issue PSD permits governing GHG. Second, the SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Connecticut’s PSD permitting requirements for their GHG emissions. The first change is necessary because Connecticut is required to apply its PSD program to GHG-emitting sources, and unless it does so (or unless EPA promulgates a federal implementation

plan (FIP) to do so), such sources will be unable to receive preconstruction permits and therefore may not be able to construct or modify. The second change is necessary, because without it, PSD requirements would apply at the 100 or 250 ton per year (tpy) levels otherwise provided under the Clean Air Act (CAA or Act), which would overwhelm Connecticut’s permitting resources. EPA is approving Connecticut’s February 9, 2011, SIP revision because the Agency has made the determination that this SIP revision is in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting for GHG. Additionally, EPA is responding to adverse comments received on EPA’s January 6, 2011, proposed approval of Connecticut’s December 9, 2010, SIP revision.

DATES: *Effective Date:* This rule will be effective May 10, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2010–0996. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Air Programs Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Connecticut SIP, contact Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Air Programs Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Mr. Dahl’s telephone number is (617) 918–1657; *e-mail address:* dahl.donald@epa.gov.

SUPPLEMENTARY INFORMATION:**Table of Contents**

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I. What is the background for this final action?

EPA has recently undertaken a series of actions pertaining to the regulation of GHG that, although for the most part distinct from one another, establish the overall framework for today's final action for the Connecticut SIP. The first four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,¹ the "Johnson Memo Reconsideration,"² the "Light-Duty Vehicle Rule,"³ and the "Tailoring Rule."⁴ Taken together, these actions established regulatory requirements for GHG emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, will subject GHG emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. In a separate action, EPA called on the State of Connecticut and 12 other states with SIPs that do not provide authority to issue PSD permits governing GHG to revise their SIPs to provide such authority (the "GHG PSD SIP Call").⁵ EPA established a deadline of March 1, 2011, for Connecticut to submit its GHG PSD SIP. Finally, in the most recent action, EPA proposed to implement a FIP authorizing PSD permitting for GHG for those states that are unable to revise their SIPs to provide that authority by the applicable

deadline (the "GHG PSD FIP").⁶ By a notice signed December 23, 2010, EPA finalized the FIP for seven states: Arizona, Arkansas, Florida, Idaho, Kansas, Oregon, and Wyoming.

On December 9, 2010, in response to the Tailoring Rule and earlier GHG-related EPA rules, and in anticipation of the GHG PSD SIP Call rulemaking, DEP submitted a draft revision to EPA for approval into the Connecticut SIP to: (1) Provide the State with the authority to regulate GHG under its PSD program; and (2) establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Connecticut's PSD permitting requirements for GHG emissions. Subsequently, on January 6, 2011, EPA published a proposed rulemaking to approve Connecticut's December 9, 2010, draft SIP revision under parallel processing. 76 FR 752. Specifically, Connecticut's December 9, 2010 draft SIP revision includes changes to Sections 22a-174-1 and 22a-174-3a of the Regulations of Connecticut State Agencies.⁷ The changes include adopting definitions of greenhouse gases and carbon dioxide equivalent and applying the Tailoring Rule's thresholds for GHG permitting applicability. Detailed background information and EPA's rationale for the proposed approval are provided in EPA's January 6, 2011, **Federal Register** notice.

EPA's January 6, 2011, proposed approval was contingent upon the State of Connecticut providing a final SIP revision that was substantively the same as the revision proposed for approval by EPA in the January 6, 2011, proposed rulemaking. 76 FR 752. Connecticut provided its final SIP revision on February 9, 2011. While there are minor differences between the draft and final regulations, mainly to the format of internal references, EPA has determined that these differences do not warrant re-proposal of this action. The changes are mostly edits to the format for internal references within the regulation, e.g. changing "Table 3a(k)(1)" to "Table 3a(k)(1) of this subsection," plus one minor edit designed to clarify the original intent of the formula for calculating "carbon dioxide equivalent emissions." See Memorandum from the

Connecticut Commissioners' Office to the Connecticut Legislative Regulation Review Committee at 2 (Jan. 25, 2011).

II. Analysis of Connecticut's SIP Revision

Section 110(k)(3) of the CAA provides that EPA shall approve a SIP revision as a whole if it meets all of the applicable requirements of the CAA. Connecticut received a SIP call because its PSD program does not apply to GHG. As a result, Connecticut is required to submit a SIP revision that applies PSD to GHG and do so either at the Tailoring Rule thresholds or at lower thresholds. Connecticut is required to demonstrate that it has adequate resources for implementation if the state establishes lower thresholds.

Connecticut has submitted a SIP revision that provides this authority. Connecticut's SIP revision adopts new definitions for "carbon dioxide equivalent emissions" and "greenhouse gases" into section 22a-174-1. These new definitions were necessary because the state's definition of air pollutant excluded carbon dioxide except for certain state rules. Connecticut's PSD regulation, found in section 22a-174-3a, is not one of the excepted rules.

To fully implement EPA's Tailoring Rule, Connecticut amended several subsections in section 22a-174-3a. Section 22a-174-3a contains the state's permitting requirements for minor new source review, PSD, and nonattainment new source review. Subsections amended were subsection (1) which adds GHG emission thresholds to the general applicability section, subsection (d)(3)(H) which requires the applicant to incorporate best available control technology (BACT) for GHG emissions, subsection (j) which establishes the thresholds for GHG emissions for applying BACT, and subsection (k) which establishes GHG emission thresholds for PSD permitting. Connecticut has adopted the thresholds contained in EPA's Tailoring Rule for all of the thresholds established in the individual subsections. Connecticut did not choose to establish a lower threshold than required by the Tailoring Rule.

EPA has determined these changes to Connecticut's regulations meet the requirements of the SIP call. Thus these changes are consistent with the CAA and its implementing regulations regarding PSD permit requirements for GHG emissions. The thresholds for permitting GHG emissions established in this submittal are the same as EPA's Tailoring Rule, and therefore comply with the requirements of the SIP call.

¹ "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

² "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

³ "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

⁴ "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

⁵ "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call; Final Rule." 75 FR 77698 (December 13, 2010).

⁶ "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan; Proposed Rule." 75 FR 53883 (September 2, 2010).

⁷ Connecticut's submittal also revises Section 22a-174-33; however, this section relates to the state's title V operating permit program and it is not the state's intention to incorporate any provision of this program into the SIP. As such, EPA is not taking final action to approve Connecticut's changes to Section 22a-174-33 in this rulemaking.

III. What is EPA's response to comments received on this action?

EPA received two sets of comments on the January 6, 2011, proposed rulemaking to approve revisions to Connecticut's SIP. One set of comments, provided by the Sierra Club, was in favor of EPA's January 6, 2011 proposed action. The other set of comments, provided by the Air Permitting Forum, raised concerns with final action on EPA's January 6, 2011 proposed action. A full set of the comments provided by both the Sierra Club and Air Permitting Forum (hereinafter referred to as "the Commenter") is provided in the docket for today's final action. A summary of the adverse comments and EPA's responses are provided below.

Generally, the adverse comments fall into five categories. First, the Commenter asserts that EPA's SIP Call was unauthorized and imposed too short a deadline for Connecticut to act to revise its SIP. Second, the Commenter asserts that PSD requirements cannot be triggered by GHG. Third, the Commenter expresses concerns regarding EPA's previously announced intention to narrow its prior approval of some SIPs to ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds will not be obligated under federal law to obtain PSD permits prior to a SIP revision incorporating those thresholds. The Commenter explains that the planned SIP approval narrowing action is inapplicable to this action and, if applicable, is illegal. Fourth, the Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Lastly, the Commenter states: "EPA should explicitly state in any final rule that the continued enforceability of these provisions in the Connecticut SIP is limited to the extent to which the federal requirements remain enforceable." EPA's response to these five categories of comments is provided below.

