

Dated: April 22, 2004.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV065-6034a; FRL-7653-8]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Sulfur Dioxide Attainment Demonstration for the City of Weirton Including the Clay and Butler Magisterial Districts in Hancock County

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of West Virginia. This revision contains enforceable emission limitations for the Weirton Steel Corporation, and the Wheeling-Pittsburgh Steel Corporation in Hancock County, West Virginia. The revision provides for, and demonstrates, the attainment of the national ambient air quality standards (NAAQS) for sulfur oxides, measured as sulfur dioxide (SO₂) in the City of Weirton, including the Clay and Butler Magisterial Districts, Hancock County nonattainment area. EPA is approving these revisions to the West Virginia SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on July 6, 2004, without further notice, unless EPA receives adverse written comment by June 4, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the *Federal Register* and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by WV065-6034 by one of the following methods:

A. *Federal eRulemaking Portal:*
<http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:* morris.makeba@epa.gov.

C. *Mail:* Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the

Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. WV065-6034. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regulations.gov or e-mail. The Federal Regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through Regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, West Virginia 25304-2943.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

I. Background

Following the Clean Air Act Amendments (CAA) of 1977, EPA published a list of areas identified by

the States as nonattainment, attainment, or unclassifiable for SO₂. The 1990 CAA Amendments provided for designations of areas based on their status immediately before enactment of the 1990 Amendments. For example, any area previously designated as not attaining the primary or secondary NAAQS for SO₂ as of the date of enactment of the 1990 Amendments, was designated nonattainment for SO₂ by operation of law upon enactment, pursuant to section 107(d)(1)(C)(i) of the Act. In addition, any area designated as attainment or unclassifiable (or "cannot be classified") immediately before the enactment of the 1990 Amendments, was also designated as such upon the enactment of the Amendments pursuant to sections 107(d)(1)(C)(ii) and (iii) of the Act.

As described above, EPA is authorized to initiate the redesignation of additional areas or portions of areas as nonattainment for SO₂ pursuant to section 107(d)(3)(D) of the Act on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator may deem appropriate. On December 21, 1993 (58 FR 67334), EPA redesignated the City of Weirton, including the Clay and Butler Magisterial Districts of Hancock County, West Virginia to nonattainment for SO₂ based upon monitored values in the Weirton, West Virginia area. This action required the State to submit a SIP revision for the Weirton area by July 20, 1995. On July 21, 1995, EPA received a SIP revision submittal for the Weirton area including the Clay and Butler Magisterial Districts of Hancock County, West Virginia. However, no applicable model was available at the time to handle the intricate topography of the area. Another major concern was the lack of comprehensive local meteorological data that was representative of such a complex terrain. Limited local meteorological data was obtained from the Browns Island meteorological tower operated by the State. EPA commented on the SIP submittal asking the West Virginia Department of Environmental Protection (WVDEP) to consider using a refined air quality model utilizing a new meteorological tower. A 60-meter meteorological tower and acoustical Sound Detection and Ranging (SODAR) were installed in Weirton, West Virginia as part of a Supplemental Environmental Project (SEP) between Weirton Steel Corporation and EPA.

Additional air quality monitors were added to the area surrounding Weirton Steel based on "hot spot" modeling locations identified by EPA. Modeling

results indicated major contributors of SO₂ in the local area to be sources located within Weirton Steel Corporation and Wheeling-Pittsburgh Steel Corporation. Modeled attainment of the NAAQS required the drafting of a Consent Order (CO) entered into between Weirton Steel Corporation and the WVDEP, and the modification of a permit for Wheeling-Pittsburgh Steel Corporation issued by WVDEP to set enforceable allowable limits on specific units within each of the facilities.

II. Summary of SIP Revision

On December 29, 2003, West Virginia submitted a formal SIP revision for the City of Weirton, including the Clay and Butler Magisterial Districts nonattainment area in Hancock County, West Virginia. The SIP revision consists of an enforceable operating permit for the Wheeling-Pittsburgh Steel Corporation, and an individual CO entered into by and between the State of West Virginia and the Weirton Steel Corporation in Hancock County, West Virginia, establishing SO₂ emission

limits for numerous emission points at both facilities. The SIP submittal also contains an air quality dispersion modeling demonstration that indicates that the allowable emission limits will provide for the attainment of the NAAQS for SO₂ in the Weirton area including the Clay and Butler Magisterial Districts. A summary of the essential compliance provisions of the consent order and the operating permit are presented below:

