



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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Philadelphia, Pennsylvania 19103-2029

COPY

MAR 06 2014

William Durham, Assistant Director
West Virginia Department of Environmental Protection
601 57th St., SE
Charleston, WV 25304

Dear Mr. Durham:

Thank you for the August 5, 2013, submittal of the maintenance plan for the West Virginia portion of the Martinsburg-Hagerstown, WV-MD 1997 Fine Particulate (PM_{2.5}) National Ambient Air Quality Standard (NAAQS) Nonattainment Area (Martinsburg Maintenance Plan) as a state implementation plan (SIP) revision. This letter addresses the U.S. Environmental Protection Agency's (EPA) review of the adequacy of the motor vehicle emissions budgets (MVEBs) for direct particulate matter (PM) and nitrogen oxides (NO_x) for the West Virginia portion of the Martinsburg-Hagerstown, WV-MD 1997 PM_{2.5} NAAQS Nonattainment Area.

Pursuant to 40 CFR 93.118(e)(4) of the Transportation Conformity Rule (40 CFR part 93, subpart A), EPA has reviewed the Martinsburg Maintenance Plan as well as the MVEBs contained in the maintenance plan, which were developed with the use of the Motor Vehicle Emission Simulator (MOVES). EPA has determined that these MVEBs are adequate for transportation conformity purposes.

West Virginia's Martinsburg Maintenance Plan has MVEBs for direct PM and NO_x for 2017 and 2025. The MVEBs are 83 tons per year for direct PM and 2,621 tons per year NO_x for 2017 and 50 tons per year for direct PM and 1,660 tons per year NO_x for 2025. These MVEBs meet the standard requirement that any MVEB must meet before it can be used to determine conformity for a transportation improvement program or long range transportation plan. As a result of EPA's finding, the State of West Virginia must use the 2017 and 2025 MVEBs for future conformity determinations for the 1997 PM_{2.5} NAAQS. However, this adequacy finding does not relate to the merits of the SIP submittal nor does it indicate whether the submittal meets the requirements for approval.

EPA opened the public comment period on the adequacy of the submitted SIP by posting to the EPA Office of Transportation and Air Quality's adequacy review website (<http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>) on December 20, 2013. The comment period closed on January 21, 2014, and no comments were received. EPA will soon publish a notice in the Federal Register announcing this adequacy finding. The Federal Register will also announce the date that the adequacy finding becomes effective. The MVEBs will be available for use on the effective date.



EPA has considered these MVEBs in light of the current status of the Clean Air Interstate Rule (CAIR) and the Cross State Air Pollution Rule (CSAPR). The U.S. Court of Appeals for the D.C. Circuit issued a decision on July 11, 2008 to vacate and remand CAIR. *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). On December 23, 2008, the court granted EPA's motion for rehearing and revised its prior decision. Instead of vacating and remanding CAIR, the court decided to remand the rule to EPA for further rulemaking. The court decided to leave CAIR in place to "at least temporarily preserve the environmental values" of the rule. *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008).

On August 8, 2011 (76 FR 48208), EPA finalized CSAPR as a replacement for the remanded CAIR rule.

On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), *cert. granted* 133 U.S. 2857 (2013). The court also ordered EPA to continue to administer CAIR pending the promulgation of a valid replacement. EPA and other parties filed petitions for certiorari to the U.S. Supreme Court. On June 24, 2013, the Supreme Court granted EPA's petition for certiorari.¹ EPA is continuing to administer CAIR in accordance with the August 2012 decision.

EPA has reviewed these budgets in light of the remand of CAIR, the vacatur of CSAPR and the Court's order that EPA continue administering CAIR. EPA has concluded that the budgets meet the conformity rule's adequacy criteria found at 40 CFR 93.118(e)(4). In particular, EPA has concluded that the budgets satisfy the requirements of 40 CFR 93.118(e)(4)(iv), which requires that the budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for maintenance of the 1997 PM_{2.5} NAAQS.