Comment 1: The first comment asserts that EPA's SIP Call was unauthorized and imposed too short a deadline for Connecticut to act to revise its SIP. This is because, according to the Commenter, the recent *Cinergy* decision allows sources in the State to rely on the provisions of the currently approved PSD SIP to obtain permits for construction or modification. *United States v. Cinergy Corp.*, 623 F.3d 455 (7th Cir. 2010).

Response 1: EPA established the requirement that Connecticut submit a corrective SIP revision to provide for the authority to issue PSD permits for GHG

emissions in the GHG PSD SIP call rulemaking. As part of that rulemaking, EPA allowed states to choose not to object to a short timeframe for amending their SIPs, and the deadline established for submitting Connecticut's PSD SIP revision is the date requested by the State. EPA has not reopened either of these issues in the current rulemaking. The only issues relevant to this rulemaking concern whether Connecticut's SIP submission meets the requirements of the SIP call and therefore should be approved. Issues concerning the validity of the SIP call and the deadlines it established, including the comments raised by the commenter, may have been relevant for the SIP call rulemaking but are not relevant for this rulemaking. Accordingly, these comments are not relevant for this rulemaking.

In any event, EPA disagrees with the comment and the Commenter's interpretation of the *Cinergy* decision. EPA specifically discussed the *Cinergy* decision in the SIP call itself, 75 FR 77705–06 n.16. As we stated in the SIP call, EPA has long interpreted the PSD applicability provisions in the CAA to be self-executing,⁸ that is, they apply by their terms so that a source that emits any air pollutant subject to regulation becomes subject to PSD—and, therefore, cannot construct or modify without obtaining a PSD permit—and these provisions apply by their terms in this manner regardless of whether the state has an approved SIP PSD program. What's more, until an applicable implementation plan is in place—either an approved SIP or a FIP—no permitting authority is authorized to issue a permit to the source. In the recent *Cinergy* decision, the 7th Circuit confronted a case that, at the district court level, involved both nonattainment NSR and PSD claims, with the appeal involving substantive nonattainment NSR issues and evidentiary PSD issues. However, in its opinion, the 7th Circuit described the substantive nonattainment NSR issue as if it applied to both nonattainment NSR and PSD. On that issue, the Court held that sources could continue to abide by permitting requirements in an existing SIP until amended, even if that SIP does not comport with the law. Again, notwithstanding the Court's broader description of the case, that holding applied only to the nonattainment NSR claims because, again, only those claims were before it on that issue. *United States v. Cinergy Corp.*, 623 F.3d 455 (7th Cir. 2010). In stark contrast to the nonattainment provisions actually at

issue in *Cinergy*—which are not self-executing and must therefore be enforced through a SIP—PSD is self-executing; it is the statute (CAA section 165), not just the SIP, that prohibits a source from constructing a project without a permit issued in accordance with the Clean Air Act. Because the PSD provisions were simply not before the *Cinergy* Court in the appeal on this issue, the commenter's reading of that portion of the opinion to apply to PSD is in error. As the commenter noted, in a petition for rehearing that was primarily devoted to other issues, EPA asked the Court to revise its opinion to make clear that its holding on the relevant issue was limited to the nonattainment provisions in play on that issue. The Court denied the petition for rehearing and, accordingly, did not revise its opinion. However, the Court did not explain its reasons for denying the petition for rehearing, and therefore did not address why it would not revise its opinion. We note that *Cinergy*, in its response to EPA's petition for reconsideration, did not contest that the relevant issue concerned only the nonattainment provisions, and not the PSD provisions. Accordingly, we do not read the Court's denial of the petition for rehearing as any kind of affirmation that in the Court's view, its decision on the relevant issue extends beyond the nonattainment provisions in play on that issue. Further, we believe that the fact that all of the parties to the case recognized that only the nonattainment provisions were in play on the relevant issue could explain the Court's denial of EPA's request to revise the opinion.

Comment 2: The Commenter asserts that PSD requirements cannot be triggered by GHG. In its letter, the Commenter states: "[n]o area in the State of Connecticut has been designated attainment or unclassifiable for greenhouse gases (GHGs), as there is no national ambient air quality standard (NAAQS) for GHGs. Therefore, GHGs cannot trigger PSD permitting requirements." The Commenter notes that it made this argument in detail in comments submitted to EPA on the Tailoring Rule and other related GHG rulemakings.⁹ Finally, the Commenter states that "EPA should immediately provide notice that it is now interpreting the Act not to require that GHGs trigger PSD and allow

⁸ EPA is likewise also not reopening this issue in this rulemaking.

⁹ The Commenter recited that it had attached those previously submitted comments to its comments on the proposed rulemaking related to this action, although it appears they were neither attached nor forwarded to the docket for this action. Nevertheless, EPA is aware of the Commenter's prior comments and, as explained below, does not find them persuasive.

Connecticut to rescind that portion of its rules and implement the program consistent with the proper interpretation such that GHGs do not trigger PSD permitting * * *

Response 2: EPA established the requirement that PSD applies to all pollutants newly subject to regulation, including non-NAAQS pollutants, in earlier national rulemakings concerning the PSD program, and EPA has not reopened that issue in this rulemaking. Accordingly, these comments are not relevant to this rulemaking and are time-barred as to the earlier national rulemakings. In addition, EPA has explained in detail, in recent rulemakings concerning GHG PSD requirements, its reasons for disagreeing with these comments.

In an August 7, 1980, rulemaking at 45 FR 52676, 45 FR 52710–52712, and 45 FR 52735, EPA stated that a “major stationary source” was one that emitted “any air pollutant subject to regulation under the Act” at or above the specified numerical thresholds, and defined a “major modification,” in general, as a physical or operational change that increased emissions of “any pollutant subject to regulation under the Act” by more than an amount that EPA variously termed as *de minimis* or significant. In addition, in EPA’s NSR Reform rule at 67 FR 80186 and 67 FR 80240 (December 31, 2002), EPA added to the PSD regulations the new definition of “regulated NSR pollutant” (currently codified at 40 CFR 52.21(b)(50) and 40 CFR 51.166(a)(49)), noted that EPA added this term based on a request from a commenter to “clarify which pollutants are covered under the PSD program,” and explained that in addition to criteria pollutants for which a NAAQS has been established, “[t]he PSD program applies automatically to newly regulated NSR pollutants, which would include final promulgation of an NSPS [new source performance standard] applicable to a previously unregulated pollutant.” *Id.* at 67 FR 80240 and 67 FR 80264. Among other things, the definition of “regulated NSR pollutant” includes “[a]ny pollutant that otherwise is subject to regulation under the Act.” See 40 CFR 52.21(b)(50)(d)(iv); see also 40 CFR 51.166(a)(49)(iv).