Table 1 summarizes the requirements imposed upon the Weirton Steel Corporation facility to reduce SO₂:

TABLE 1.—WEIRTON STEEL CORPORATION, WEIRTON FACILITY SO₂ REDUCTION MEASURES

SO ₂ emissions unit	SO ₂ emission limit
Sinter Plant	Shall not be operated by the Company.
High Pressure Boilers 1 and 2	Shall not be operated by the Company.
Low Pressure Boilers LP1, LP2, LP3, LP4, and LP15	Shall not be operated by the Company.
Coal	Shall not be fired at any boiler operated by the Company.
SO ₂ emissions from High Pressure Boilers 3, 4 and 5	Shall be limited by restricting the firing of fuel oil to a rate dependent upon the sulfur content of the fuel oil fired as described in Appendix A to the Consent Order. The allowable fuel oil firing rate shall be the 3-hour block average derived from Appendix A expressed in total gallons of fuel oil fired at High Pressure Boilers 3, 4, and 5 over a 3-hour period.
The percentage of sulfur contained in the fuel oil purchased to be fired at the company's high pressure boilers.	Shall not exceed three percent.
Total fuel oil and sulfur content fired at boilers 3, 4 and 5	Shall be limited to the product of gallons per minute (gpm) × (percent Sulfur) being less than or equal to the emission factor of 91.7 as per the curve in Appendix A of the Consent Order.
The BOP Waste Heat Boiler	Shall be pre-heated using steam sparging. Fuel fired at the Waste Heat Boiler shall be limited to Natural Gas, Mixed Gas, or steel making process gas.
Foster Wheeler Boilers #101 and #102	Shall have a combined limit of 109.73 lbs. per hour of SO ₂ . These boilers shall be limited to firing only blast furnace gas, natural gas, and mixed gas (comprised of approximately 70 percent natural gas and 30 percent air).
Hot Mill Reheat Furnaces, Hydrochloric Acid Regeneration Plant combustion sources, and Annealing Furnaces.	Shall be limited to firing only natural gas and mixed gas (comprised of approximately 70 percent natural gas and 30 percent air).
Blast Furnaces designated #2 and #3	Shall not recommence operation.
Blast Furnace #1 Stoves	Shall be limited to 60.1 lbs. per hour of SO ₂ .
Blast Furnace #1	Shall be limited to 42.1 lbs. per hour of SO ₂ .
Blast Furnace #4 Stoves	Shall be limited to 60.1 lbs per hour of SO ₂ .
Blast Furnace #4 Flare	Shall be limited to 42.1 lbs per hour of SO ₂ .
Slag Granulator	Shall be limited to 50 lbs per hour of SO ₂ .

With regard to the Wheeling-Pittsburgh Steel Corporation's revised permit, as specified in Section B, Other Requirements, the permittee shall comply with all the applicable provisions of West Virginia regulations 45CSR4, 45CSR6, 45CSR10, 45CSR13, 45CSR14, and 45CSR30, provided that the permittee shall comply with any more stringent requirements as may be set forth under Section A, Specific Requirements, of the permit.

The specific requirements of Section A of the operating permit issued by the WVDEP to Wheeling-Pittsburgh Steel Corporation (the permittee), are as follows:

A. Specific Requirements

1. Maximum emissions to the atmosphere from the Excess Coke Oven Gas (COG) Flare (Emission Point 1EF) shall not exceed the limits listed in Table 2:

TABLE 2

Hourly emissions (lbs./hr)	Maximum hourly emissions during the desulfurization outage	Annual emissions (tpy)
39.8	*396	294.0

* Annual emissions account for the desulfurization unit being down 672 hours per year for scheduled maintenance and maximum hydrogen sulfide concentration of 479 grains per 100 cu. ft. of COG.

2. In order to maintain compliance with the annual emission limit, the daily flow rate of COG to the excess COG flare (emission point 1EF) shall not exceed 7.1 MM standard cubic feet per

day over a thirty-day rolling average. The permittee shall keep daily records of the flow rate of COG to the flare and correct the measured flow rate to a standard temperature of 68°F. Compliance shall be determined using a thirty-day rolling average.