In light of these unique circumstances and for the reasons explained below, EPA has concluded that the motor vehicle emissions budgets for the 1997 PM_{2.5} NAAQS are consistent with maintenance of the 1997 PM_{2.5} NAAQS. The air quality modeling analysis conducted for CSAPR demonstrates that the West Virginia portion of the Martinsburg-Hagerstown WV-MD 1997 PM_{2.5} NAAQS Nonattainment Area would be able to attain the 1997 PM_{2.5} NAAQS even in the absence of either CAIR or CSAPR. See "Air Quality Modeling Final Rule Technical Support Document," App. B, B-XX to B-XX. This modeling is available in the docket for this proposed redesignation action. Nothing in the D.C. Circuit's August 2012 decision disturbs or calls into question that conclusion or the validity of the air quality analysis on which it is based.

In addition, CAIR remains in place and enforceable until substituted by a valid replacement rule. West Virginia lists CAIR as a control measure in the submitted the Martinsburg Maintenance Plan. West Virginia's CAIR SIP was approved by EPA on August 2, 2009 (74 FR 38536). To the extent that West Virginia is relying on CAIR in its maintenance plan, the recent directive from the D.C. Circuit in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the Court to develop a new rule and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. CAIR thus cannot be replaced until EPA has promulgated a final rule through a notice-and-comment rulemaking process, States have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a federal implementation plan (FIP) if appropriate. The Court's clear

¹ The Supreme Court also granted the American Lung Association's petition for certiorari.



instruction to EPA that it must continue to administer CAIR until a valid replacement exists provides an additional backstop; by definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to have SIPs that eliminate significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas. Thus, the maintenance plan's reliance on CAIR is acceptable, as either CAIR or its replacement will be in effect for the period covered by the maintenance plan.

West Virginia did not provide emission budgets for sulfur dioxide (SO₂), volatile organic compounds (VOCs), or ammonia for the Martinsburg Maintenance Plan because it concluded that emissions of these precursors from motor vehicles are not significant contributors to the area's PM_{2.5} air quality problem. The transportation conformity rule provision at 40 CFR 93.102(b)(2)(v) indicates that conformity does not apply for these precursors, due to the lack of motor vehicle emissions budgets for these precursors and state's conclusion that motor vehicle emissions of SO₂, VOCs, and ammonia do not contribute significantly to the area's PM_{2.5} nonattainment problem. This provision of the transportation conformity rule predates and was not disturbed by the January 4, 2013 decision in the litigation on the PM_{2.5} implementation rule.² EPA has preliminarily concluded that the State's decision to not include budgets for SO₂, VOCs, and ammonia is consistent with the requirements of the transportation conformity rule. That decision does not affect EPA's adequacy finding for the submitted direct PM and NO_x MVEBs for the Martinsburg Maintenance Plan.

EPA has concluded that MVEBs satisfy the requirements of 40 CFR 93.118(e)(4)(iv), which requires that the budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for attainment/maintenance. These MVEBs serve to strengthen the SIP through continued attainment and ensure that motor vehicle emissions remain consistent with the emissions levels provided for in the SIP.

If members of your staff have any questions regarding this finding, they may direct them to Ms. Asrah Khadr, at (215) 814-2071.

Sincerely,



Cristina Fernandez, Associate Director
Office of Air Program Planning

² EPA issued conformity regulations to implement the 1997 PM_{2.5} NAAQS (69 FR 40004, July 1, 2004 and 70 FR 24280, May 6, 2005, respectively). Those actions were not part of the final rule recently remanded to EPA by the Court of Appeals for the District of Columbia in *NRDC v. EPA*, No. 08-1250 (January 4, 2013), in which the Court remanded to EPA the implementation rule for the PM_{2.5} NAAQS because it concluded that EPA must implement that NAAQS pursuant to the PM-specific implementation provisions of subpart 4 of Part D of Title I of the CAA, rather than solely under the general provisions of subpart 1.