In any event, EPA disagrees with the Commenter’s underlying premise that PSD requirements are not triggered for GHG when GHG became subject to regulation as of January 2, 2011. As just noted, this has been well-established and discussed in connection with prior EPA actions, including, most recently, the Johnson Memo Reconsideration and the Tailoring Rule. In addition, EPA’s

November 18, 2010, proposed rulemaking notice provides the general basis for the Agency’s rationale that GHG, while not a NAAQS pollutant, can trigger PSD permitting requirements. The November 18, 2010, notice also refers the reader to the preamble to the Tailoring Rule for further information on this rationale. In that rulemaking, EPA addressed at length the comment that PSD can be triggered only by pollutants subject to the NAAQS and concluded that such an interpretation of the Act would contravene Congress’s unambiguous intent. See 75 FR 31560–31562. Further discussion of EPA’s rationale for concluding that PSD requirements are triggered by non-NAAQS pollutants such as GHG appears in the Tailoring Rule Response to Comments document (“Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA’s Response to Public Comments”), pp. 34–41; and in EPA’s response to motions for a stay filed in the litigation concerning those rules (“EPA’s Response to Motions for Stay,” *Coalition for Responsible Regulation v. EPA*, DC Cir. No. 09–1322 (and consolidated cases)), at pp. 47–59, and are incorporated by reference here. These documents have been placed in the docket for today’s action.

Comment 3: The Commenter expresses concerns regarding the legality of narrowing prior SIP approvals if states cannot interpret their regulations to include the Tailoring Rule thresholds within the phrase “subject to regulation.”

Response 3: While EPA does not agree with the Commenter’s assertion that the narrowing approach discussed in EPA’s Tailoring Rule is illegal, the validity of the narrowing approach is irrelevant to the action that EPA is today taking for Connecticut’s February 9, 2011, SIP revision. EPA did not propose to narrow its approval of Connecticut’s SIP as part of this action, and in today’s final action, EPA is acting to approve a SIP revision submitted by Connecticut and is not otherwise narrowing its approval of prior submitted and approved provisions in the Connecticut SIP. Accordingly, the legality of the narrowing approach is not at issue in this rulemaking.

Comment 4: The Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Specifically, the Commenter refers to the statutory requirements and executive orders for the Paperwork Reduction Act, the Regulatory Flexibility Act (RFA), the Unfunded Mandates Reform Act, and Executive Orders 12866 (OMB review of significant regulatory actions), 13175

(tribal implications), 13211 (economically significant regulatory action), and 13132 (Federalism). Additionally, the Commenter mentions that EPA has never analyzed the costs and benefits associated with triggering PSD for stationary sources in Connecticut, much less nationwide.

Response 4: EPA disagrees with the Commenter’s statement that EPA has failed to meet applicable statutory and executive order review requirements. As stated in EPA’s proposed approval of Connecticut’s December 9, 2010 proposed SIP revision, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. Accordingly, EPA approval, in and of itself, does not impose any new information collection burden, as defined in 5 CFR 1320.3(b) and (c), that would require additional review under the Paperwork Reduction Act. In addition, this SIP approval will not have a significant economic impact on a substantial number of small entities, beyond that which would be required by the state law requirements, so a regulatory flexibility analysis is not required under the RFA. Accordingly, this rule is appropriately certified under section 605(b) of the RFA. Moreover, as this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandates or significantly or uniquely affect small governments, such that it would be subject to the Unfunded Mandates Reform Act. In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Finally, this action does not have federalism implications that would make Executive Order 13132 applicable, because it merely approves a state rule implementing a federal standard and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Today’s rule is a routine approval of a SIP revision, approving state law, and does not impose any requirements beyond those imposed by state law. To the extent these comments are directed more generally to the application of the statutory and executive order reviews to the required regulation of GHG under PSD programs, these comments are irrelevant to the approval of state law in

today's action. However, EPA provided an extensive response to similar comments in promulgating the Tailoring Rule. EPA refers the Commenter to the sections in the Tailoring Rule entitled "VII. Comments on Statutory and Executive Order Reviews," 75 FR 31601–31603, and "VI. What are the economic impacts of the final rule?," 75 FR 31595–31601. EPA also notes that today's action does not in and of itself trigger the regulation of GHG. To the contrary, GHG are already being regulated nationally, and sources in Connecticut that are subject to the PSD program are required to obtain a permit from a PSD program that addresses GHG emissions consistent with the Act's requirements. Today's action simply approves existing state laws that provide such a PSD program.

Comment 5: The Commenter states that "EPA should explicitly state in any final rule that the continued enforceability of these provisions in the Connecticut SIP is limited to the extent to which the federal requirements remain enforceable." Further, the Commenter remarks on the ongoing litigation in the U.S. Court of Appeals for the DC Circuit. Specifically, regarding EPA's determination that PSD can be triggered by GHG or is applicable to GHG, the Commenter mentions that "if the DC Circuit and/or Supreme Court determine that EPA's approach to regulating GHGs under the PSD program is invalid, the Connecticut rules should be approved in a manner that they would automatically sunset."

Response 5: EPA believes that it is most appropriate to take actions that are consistent with the federal regulations that are in place at the time the action is being taken. To the extent that any changes to federal regulations related to today's action result from pending legal challenges or other actions, EPA will process appropriate SIP revisions in accordance with the procedures provided in the Act and EPA's regulations. EPA notes that in an order dated December 10, 2010, the United States Court of Appeals for the DC Circuit denied motions to stay EPA's regulatory actions related to GHG. *Coalition for Responsible Regulation, Inc. v. EPA*, Nos. 09–1322, 10–1073, 10–1092 (and consolidated cases), Slip Op. at 3 (D.C. Cir. December 10, 2010) (order denying stay motions).

IV. What is the effect of this final action?

Final approval of Connecticut's February 9, 2011 SIP revision will make Connecticut's SIP adequate with respect to PSD requirements for GHG-emitting sources, thereby negating the need for a

GHG PSD FIP. Furthermore, final approval of Connecticut's SIP revision will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule (75 FR 31514, June 3, 2010), ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements. Pursuant to section 110 of the CAA, EPA is approving changes made in Connecticut's February 9, 2011, proposed SIP revision into the State's SIP.

The changes to Connecticut's SIP-approved PSD program that EPA is approving today are to Connecticut's rules which have been formatted to conform to Connecticut's rule drafting standards for Sections 22a–174–1 and 3a, but in substantive content the rules that address the Tailoring Rule provisions are the same as the federal rules. As part of its review of the Connecticut submittal, EPA performed a line-by-line review of Connecticut's proposed SIP changes and has determined that the provisions that EPA is approving today are consistent with the Tailoring Rule. Furthermore, EPA has determined that the February 9, 2011, revision to Connecticut's SIP is consistent with section 110 of the CAA. See, e.g., Tailoring Rule, at 75 FR 31561.

V. When is this action effective?

The effective date of today's final action is the date that this notice is published in the **Federal Register**. In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective on the date of publication. The effective date upon publication of this notice for this action is authorized under 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule provides sources emitting GHG at or above the higher emissions thresholds with a permitting authority from which it can seek the permits which, prior to this rule, federal law already required them to seek, and relieves the sources within the State from considering the lower emissions thresholds for GHG permitting purposes. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for

this action to become effective immediately upon publication.

VI. Final Action

EPA is taking final action to approve the State of Connecticut's February 9, 2011 SIP revision, which includes updates to Connecticut's air quality regulations, sections 22a–174–1 and 22a–174–3a relating to PSD requirements for GHG-emitting sources. Significantly, Connecticut's February 9, 2011, SIP revision: (1) Provides the State with the authority to regulate GHG under its PSD program, and (2) establishes appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the determination that the February 9, 2011 SIP revision is approvable because it is in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting for GHG.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Greenhouse gases, Incorporation by reference, Intergovernmental relations, and

Reporting and recordkeeping requirements.

Dated: March 15, 2011.

For H. Curtis Spalding,

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

40 CFR part 52 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 *et seq.*

Subpart H—Connecticut

■ 2. Section 52.370 is amended by adding paragraph (c)(99) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(99) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on February 9, 2011.