3. Maximum SO₂ emissions to the atmosphere from boilers # 6 and # 7 (emission point) shall not exceed the limits listed in Table 3:

TABLE 3

	Boiler #6	Boiler #7
Hourly SO ₂ Rate (lb/hr)	20.4	20.4
Hourly SO ₂ Rate during Desulfurization Outage (lb/hr)	*203.1	*203.1
Annual SO ₂ Rate* (TPY) ...	150.7	150.7

*Annual Emission accounts for the desulfurization unit being down 672 hours per year for scheduled maintenance and maximum hydrogen sulfide concentration of 479 grains per 100 cu. ft. of COG.

4. Boilers #5, 6 and 7 shall only combust COG.

5. In order to maintain compliance with the SO₂ emission limits specified in provisions #1 and #3 of the permit, the hydrogen sulfide concentration level in the COG stream from the by-products plant shall not exceed 50 grains of hydrogen sulfide per one hundred (100) cubic feet of COG except as noted in provision # 6 below. Compliance with the allowable hydrogen sulfide concentration level shall be based on three (3) hour averaging periods.

6. In order to maintain compliance with the SO₂ emission limits specified in provisions #1 and #3 of the permit while the desulfurization unit is down for scheduled maintenance, the permittee shall calculate and record the hourly sulfur dioxide emission rate of the flare and boilers #6 and #7 over a 24-hour period using the recorded mean hydrogen sulfide concentration level and the recorded standard flow rate for the respective day. These records shall be kept on site for a period of at least five years.

7. The permittee shall be limited to a maximum of twenty-eight (28) days in any calendar year for planned maintenance outages of the desulfurization unit in the coke-by-products recovery plant. No single outage period shall extend beyond 336 hours. The start of a planned maintenance shall begin at the time of the first hour of a three-hour average concentration that is greater than 50 grains of H₂S/100 cubic feet of COG. The planned maintenance shall be

concluded at the time of the first hour of a three-hour average concentration that is less than or equal to 50 grains of H₂S/100 cubic feet of COG.

8. The permittee shall notify the Director in writing thirty (30) days prior to undertaking any planned maintenance outage of the desulfurization unit, which shall include a detailed explanation of each and every maintenance and/or repair activity intended to be undertaken.

9. The permittee shall select the period for the planned maintenance outage that would prevent, to the greatest extent practicable, any violation of the NAAQS for SO₂ using, at a minimum, air quality dispersion modeling to determine what periods represent the most favorable dispersion of excess SO₂ emissions. To ensure maintenance of the 24-hour NAAQS for SO₂, a modeling target for SO₂ concentrations for the high 24-hour value of 265 µg/m³ shall be used to provide a margin of 100 µg/m³ for other source impacts within the immediate vicinity of the facility.

10. Prior to any planned maintenance outage of the desulfurization unit, the permittee shall prepare and submit an SO₂ mitigation plan to the Director outlining what measures the permittee will employ during the outage to ensure continued attainment of the NAAQS. This plan shall include the employment of all feasible control measures and process changes at the Follansbee facility to reduce SO₂ from the facility, including, but not limited to reduction of the coke production rate at Coke Oven Batteries #1, #2, #3, and #8.

11. No later than thirty (30) days after completing a planned maintenance outage of the desulfurization unit, the permittee shall submit a report identifying the SO₂ impacts associated with the planned outage. The report shall include any deviation of the SO₂ mitigation plan that was submitted for the outage period.

12. Visible emissions from the excess COG flare shall not exceed twenty percent opacity except upon the first eight (8) minutes of starting the thermal oxidizer. After this point, visible emissions from this emission point shall not exceed forty percent opacity for this time period. The permittee shall demonstrate compliance with this condition by taking visual observations using EPA Method 22 once a month. If the permittee observes visible emissions from the flare using Method 22, the permittee shall conduct an additional observation within 24 hours using EPA Method 9 to determine the opacity of the visible emissions being emitted from the flare.

13. The Sinter Plant shall not be operated by the permittee unless the proper permit is obtained from the Director prior to restarting the Sinter Plant.

14. The permittee shall operate and maintain a continuous hydrogen sulfide monitor and recorder for the purpose of monitoring the hydrogen sulfide concentration of the sweetened COG before it is routed to any combustion unit or source utilizing COG. This monitor shall be installed and maintained in accordance with Performance Specification 7 of Appendix B of 40 CFR 60.