(i) Incorporation by reference. (A) The additions of subsections (21) and (49) to Section 22a-174-1, effective January 28, 2011.

(B) The revisions to Sections 22a-174-3a(a)(1)(H) through (J), Sections 22a-174-3a(d)(3)(H), Sections 22a-174-3a(j)(1)(E) through (I), Sections 22a-174-3a(k)(1) through (k)(2), and Sections 22a-174-3a(k)(4), effective January 28, 2011.

[FR Doc. 2011-11218 Filed 5-9-11; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA-2011-0002; Internal Agency Docket No. FEMA-8179]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain

management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal

Appendix 5: New Mexico: Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP) for Albuquerque-Bernalillo County' Prevention of Significant Deterioration (PSD) Permitting. 80 FED. REG. 52,401 (Aug. 31, 2015)

Appendix 6: Ohio - West Virginia: Approval of Air Quality Implementation Plans; Ohio and West Virginia; Attainment Plans for the Steubenville Ohio-West Virginia 2010 Sulfur Dioxide Nonattainment Area. 84 FED. REG. 56,385 (Oct. 22, 2019)

POSTAL SERVICE**39 CFR Part 265****Procedures for Disclosure of Records Under the Freedom of Information Act****AGENCY:** Postal Service™.**ACTION:** Final rule.

SUMMARY: In August 2019, the Postal Service proposed to amend its Freedom of Information Act (“FOIA”) regulations regarding fee waivers. These changes would improve clarity and more closely align the regulations with both the relevant guidance from the Department of Justice’s Office of Information Policy and the relevant statute. The Postal Service did not receive any comments.

DATES: This rule is effective as of November 21, 2019.

FOR FURTHER INFORMATION CONTACT: Joshua J. Hofer, Attorney, Federal Compliance, joshua.hofer@usps.gov, 202–268–6704.

SUPPLEMENTARY INFORMATION: In August 2019, the Postal Service proposed to amend 39 CFR part 265 (84 FR 44565). The purpose of the changes is to improve clarity and to more closely align the regulations with both the relevant guidance from the Department of Justice’s Office of Information Policy and the relevant statute, 5 U.S.C. 552(a)(4)(A)(iii). The portion of the regulations being amended concerns fee waivers. Generally speaking, fees for a FOIA request will be waived “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. 552(a)(4)(A)(iii). The guidance from the Department of Justice elucidates a six-factor test from this rule—two of which of which relate to the commercial interest of the requester. The amendment to 39 CFR 265.9(j)(3)(i) clarifies that the first commercial interest factor is to determine whether a commercial interest exists. The amendment to 39 CFR 265.9(j)(3)(ii) incorporates the balancing test from the statute as the second part of the commercial interest factor, along with adding a presumption concerning news media requesters. No comments were received in response to the proposed changes.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees.

For the reasons stated in the preamble, the Postal Service amends 39 CFR chapter I as follows:

PART 265—[AMENDED]

■ 1. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601; Pub. L. 114–185.

■ 2. Amend § 265.9 by revising paragraphs (j)(3)(i) and (ii) to read as follows:

§ 265.9 Fees.

* * * * *

(j) * * *

(3) * * *

(i) Whether there is a commercial interest, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure. If so, then the requester will be given an opportunity to provide explanatory information regarding this consideration.

(ii) Whether any identified commercial interest of the requester in disclosure outweighs the public interest, as defined in paragraph (j)(1)(i) of this section, in disclosure. If so, then the disclosure is primarily in the commercial interest of the requester. The component ordinarily shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by the requested disclosure. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

* * * * *

Joshua Hofer,
Attorney, Federal Compliance.

[FR Doc. 2019–22971 Filed 10–21–19; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R03–OAR–2019–0044; EPA–R05–OAR–2015–0699; FRL–10001–26–Region 5]

Approval of Air Quality Implementation Plans; Ohio and West Virginia; Attainment Plans for the Steubenville, Ohio-West Virginia 2010 Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), two State Implementation Plan (SIP) revision submittals, submitted by Ohio and West Virginia, respectively. The Ohio and West Virginia submittals include each State’s attainment demonstration for the Steubenville Ohio-West Virginia sulfur dioxide (SO₂) nonattainment area (hereinafter “Steubenville Area” or “Area”). Each SIP contains an attainment demonstration, enforceable emission limits, control measures and other elements required under the CAA to address the nonattainment area requirements for the Steubenville Area. EPA concludes that the Ohio and West Virginia attainment plan submittals demonstrate that the provisions in the respective SIPs provide for attainment of the 2010 primary SO₂ national ambient air quality standard (NAAQS) in the entire Steubenville Area and meet the requirements of the CAA. EPA is also approving into the West Virginia SIP new emissions limits, operational restrictions, and associated compliance requirements for Mountain State Carbon, and approving into the Ohio SIP the limits on emissions from Mingo Junction Energy Center, JSW Steel, and the Cardinal Power Plant.

DATES: This final rule is effective on November 21, 2019.

ADDRESSES: EPA has established dockets for this action under Docket ID Nos. EPA–R03–OAR–2019–0044 and EPA–R05–OAR–2015–0699. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the applicable Region III or Region V person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers at EPA Region III, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, (215) 814–2308, powers.marilyn@epa.gov. John Summerhays at EPA Region V, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency,

Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, summerhays.john@epa.gov.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this preamble.

Table of Contents

- I. Summary of EPA's Notice of Proposed Rulemaking
- II. Comments and EPA's Responses
- III. EPA's Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Summary of EPA's Notice of Proposed Rulemaking

Following the promulgation in 2010 of a 1-hour primary SO₂ NAAQS, EPA designated a two-State Steubenville, Ohio-West Virginia area (among other areas) as nonattainment for this NAAQS. Ohio and West Virginia submitted SIP revision requests to address the attainment planning requirements that then applied for this area. Ohio's requested SIP revision was submitted to EPA through the Ohio Environmental Protection Agency (OEPA) on April 1, 2015 with supplemental submissions on October 13, 2015, March 25, 2019, and June 25, 2019. West Virginia's requested SIP revision was submitted to EPA through the West Virginia Department of Environmental Protection (WVDEP) on April 25, 2016, with a supplemental submission from WVDEP on November 27, 2017 and a clarification letter on May 1, 2019.

On June 24, 2019, at 84 FR 29456, EPA published a notice of proposed rulemaking (NPRM) on Ohio's and West Virginia's plans for assuring that the Steubenville Area attains the 2010 SO₂ NAAQS. Because the Area includes

portions in both Ohio and West Virginia, each State was required to submit plans that in combination provided for attainment throughout the two-State area. EPA published a combined NPRM on the two States' submittals addressing whether these submittals satisfied applicable requirements throughout the Area. Ohio's submittal included proposed rules with a proposed emission limit for the Cardinal Power Plant. EPA's NPRM proposed to approve the two States' submittals contingent upon Ohio adopting and submitting these rules in final form.

The NPRM provided extensive discussion of EPA's rationale for proposing to approve the two States' submittals as meeting these requirements. The NPRM described the requirements that nonattainment plans are designed to meet. Notably, Ohio's plan included a 30-day average SO₂ emission limit for the Cardinal Power Plant (Cardinal), and the West Virginia plan included 24-hour average SO₂ emission limits for the Mountain State Carbon facility. The NPRM included an extensive discussion of EPA's guidance on the use of such longer term average emission limits, including a full discussion of EPA's rationale for concluding that properly set longer term average SO₂ emission limits (in particular, longer term emission limits that are comparably stringent to the 1-hour limits that would otherwise be established) can be effective in providing for attainment. The NPRM then described EPA's review of the modeling that the States submitted to demonstrate that the limits they adopted would provide for attainment of the 2010 SO₂ NAAQS and described EPA's

review of whether the submittals met other applicable requirements such as the requirements for an emissions inventory and for reasonably available control measures.