15. The permittee shall maintain in accordance with the manufacturer's instructions, flow-measuring devices for the purpose of measuring and recording the amount of COG consumed by the excess COG flare and Boilers #6 and #7. The permittee shall keep daily records of the amount of COG consumed by the above mentioned units. These units shall remain on site for a period of at least 5 years.

16. The permittee shall maintain the automatic re-ignition system in accordance with the manufacturer's specifications.

17. The permittee shall not vent any noncombusted COG into the open atmosphere through the excess COG flare. The permittee shall record the date and time of an event when the flare was not in operation and COG was being emitted to the atmosphere through the excess COG flare. The permittee shall submit a report explaining the event and measures taken to prevent a recurrence of the event. These records shall be maintained on site for a period of at least five years.

18. No later than ninety (90) days after issuance of the permit, the permittee shall continuously maintain a system around the facility to prevent public access to the facility.

19. Compliance with the allowable emission limits of this permit shall be calculated using the appropriate amount of COG combustion by the excess COG flare on a volumetric basis, higher heat value of 568 Btu/cu. ft. for COG, and the following factors: Carbon Monoxide (0.37 lb/MM Btu), Nitrogen oxides (0.068 lb/MM Btu), Particulate Matter (0.012 lb/MM Btu), Particulate Matter 10 microns (0.012 lb/MM Btu), Volatile Organic Compounds (0.14 lb/MM Btu). The permittee shall determine the amount of each pollutant emitted on a monthly basis using the above mentioned information and appropriate engineering calculations. The permittee shall keep a 12-month rolling total for each of the above mentioned pollutants.

20. In the event of unforeseen circumstances beyond the control of the permittee during an approved planned maintenance outage, the permittee may exceed the SO₂ emission limit for the flare as stated in provision # 1 of this permit in order to prevent an anticipated excursion of the NAAQS for SO₂ from occurring in the local area, which includes the city of Weirton, West Virginia. The permittee shall document in the Desulfurization System Outage Report, the unforeseen circumstances, the SO₂ emissions rate calculation, and the modeling results, to document the necessity of the temporary increase in the flare's SO₂ allowable emissions rate.

21. Boiler # 5 (emission point 1D S11) shall not be operated unless the permittee obtains the proper permit from the Director prior to restarting the boiler.

22. The permittee shall fire only natural gas at coke plant boiler # 8 (emission point 1D, S11), unless an applicable permit is obtained from the Director.

23. Sulfur dioxide emissions from pushing Coke Oven Batteries #1, #2, and #3 shall not exceed 10.48 pounds SO₂ per hour (emission point SO5).

24. Sulfur dioxide emissions from pushing at Coke Oven Battery #8 shall not exceed 15.72 pounds per hour of SO₂ (emission point SO6).

25. Compliance with the allowable emission limits established in provisions #23 and #24 of the permit shall be calculated using an emission factor of 0.1078 pounds per tons of coal charged and multiplied by the hourly average tons of coal charged to the batteries each month.

III. Evaluation of the State Submittal

The CAA requires States to submit implementation plans that indicate how each State intends to attain and maintain the NAAQS. The 1977 Amendments established specific requirements for implementation plans in nonattainment areas in part D, sections 171-178. The 1990 Amendments did not change these requirements in any significant way with regard to SO₂ nonattainment areas and existing guidance remains valid. On April 16, 1992 (57 FR 13498), EPA issued "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" describing EPA's preliminary views on how it intends to interpret various provisions of title I, primarily those concerning revisions required for nonattainment areas. In order to approve the SIP revision, each of the part D requirements must be evaluated

and the revision must ensure that: (1) The revised allowable emission limitations demonstrate attainment and maintenance of the NAAQS for SO₂ in the nonattainment area, (2) the emission limitations are clearly enforceable, and (3) that all applicable procedural and substantive requirements of 40 CFR part 51 are met.