On this basis, EPA proposed to conclude that, in combination with the other limits in Ohio's and West Virginia's plans, these longer term average SO₂ emission limits assure attainment in the Steubenville Area. More generally, EPA proposed to approve Ohio's and West Virginia's SIP submittals as addressing the nonattainment planning requirements, provided Ohio adopted and submitted in final form its proposed rules limiting emissions from the Cardinal power plant.

II. Comments and EPA's Responses

EPA received two comment letters on the NPRM, from owners of two of the facilities affected by these plans. JSW Steel provided brief comments supporting EPA's proposed action. Mountain State Carbon also expressed support for EPA's proposed action but identified various alleged factual errors in the NPRM that it sought to correct for the record. The following paragraph describes Mountain State Carbon's requested corrections and EPA's responses.

Mountain State Carbon identified several emission rates listed in the NPRM as inconsistent with the emissions reflected in Ohio's and West Virginia's plans. These claims are summarized in Table 1. For convenience, EPA's response is also listed in the table. In each case, EPA agrees with Mountain State Carbon's requested correction.

TABLE 1—EMISSION RATES IDENTIFIED AS BEING IN ERROR

[Abbreviations shown below]

Source	Unit(s)	NPRM value	Recommended value	Does EPA agree with MSC?
MJEC	4 units	20.34 lb/hr each	0.5 lb/hr each (total of 2 lb/hr)	Yes.
MSC	Battery #8 pushing, outage operation.	15.72 lb/hr	9.8 lb/hr	Yes.
MSC	Battery #1 combustion	241.5lb#/hr	76.8 lb/hr	Yes.
MSC	At issue*	Limit (1.32 g/s or 10.48 lb/hr) applies to power boilers.	Emission limit (correct value) applies to Battery 1/2/3 pushing baghouse.	Yes.

* The commenter states that the NPRM (the footnote to Table 4) assigns a limit incorrectly, that the limit of 1.32 g/s (10.32 lb/hr) applies not to the power boilers but instead to the Battery 1/2/3 pushing baghouse. EPA agrees.

Abbreviations: MJEC—Mingo Junction Energy Center; MSC—Mountain State Carbon; NPRM Value—Value cited in NPRM; Recommended Value—Value that MSC cites as the correct value; lb/hr—pounds per hour; g/s—grams per second.

EPA is correcting the record accordingly. Mountain State Carbon states that it does not believe that its comments are material to the proposed approval of the SIP, and that it supports

EPA's action. Moreover, Mountain State Carbon explains that the corrected values are provided in West Virginia's submission. EPA agrees, and concludes that making these corrections, which

more accurately characterizes the emission rates in Ohio's and West Virginia's modeled attainment plans, and which in the aggregate reflect lower allowable emission rates than EPA had

presented in the NPRM, does not necessitate reconsidering the validity of the attainment demonstration.

III. EPA's Final Action

EPA is approving two SIP revision submittals, one submitted by the State of Ohio on April 1, 2015, which Ohio supplemented on October 13, 2015, March 25, 2019, and June 25, 2019, and the other submitted by the State of West Virginia on April 25, 2016, which West Virginia supplemented on November 27, 2017, with a clarification letter submitted on May 1, 2019. The proposed approval was contingent on Ohio adopting and submitting in final form the limit for Cardinal that it submitted in proposed form on March 25, 2019. Ohio has adopted the limit it had proposed, effective July 5, 2019, and submitted this limit to EPA on June 25, 2019.¹

Ohio's and West Virginia's submittals represent their plans for attaining the 2010 SO₂ NAAQS and how they are meeting other nonattainment area planning requirements. EPA is approving the attainment demonstrations, emissions limitations and control measures, the base year emissions inventory, nonattainment new source review program, reasonable further progress, and reasonably available control technology/reasonably available control measures, and contingency measures submitted by Ohio and West Virginia for the Steubenville Area. In the West Virginia SIP, EPA is approving the consent order between West Virginia and Mountain State Carbon identified as CO-SIP-C-2017-9, effective September 29, 2017, containing emission limits and other measures for Mountain State Carbon, including operational restrictions and sulfur content limits during the periods in which the desulfurization unit for Mountain State Carbon is shut down for maintenance purposes, and their associated compliance requirements. In the Ohio SIP, EPA is approving OAC Rule 3745-18-03, the pertinent sections of 3745-18-04,² and 3745-18-47.

¹ In conjunction with the newly adopted limit for Cardinal and resubmitted limits for other Ohio sources, in Ohio Administrative Code (OAC) 3745-18-47, Ohio also adopted and submitted associated compliance deadlines and compliance determination procedures, in OAC 3745-18-03 and 3745-18-04, respectively.

² EPA has historically not taken action on several paragraphs of OAC 3745-18-04. Ohio requested that EPA approve "the revisions to . . . 3745-18-04 . . . , with the exception of [several listed portions of OAC 3745-18-04 that mostly have not previously been approved]." Although Ohio's rulemaking for this submittal only revised paragraph (D)(11) of this rule, for administrative convenience EPA is reapproving all of OAC 3745-18-04 except for the listed paragraphs.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Ohio and West Virginia Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region III and Region V Offices (please contact the applicable person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.³

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 23, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

³ 62 FR 27968 (May 22, 1997).

shall not postpone the effectiveness of such rule or action.

This action to approve the Steubenville Area attainment plans for Ohio and West Virginia 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, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 23, 2019
Cosmo Servidio,
Regional Administrator, Region III.
 Dated: October 7, 2019
Cathy Stepp,
Regional Administrator, Region V.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.1870 is amended:

EPA-APPROVED OHIO REGULATIONS

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
*	*	*	*	*
Chapter 3745–18 Sulfur Dioxide Regulations				
3745–18–03	Compliance Time Schedules.	7/5/2019	10/22/2019, [insert Federal Register citation].	*
3745–18–04	Measurement Methods and Procedures.	7/5/2019	10/22/2019, [insert Federal Register citation].	Except (D)(2), (D)(3), (D)(5), (D)(6), (D)(9)(c), (E)(2), (E)(3), and (E)(4).
3745–18–47	Jefferson County Emission Limits.	7/5/2019	10/22/2019, [insert Federal Register citation].	*
*	*	*	*	*

* * * * * (e) * * *

EPA-APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
*	*	*	*	*
Summary of Criteria Pollutant Attainment Plans				
SO ₂ (2010)	Steubenville	6/25/19	10/22/2019, [insert Federal Register citation].	*
*	*	*	*	*

* * * * *

■ 3. Section 52.2520 is amended:

■ a. In the table in paragraph (d) by adding an entry at the end of the table for “Mountain State Carbon”; and

■ b. In the table in paragraph (e) by adding an entry at the end of the table for “2010 Sulfur Dioxide Attainment Plan”.

The additions read as follows:

■ a. In the table in paragraph (c), under “Chapter 3745–18 Sulfur Dioxide Regulations,” by revising the entries for “3745–18–03”, “3745–18–04” (with a State effective date of 2/16/2017), and “3745–18–47”; and
 ■ b. In the table in paragraph (e), under the heading “Summary of Criteria Pollutant Attainment Plans,” by adding a second entry for “SO₂ (2010)” (with a State date of 2/16/2017).