A. Evaluation of the Part D Requirements as Described in the "General Preamble"

1. Reasonably Available Control Technology (RACT)

West Virginia's SIP revision provides for reasonable available control technology (RACT). The definition for RACT for SO₂ is that control technology which is necessary to attain and maintain the NAAQS. The technology must also be reasonably available considering technological and economic feasibility. Furthermore, RACT must be that technology which will provide for the achievement of the NAAQS within the established statutory time frames. The SIP revision indicates that SO₂ emissions are controlled at the Weirton Steel Corporation and the Wheeling-Pittsburgh Steel Corporation through fuel specifications and operations. The revision establishes allowable SO₂ emission limits and also defines allowable fuel usage for a number of processes. Modeling results indicate that major contributors of SO₂ in the area to be blast furnaces and flares, high-pressure boilers, and Foster-Wheeler boilers at the Weirton Steel facility, along with boilers and coke ovens at the Wheeling-Pittsburgh Steel Corporation. The plan complies with the requirements to implement RACT by providing for immediate attainment of the NAAQS for SO₂ through the emission limits and operating restrictions imposed on specific units within each of the facilities by the consent orders and permits. The SIP revision provides a demonstration that these limits will provide for the attainment of the NAAQS in the nonattainment area. Therefore, West Virginia has ensured that reasonably available control technology, fuel specification and operations modification is required, and that the control technology provides for achievement of the NAAQS.

2. Reasonable Further Progress (RFP)

West Virginia's SIP revision provides for reasonable further progress (RFP). Sulfur dioxide emission reductions that provide for attainment in an area are achieved at a limited, readily-defined number of sources, using control

measures that immediately improve air quality. Therefore, RFP for SO₂ nonattainment implementation plans is defined simply as the "adherence to an ambitious compliance plan." The SIP revision provides for RFP due to the immediate effect of the emission limits required by the plan.

3. Emissions Inventory

West Virginia's SIP revision provides an adequate emissions inventory from Weirton Steel Corporation and Wheeling-Pittsburgh Steel Corporation, as well as from all relevant sources of SO₂ in the nonattainment area. The revision contains an updated 2001 inventory.

4. Identification and Quantification

This information is unnecessary because the area has not been identified as a zone for which economic development should be targeted.

5. Permits for New and Modified Major Stationary Sources

The Federal requirements for new source review (NSR) in nonattainment areas are contained in section 172(c)(5). Any new or modified source constructed in the area must comply with a state submitted and federally approved New Source Review Program (NSR). No modifications or installations have been made that detrimentally affect the modeling results. Presently, any major sources wishing to construct or make a major modification within the nonattainment area are required to obtain an NSR permit through SIP-approved State Regulation 45CSR19. Subsequent to redesignation of the area to attainment, any source wishing to construct or modify will be required to obtain a Prevention of Significant Deterioration (PSD) permit through SIP-approved State Regulation 45CSR14. The PSD program would require that a modeling demonstration be performed to ensure continued NAAQS attainment and maintenance. These along with requirements of the minor source permit program covered under State Regulation 45CSR13 would assure the maintenance of the NAAQS.

6. Other Measures

The plan provides for immediate attainment of the NAAQS for SO₂ through the emission limitations, operating requirements, and compliance schedules that are set forth within the permits and consent orders.

7. Compliance With Section 110(a)(2)

This submission complies with section 110(a)(2). All of the applicable provisions of section 110(a)(2) are

already met by West Virginia's Federally-approved SIP.

8. Equivalent Techniques

The modeling for this SIP submittal was conducted using EPA's "Guideline on Air Quality Models (Revised)" (GAQM). Two models, AERMOD and CALPUFF are designed to handle complex terrain features. AERMOD was selected as the best performing model for this situation and was chosen as the appropriate model for this SIP demonstration.

9. Contingency Measures

West Virginia's SIP revision provides for adequate contingency measures. The State's plan includes the continuous review of air quality monitoring data in the area of concern, the review of local monitored meteorological data, and the assessment of compliance of local targeted facilities to verify continued attainment of the area. The State will review the annual emissions inventory for the Weirton area at a minimum of once every three years. In the event of a certified violation, West Virginia intends to assess all source compliance with existing rules, regulations and permits, and assess fuel switching at fuel burning units. The supporting documentation (ambient air quality data) indicates that the Weirton, West Virginia area has shown attainment of the NAAQS for SO₂ since the fourth quarter of 1994. At such time as West Virginia submits a redesignation request and maintenance plan for this area, the maintenance plan will also include a detailed contingency plan along with triggering indicators.

B. The Attainment Demonstration

The SIP revision includes a dispersion modeling analysis which was performed to demonstrate compliance with the NAAQS for SO₂. The model

used in the compliance analysis was the American Meteorological Society (AMS)/EPA Regulatory Model (AERMOD). The AERMOD was proposed to be included as a preferred model in the "Guideline on Air Quality Models" at the 7th Conference on Air Quality Modeling held on June 28-29, 2000, in Washington, DC. Meteorological data collected on-site at Weirton Steel from June 1, 1997 through May 31, 1999, were processed with the AERMET preprocessor and used for the analysis. (AERMET is the meteorological pre-processor for AERMOD). Since the AERMOD model is not currently an approved model under the GAQM, but has been proposed for inclusion and is undergoing the regulatory process for inclusion, WVDEP made a request to EPA for the use of the AERMOD model for the Weirton SO₂ SIP revision in a letter dated May 25, 2001. The use of this model was approved by EPA in a letter dated July 2, 2001.

The modeling inventory included all sources within the Weirton nonattainment area, and all sources within 100 kilometers of the area with a significant impact within the area. A significant impact was defined by the Federal significance criteria of 1 microgram per cubic meter (µg/m³) annually, 5 µg/m³ on a 24-hour average, and 25 µg/m³ on a 3-hour average. For Weirton Steel, four operating scenarios were evaluated to provide for flexibility with regard to fuel switching capabilities, fuel consumption rates and sulfur content. The four modeling scenarios are:

- a. Firing fuel oil containing 1.29% sulfur at HP Boilers 3, 4, and 5 with Foster Wheeler Boilers 101 & 102 firing Blast Furnace Gas.
- b. Firing fuel oil containing 1.29% sulfur at HP Boilers 3, 4, and 5 with

Foster Wheeler Boilers 101 & 102 off-line and flaring excess Blast Furnace Gas.

c. Firing fuel oil containing 1.81% sulfur at HP Boilers 3 and 5 with Foster Wheeler Boilers 101 & 102 firing Blast Furnace Gas.

d. Firing fuel oil containing 1.81% sulfur at HP Boilers 3 and 5 with Foster Wheeler Boilers 101 & 102 off-line and flaring excess Blast Furnace Gas.

The final dispersion modeling, based upon the SO₂ emission limits of sources amended through Operating Permits in addition to a representative background, demonstrates that the maximum SO₂ impacts do not violate the NAAQS for SO₂. The results of the modeling analyses indicate that no exceedances of the NAAQS for SO₂ are expected in the City of Weirton, including the Clay and Butler Magisterial Districts nonattainment area when the Wheeling-Pittsburgh Steel Corporation and the Weirton Steel Company are operating at the emission rates contained in their respective operating permits and consent orders, and the other significant sources comply with their allowable emission rates. The maximum annual modeled SO₂ was 70.82 µg/m³, which includes the background of 5.24 µg/m³ as compared to the 80 µg/m³ standard. The maximum modeled 24-hour SO₂ value was 360.46 µg/m³ which includes the background of 31.44 µg/m³ as compared to the 365 µg/m³ standard. The maximum modeled 3-hour SO₂ value was 1297.23 µg/m³ which includes the background of 81.22 µg/m³ as compared to the 1300 µg/m³ standard. These modeling results demonstrate attainment with respect to the NAAQS for SO₂.

The modeled impacts with the maximum Weirton Steel scenarios, including background concentrations, are provided in Table 4.

TABLE 4.—PREDICTED MAXIMUM SULFUR DIOXIDE IMPACTS

[Micrograms per cubic meter]

Period	Armed	Background	Total	NAAQS	NAAQS (percent)
3-Hour	1216.01	81.22	1297.23	1300	99.79
24-Hour	329.02	31.44	360.46	365	98.76
Annual	65.58	5.24	70.82	80	88.53

Federal regulations, 40 CFR 51.112, require nonattainment plans to include a demonstration of the adequacy of the plan's control strategy. This demonstration must include the following information: model selection and descriptions; model application and assumptions made during application of

selected models; receptor grids; meteorological data; ambient air monitoring data and background concentration, model source input, and modeling results. This information is described in detail in the Technical Support Document (TSD) prepared for this rulemaking.

The SO₂ monitoring network in the Weirton area consists of six monitors, Oak Street, Summit Circle, Maryland Heights, Williams Country Club, McKims Ridge and Skyview. A number of the monitors were added as a result of EPA modeled hot spots. Data collected and quality-assured in

accordance with 40 CFR part 58, and recorded into EPA new ambient air quality data system known as the Air Quality Subsystem (AQS), indicates that there have been no monitored NAAQS violations recorded for a period of time nearing 10 years. These sites have monitored no 24-hour average values above 365 $\mu\text{g}/\text{m}^3$, no annual average values above 80 $\mu\text{g}/\text{m}^3$, and no monitored 3-hour average values above 1300 $\mu\text{g}/\text{m}^3$. Reductions in SO_2 emissions from both the Weirton Steel and Wheeling-Pittsburgh Steel facilities have contributed significantly to these ambient monitored attainment values. Air quality measurements used in this analysis were performed in accordance with appropriate regulations and guidance documents including adherence to EPA quality assurance requirements. Monitoring procedures were determined in accordance with 40 CFR parts 53 and 58.