The revisions and additions read as follows:

§ 52.1870 Identification of plan.

* * * * *
 (c) * * *

§ 52.2520 Identification of plan.

* * * * *
 (d) * * *

EPA-APPROVED SOURCE SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
* Mountain State Carbon.	* Consent Order CO-SIP-C-2017-9.	* 9/29/17	* 10/22/2019, [insert Federal Register citation].	* *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographical area	State submittal date	EPA approval date	Additional explanation
* 2010 Sulfur Dioxide Attainment Plan.	* Steubenville Area (Brooke County).	* 4/25/16	* 10/22/2019, [insert Federal Register citation].	* 52.2525(c).

■ 4. Section 52.2525 is amended by adding paragraph (c) to read as follows:

§ 52.2525 **Control strategy: Sulfur dioxide.**

* * * * *

(c) EPA approves the attainment plan for Brooke County, West Virginia, submitted by the Department of Environmental Protection on April 25, 2016, supplemented on November 27,

2017, and with a clarification letter submitted on May 1, 2019.

[FR Doc. 2019-22909 Filed 10-21-19; 8:45 am]

BILLING CODE 6560-50-P

Appendix 7: Ohio - West Virginia: Letter from Laurie A. Stevenson, Director, Ohio EPA to Cathy Stepp, Regional Administrator US. EPA Region 5, requesting parallel processing of Ohio's attainment demonstration and revisions to the Ohio Administrative Code (Mar. 25, 2019)



Mike DeWine, Governor
Jon Husted, Lt. Governor
Laurie A. Stevenson, Director

MAR 25 2019

Ms. Cathy Stepp
Regional Administrator
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Re: Supplement to Ohio's Attainment Demonstration for the Sulfur Dioxide National Ambient Air Quality Standard for the Steubenville OH-WV Nonattainment Area

Dear Administrator Stepp:

I am writing to supplement Ohio's attainment demonstration state implementation plan (SIP) for the 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS) for the Steubenville OH-WV nonattainment area. The United States Environmental Protection Agency (U.S. EPA) promulgated the revised NAAQS for SO₂ effective August 23, 2010 (75 FR 35520). On August 15, 2013, U.S. EPA published (78 FR 47191) the initial SO₂ nonattainment area designations for the 1-hour SO₂ standard across the country (effective October 4, 2013), including the Steubenville OH-WV nonattainment area (Cross Creek Township, Steubenville Township, Warren Township, Wells Township, and Steubenville City in Jefferson County, Ohio and Cross Creek Tax District in Brooke County, West Virginia).

The Clean Air Act (CAA), as amended, requires each state with areas failing to meet the 1-hour SO₂ NAAQS to develop and submit SIPs to expeditiously attain and maintain the standard. These nonattainment area SIPs were due by April 4, 2015. Ohio EPA submitted its attainment demonstration SIP on April 3, 2015 and submitted revisions on October 13, 2015 and March 13, 2017.

Ohio is now submitting as a supplement to the attainment demonstration the attached proposed revisions to Ohio Administrative Code (OAC) Chapter 3745-18 establishing a revised emission limit for the Cardinal Power Plant, along with the appropriate technical justification and modeling demonstrating the revised emission limit, in conjunction with the previously established emission limits, provides for attainment and maintenance of the SO₂ NAAQS. The revised emission limit and updated modeling supersede all emission limits and modeling in previous submittals.

While the technical justification and updated modeling are documented within Ohio EPA's attached draft redesignation request and maintenance plan for this area, Ohio is not requesting action on the redesignation itself at this time. Rather, Ohio is requesting parallel processing of U.S. EPA's approval of Ohio's attainment demonstration strategy and the revisions to OAC Chapter 3745-18 establishing a revised emission limit for the Cardinal Power Plant. When Ohio's rulemaking and comment processes are completed, which we aim to complete in the next two to three months, Ohio will submit the final revisions to OAC Chapter 3745-18 along with its associated technical justification and modeling. At that time, Ohio will also finalize and submit

our redesignation request and maintenance plan and request U.S. EPA process that request expeditiously.

If you have questions, please contact Jennifer Van Vlerah in our Division of Air Pollution Control at (614) 644-3696.

Sincerely,



Laurie A. Stevenson
Director

Cc: Bob Hodanbosi, Chief, Division of Air Pollution Control, Ohio EPA

Enclosure

Appendix 8: Texas: Approval and Promulgation of Implementation Plans; Texas; Revisions to Emissions Banking and Trading Programs for Area and Mobile Sources. 82 FED. REG. 57,677 (Dec. 7, 2017)

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R03–OAR–2016–0592; FRL–9971–41–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendment to Ambient Air Quality Standard for Ozone; Withdrawal**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Withdrawal of direct final rule.

SUMMARY: Due to adverse comments received, the Environmental Protection Agency (EPA) is withdrawing the October 16, 2017 direct final rule that approved a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia to incorporate by reference the most recent federal ambient air quality standard for ozone into Virginia's SIP. EPA stated in the direct final rule that if EPA received adverse comments by November 15, 2017, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments. EPA will address comments received in a subsequent final action based upon the proposed rulemaking action, also published on October 16, 2017. EPA will not institute a second comment period on this action.

DATES: The direct final rule published at 82 FR 47985 on October 16, 2017 is withdrawn as of December 7, 2017.

FOR FURTHER INFORMATION CONTACT: Gavin Huang, (215) 814–2042, or by email at huang.gavin@epa.gov.

SUPPLEMENTARY INFORMATION: On July 25, 2016, the Commonwealth of Virginia through the Virginia Department of Environmental Quality (VADEQ) submitted a formal revision to its SIP. The SIP revision sought to incorporate the 2015 ozone national ambient air quality standards (NAAQS) promulgated by EPA on October 26, 2015 (80 FR 65292) into the Virginia SIP. In the direct final rule published on October 16, 2017 (82 FR 47985), EPA stated that if EPA received adverse comments by November 15, 2017, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments from anonymous commenters.

Because adverse comments were received, EPA is withdrawing the direct final rule approving the revisions to the Virginia SIP that incorporates the 2015 ozone NAAQS promulgated by EPA on October 16, 2017 (82 FR 47985). EPA will respond to the adverse comments in a separate final rulemaking action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

Dated: November 17, 2017.

Cosmo Servidio,

Regional Administrator, Region III.

■ Accordingly, the amendment to § 52.2420(c) published on October 16, 2017 (82 FR 47985), which was to become effective December 15, 2017, is withdrawn as of December 7, 2017.

[FR Doc. 2017–26303 Filed 12–6–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R06–OAR–2017–0192; FRL–9971–04–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Emissions Banking and Trading Programs for Area and Mobile Sources**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the Texas State Implementation Plan (SIP) Emissions Banking and Trading Programs submitted on October 10, 2017. Specifically, we are approving revisions that clarify and expand the existing provisions for the generation and use of emission credits from area and mobile sources.

DATES: This rule is effective on January 8, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2017–0192. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT:

Adina Wiley, 214–665–2115, wiley.adina@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our June 8, 2017 proposal (82 FR 26634). In that document we proposed to approve via parallel processing the proposed revisions to the Texas Emissions Banking and Trading Programs for the generation and use of emission credits from area and mobile sources. We preliminarily determined that the proposed revisions were consistent with the CAA and the EPA's regulations and guidance for emissions trading.

Under the EPA's “parallel processing” procedure, the EPA proposes a rulemaking action on a proposed SIP revision concurrently with the State's public review process. If the State's proposed SIP revision is not significantly changed, the EPA will finalize the rulemaking on the SIP revision as proposed after responding to any submitted comments. Final rulemaking action by the EPA will occur only after the final SIP revision has been fully adopted by the TCEQ and submitted formally to the EPA for approval as a revision to the Texas SIP. See 40 CFR part 51, Appendix V.

The TCEQ completed their state rulemaking process and adopted revisions on September 20, 2017. The TCEQ submitted these adopted changes as a revision to the Texas SIP on October 10, 2017. The EPA has evaluated the State's final SIP revision for any changes made from the time of proposal. Our evaluation indicates that the TCEQ made two types of revisions at adoption. First, the TCEQ made several non-substantive revisions to correct grammar, internal cross-references, and citations consistent with the *Texas Register* formatting guidance. The EPA has evaluated these non-substantive revisions and determined that they do not make any material changes to the regulations we proposed to approve. The TCEQ also made several substantive revisions at adoption that the EPA has evaluated and classified as logical outgrowth from our proposal. The EPA's evaluation of the adopted revisions is included in the “Addendum to the Technical Support Document” for EPA–R06–OAR–2017–0192, available in the rulemaking docket.

The EPA is proceeding with our final approval of the October 10, 2017, revisions to the Texas SIP, consistent with the parallel processing provisions

in 40 CFR part 51, Appendix V. We did not receive any comments regarding our proposal. As such, we are proceeding with our final approval because the submitted final regulations adopted by the state do not alter our rationale for proposal presented in our June 8, 2017 proposed rulemaking.

II. Final Action

The EPA has determined that the October 10, 2017, revisions to the Texas SIP are consistent with the CAA and the EPA's policy and guidance on emissions trading. Therefore, under section 110 of the Act, the EPA approves the following revisions to the Texas SIP that were adopted on September 20, 2017, and submitted to the EPA on October 10, 2017:

- Revisions to 30 TAC Section 101.300;
- Revisions to 30 TAC Section 101.302;
- Revisions to 30 TAC Section 101.303;
- Revisions to 30 TAC Section 101.304;
- Revisions to 30 TAC Section 101.306;
- Revisions to 30 TAC Section 101.370;
- Revisions to 30 TAC Section 101.372;
- Revisions to 30 TAC Section 101.373;
- Revisions to 30 TAC Section 101.374; and
- Revisions to 30 TAC Section 101.376.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 6 Office (please contact Adina Wiley for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation (62 FR 27968, May 22, 1997).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
 - Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
 - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
 - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an

Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 February 5, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 1, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. In § 52.2270(c) the table titled “EPA Approved Regulations in the Texas SIP” is amended by revising the entries for

Sections 101.300, 101.302, 101.303, 101.304, 101.306, 101.370, 101.372, 101.373, 101.374, and 101.376 to read as follows:

§ 52.2270 Identification of plan.
 * * * * *
 (c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 101—General Air Quality Rules				
*	*	*	*	*
Subchapter H—Emissions Banking and Trading				
Division 1—Emission Credit Program				
Section 101.300	Definitions	09/20/2017	12/7/2017, [Insert Federal Reg- ister citation].	
*	*	*	*	*
Section 101.302	General Provisions	09/20/2017	12/7/2017, [Insert Federal Reg- ister citation].	
Section 101.303	Emission Reduction Credit Gen- eration and Certification.	09/20/2017	12/7/2017, [Insert Federal Reg- ister citation].	
Section 101.304	Mobile Emission Reduction Cred- it Generation and Certification.	09/20/2017	12/7/2017, [Insert Federal Reg- ister citation].	
*	*	*	*	*
Section 101.306	Emission Credit Use	09/20/2017	12/7/2017, [Insert Federal Reg- ister citation].	
*	*	*	*	*
Division 4—Discrete Emission Credit Program				
Section 101.370	Definitions	09/20/2017	12/7/2017, [Insert Federal Reg- ister citation].	
*	*	*	*	*
Section 101.372	General Provisions	09/20/2017	12/7/2017, [Insert Federal Reg- ister citation].	
Section 101.373	Discrete Emission Reduction Credit Generation and Certifi- cation.	09/20/2017	12/7/2017, [Insert Federal Reg- ister citation].	
Section 101.374	Mobile Discrete Emission Reduc- tion Credit Generation and Certification.	09/20/2017	12/7/2017, [Insert Federal Reg- ister citation].	
*	*	*	*	*
Section 101.376	Discrete Emission Credit Use	09/20/2017	12/7/2017, [Insert Federal Reg- ister citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2017-26342 Filed 12-6-17; 8:45 am]

BILLING CODE 6560-50-P



west virginia department of environmental protection

Division of Air Quality
601 57th Street, SE
Charleston, WV 25304

Austin Caperton, Cabinet Secretary
dep.wv.gov

October 29, 2020

Ms. Melissa Duff
Director, Division of Air Quality
Kentucky Department of Environmental Protection
300 Sower Boulevard
Frankfort, KY 40601

Via e-mail: Melissa.Duff@ky.gov

RE: Proposed *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)*

Dear Director Duff:

The West Virginia Department of Environmental Protection (DEP), Division of Air Quality (DAQ) is herein providing an opportunity for your review and comment for the proposed partial West Virginia State Plan: *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)*.

Section 111(d)(1) of the Clean Air Act requires all states to submit to the U.S. Environmental Protection Agency (EPA) a plan which establishes standards of performance for any existing source for any air pollutant to which a standard of performance would apply if such existing source were a new source and provides for the implementation and enforcement of such standards of performance. This proposed partial State Plan will establish a carbon dioxide standard of performance for Longview Power LLC, an existing source located in West Virginia, and will provide for the implementation and enforcement of such standard of performance.

Your state is being notified because Kentucky is a border state to West Virginia.

Once finalized, the *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)* will be submitted to the U.S. EPA for approval. Written and oral comments will be accepted until the close of the public hearing and will be made part of the formal record. A public hearing is scheduled Tuesday, December 1, 2020 at 6:00 p.m. and will be held virtually due to COVID-19, as described in the public notice.

A copy of the proposed partial State Plan, supporting documentation and public notice may be viewed electronically on the Division of Air Quality website under the public notice and comment section: www.dep.wv.gov/daq/.

Send written comments to be included in the formal record to Laura M. Jennings, Division of Air Quality, at the address above or via e-mail to laura.m.jennings@wv.gov with “WV ACE State Plan Comments” in the subject line.

If you or your staff have any questions regarding this matter, please contact Laura Jennings at (304) 414-1266.

Sincerely,

**Laura M.
Crowder**

Digitally signed by: Laura M. Crowder
DN: CN = Laura M. Crowder email = Laura.
M.Crowder@wv.gov C = US O = West
Virginia Department of Environmental
Protection OU = Division of Air Quality
Date: 2020.10.29 10:27:12 -04'00'

Laura M. Crowder, Director
Division of Air Quality

Enclosure

LMC/lmj



west virginia department of environmental protection

Division of Air Quality
601 57th Street, SE
Charleston, WV 25304

Austin Caperton, Cabinet Secretary
dep.wv.gov

October 29, 2020

Mr. Tad Aburn
Director, Air & Radiation Management
Maryland Department of Environmental Protection
1800 Washington Blvd.
Baltimore, MD 21230-1780

Via e-mail: george.aburn@maryland.gov

RE: Proposed *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)*

Dear Director Aburn:

The West Virginia Department of Environmental Protection (DEP), Division of Air Quality (DAQ) is herein providing an opportunity for your review and comment for the proposed partial West Virginia State Plan: *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)*.