EPA's review of the entire submittal indicates that West Virginia's SIP revision provides for the attainment of the NAAQS for SO_2 in the City of Weirton, including Clay and Butler Magisterial Districts, Hancock County, and satisfies the requirements of part D of the Clean Air Act. The revision is supported by a modeling analysis which clearly demonstrates the adequacy of emission limits in providing for the attainment and maintenance of the NAAQS for SO_2 in the nonattainment area. The consent order between Weirton Steel Corporation and the permit between West Virginia and Wheeling-Pittsburgh Steel Corporation, at the center of the SIP revision, establish enforceable SO_2 emission limits at these two facilities. The submittal fulfills the procedural and substantive requirements of 40 CFR part 51. Therefore, EPA is approving the West Virginia SIP revision for the City of Weirton, including Clay and Butler Magisterial Districts, Hancock County SO_2 nonattainment area.

IV. Final Action

EPA is approving the SO_2 SIP revision, including the modeled attainment demonstration, submitted by the State of West Virginia on December 29, 2003, for the City of Weirton, including the Clay and Butler Magisterial Districts nonattainment area in Hancock County. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the

SIP revision if adverse comments are filed. This rule will be effective on July 6, 2004, without further notice unless EPA receives adverse comment by June 4, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule 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 mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action 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 Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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 rule 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

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 July 6, 2004.

Filing a petition for reconsideration by the Administrator of this final rule, approving the SO_2 attainment plan for the City of Weirton including the Clay and Butler Magisterial Districts nonattainment area in Hancock County, does not affect the finality of this rule for the purposes of judicial review nor

does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 20, 2004.

James W. Newsom,

Acting Regional Administrator, Region III.

■ 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 XX—West Virginia

■ 2. Section 52.2520 is amended by adding paragraph (c)(59) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(59) Revisions to the West Virginia Regulations to attain and maintain the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide in the City of Weirton, including Clay and Butler Magisterial Districts, in Hancock County, West Virginia, submitted on December 29, 2003, by the West Virginia Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of December 29, 2003, from the West Virginia Department of Environmental Protection, transmitting a revision to the State Implementation Plan (SIP) for attainment and maintenance of the sulfur dioxide NAAQS for the City of Weirton, including the Clay and Butler Magisterial Districts in Hancock County, West Virginia.

(B) The following Companies' Consent Order and Operating Permit:

(1) Wheeling-Pittsburgh Steel Corporation, Operating Permit R13-1939A, effective August 19, 2003.

(2) Weirton Steel Corporation Consent Order, CO-SIP-C-2003-28, effective August 4, 2003.

(ii) Additional Material.

(A) Remainder of the State submittal pertaining to the revision listed in paragraph (c)(59)(i) of this section.

(B) Letter of February 10, 2004, from the West Virginia Department of Environmental Protection providing

clarification to permit R13-1939A, condition B.4. issued to the Wheeling-Pittsburgh Steel Corporation.

■ 3. Section 52.2525 is amended by adding paragraph (b) to read as follows:

§ 52.2525 Control strategy: Sulfur oxides.

* * * * *

(b) EPA approves the attainment demonstration State Implementation Plan for the City of Weirton, including the Clay and Butler Magisterial Districts area in Hancock County, West Virginia, submitted by the West Virginia Department of Environmental Protection on December 29, 2003.

[FR Doc. 04-10095 Filed 5-4-04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2004-0097; FRL-7356-5]

Harpin Protein; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the biochemical harpin protein on all food commodities when applied/used to enhance plant growth, quality and yield, to improve overall plant health, and to aid in pest management. EDEN Bioscience Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of harpin protein.

DATES: This regulation is effective May 5, 2004. Objections and requests for hearings must be received on or before July 6, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket ID number OPP-2004-0097. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket/>. Although listed in the index, some information is not publicly available, i.e., 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 either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Diana M. Horne, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8367; e-mail address: horne.diana@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.