Section 111(d)(1) of the Clean Air Act requires all states to submit to the U.S. Environmental Protection Agency (EPA) a plan which establishes standards of performance for any existing source for any air pollutant to which a standard of performance would apply if such existing source were a new source and provides for the implementation and enforcement of such standards of performance. This proposed partial State Plan will establish a carbon dioxide standard of performance for Longview Power LLC, an existing source located in West Virginia, and will provide for the implementation and enforcement of such standard of performance.

Your state is being notified because Maryland is a border state to West Virginia.

Once finalized, the *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)* will be submitted to the U.S. EPA for approval. Written and oral comments will be accepted until the close of the public hearing and will be made part of the formal record. A public hearing is scheduled Tuesday, December 1, 2020 at 6:00 p.m. and will be held virtually due to COVID-19, as described in the public notice.

A copy of the proposed State Plan, supporting documentation and public notice may be viewed electronically on the Division of Air Quality website under the public notice and comment section: www.dep.wv.gov/daq/.

Send written comments to be included in the formal record to Laura M. Jennings, Division of Air Quality at the address above or via e-mail to laura.m.jennings@wv.gov with “WV ACE State Plan Comments” in the subject line.

If you or your staff have any questions regarding this matter, please contact Laura Jennings at (304) 414-1266.

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Environmental Protection OU = Division
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Date: 2020.10.29 10:30:17 -04'00'

Laura M. Crowder, Director
Division of Air Quality

Enclosure

LMC/lmj



west virginia department of environmental protection

Division of Air Quality
601 57th Street, SE
Charleston, WV 25304

Austin Caperton, Cabinet Secretary
dep.wv.gov

October 29, 2020

Mr. Mark Hammond
Director, Bureau of Air Quality
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

Via e-mail: mahammond@pa.gov

RE: Proposed *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)*

Dear Director Hammond:

The West Virginia Department of Environmental Protection (DEP), Division of Air Quality (DAQ) is herein providing an opportunity for your review and comment for the proposed partial West Virginia State Plan: *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)*.

Section 111(d)(1) of the Clean Air Act requires all states to submit to the U.S. Environmental Protection Agency (EPA) a plan which establishes standards of performance for any existing source for any air pollutant to which a standard of performance would apply if such existing source were a new source and provides for the implementation and enforcement of such standards of performance. This proposed partial State Plan will establish a carbon dioxide standard of performance for Longview Power LLC, an existing source located in West Virginia, and will provide for the implementation and enforcement of such standard of performance.

Your state is being notified because Pennsylvania is a border state to West Virginia.

Once finalized, the *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)* will be submitted to the U.S. EPA for approval. Written and oral comments will be accepted until the close of the public hearing and will be made part of the formal record. A public hearing is scheduled Tuesday, December 1, 2020 at 6:00 p.m. and will be held virtually due to COVID-19, as described in the public notice.

Promoting a healthy environment.

A copy of the proposed State Plan, supporting documentation and public notice may be viewed electronically on the Division of Air Quality website under the public notice and comment section: www.dep.wv.gov/daq/.

Send written comments to be included in the formal record to Laura M. Jennings, Division of Air Quality, at the address above or via e-mail to laura.m.jennings@wv.gov with “WV ACE State Plan Comments” in the subject line.

If you or your staff have any questions regarding this matter, please contact Laura Jennings at (304) 414-1266.

Sincerely,

**Laura M.
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Laura M. Crowder, Director
Division of Air Quality

Enclosure

LMC/lmj



west virginia department of environmental protection

Division of Air Quality
601 57th Street, SE
Charleston, WV 25304

Austin Caperton, Cabinet Secretary
dep.wv.gov

October 29, 2020

Mr. Bob Hodanbosi
Director, Division of Air Pollution Control
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, OH 43216-1049

Via e-mail: bob.hodanbosi@epa.ohio.gov

RE: Proposed *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)*

Dear Director Hodanbosi:

The West Virginia Department of Environmental Protection (DEP), Division of Air Quality (DAQ) is herein providing an opportunity for your review and comment for the proposed partial West Virginia State Plan: *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)*.

Section 111(d)(1) of the Clean Air Act requires all states to submit to the U.S. Environmental Protection Agency (EPA) a plan which establishes standards of performance for any existing source for any air pollutant to which a standard of performance would apply if such existing source were a new source and provides for the implementation and enforcement of such standards of performance. This proposed partial State Plan will establish a carbon dioxide standard of performance for Longview Power LLC, an existing source located in West Virginia, and will provide for the implementation and enforcement of such standard of performance.

Your state is being notified because Ohio is a border state to West Virginia.

Once finalized, the *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)* will be submitted to the U.S. EPA for approval. Written and oral comments will be accepted until the close of the public hearing and will be made part of the formal record. A public hearing is scheduled Tuesday, December 1, 2020 at 6:00 p.m. and will be held virtually due to COVID-19, as described in the public notice.

A copy of the proposed State Plan, supporting documentation and public notice may be viewed electronically on the Division of Air Quality website under the public notice and comment section: www.dep.wv.gov/daq/.

Send written comments to be included in the formal record to Laura M. Jennings, Division of Air Quality, at the address above or via e-mail to laura.m.jennings@wv.gov with “WV ACE State Plan Comments” in the subject line.

If you or your staff have any questions regarding this matter, please contact Laura Jennings at (304) 414-1266.

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Laura M. Crowder, Director
Division of Air Quality

Enclosure

LMC/lmj



west virginia department of environmental protection

Division of Air Quality
601 57th Street, SE
Charleston, WV 25304

Austin Caperton, Cabinet Secretary
dep.wv.gov

October 29, 2020

Mr. Michael Dowd
Director, Air and Renewable Energy Division
Virginia Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

Via e-mail: Michael.Dowd@dep.virginia.gov

RE: Proposed *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)*

Dear Director Dowd:

The West Virginia Department of Environmental Protection (DEP), Division of Air Quality (DAQ) is herein providing an opportunity for your review and comment for the proposed partial West Virginia State Plan: *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)*.

Section 111(d)(1) of the Clean Air Act requires all states to submit to the U.S. Environmental Protection Agency (EPA) a plan which establishes standards of performance for any existing source for any air pollutant to which a standard of performance would apply if such existing source were a new source and provides for the implementation and enforcement of such standards of performance. This proposed partial State Plan will establish a carbon dioxide standard of performance for Longview Power LLC, an existing source located in West Virginia, and will provide for the implementation and enforcement of such standard of performance.

Your state is being notified because Virginia is a border state to West Virginia.

Once finalized, the *West Virginia CAA §111(d) Partial Plan for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs)* will be submitted to the U.S. EPA for approval. Written and oral comments will be accepted until the close of the public hearing and will be made part of the formal record. A public hearing is scheduled Tuesday, December 1, 2020 at 6:00 p.m. and will be held virtually due to COVID-19, as described in the public notice.

A copy of the proposed State Plan, supporting documentation and public notice may be viewed electronically on the Division of Air Quality website under the public notice and comment section: www.dep.wv.gov/daq/.

Send written comments to be included in the formal record to Laura M. Jennings, Division of Air Quality, at the address above or via e-mail to laura.m.jennings@wv.gov with “WV ACE State Plan Comments” in the subject line.

If you or your staff have any questions regarding this matter, please contact Laura Jennings at (304) 414-1266.

Sincerely,

**Laura M.
Crowder**

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Date: 2020.10.29 10:26:26 -04'00'

Laura M. Crowder, Director
Division of Air Quality

Enclosure

LMC/lmj