

## Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping 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; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 106.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.765 to read as follows:

### § 165.765 Regulated Navigation Area; Port Everglades Harbor, Fort Lauderdale, Florida.

(a) *Location.* The following area in Port Everglades harbor is a regulated navigation area: all waters of Port Everglades harbor, from shore to shore, encompassed by a line commencing at the south mid-point tip of Harbor

Heights approximately 26°05.687' N, 080°06.684' W; thence south across Bar Cut to a point north of the Nova University Marina approximately 26°05.552' N, 080°06.682' W, thence southwesterly to a point near the center of Lake Mabel approximately 26°05.482' N, 080°06.793' W, thence northwesterly to a point near the Quick Flashing Red #12 approximately 26°05.666' N, 080°06.947' W, thence east to south mid-point tip of Harbor Heights (starting point) approximately 26°05.687' N, 080°06.684' W.

(b) *Regulations.* Vessels less than 150 meters entering and transiting through the regulated navigation area shall proceed at a slow speed. Nothing in this section alleviates vessels or operators from complying with all state and local laws in the area including manatee slow speed zones. Nor should anything in this section be construed as conflicting with the requirement to operate at safe speed under the Inland Navigation Rules, 33 U.S.C. 2001 *et seq.*

(c) *Definition.* As used in this section, *slow speed* means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A vessel is not proceeding at slow speed if it is:

- (1) On a plane;
- (2) In the process of coming up on or coming off of plane; or
- (3) Creating an excessive wake.

Dated: October 31, 2003.

**H.E. Johnson, Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Region 2 Docket No. NJ56–250c, FRL–7582–8]

### Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for Specific Sources in the State of New Jersey

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving revisions to the New Jersey State

Implementation Plan (SIP) for ozone. These revisions consist of source-specific reasonably available control technology (RACT) determinations for controlling oxides of nitrogen (NO<sub>x</sub>) emissions from seven facilities in New Jersey.

The EPA is also announcing that, for an eighth facility, New Jersey has revised a NO<sub>x</sub> RACT permit emission limit that EPA previously approved and EPA is incorporating the revised stricter limit into the State's SIP.

This final rule approves the source-specific RACT determinations that were made by New Jersey in accordance with provisions of its regulation. The intended effect of this rulemaking is to approve source-specific emission limitations required by the Clean Air Act.

**EFFECTIVE DATE:** This rule will be effective December 12, 2003.

**ADDRESSES:** A copy of the New Jersey submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102T), 1301 Constitution Avenue, NW., Washington, DC 20460.

### FOR FURTHER INFORMATION CONTACT:

Anthony (Ted) Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3892 or at [Gardella.Anthony@epa.gov](mailto:Gardella.Anthony@epa.gov).

**SUPPLEMENTARY INFORMATION:** The following table of contents describes the format for the Supplementary Information section:

- I. What Action Is EPA Taking Today?
- II. What Comments Did EPA Receive in Response to Its Proposal?
  - A. Background information
  - B. Comments received and EPA's response
- III. What Is EPA's Conclusion?
- IV. Statutory and Executive Order Reviews

### I. What Action Is EPA Taking Today?

EPA is approving revisions to New Jersey's ozone SIP submitted on January 21, 1998, June 12, 1998 and April 26, 1999. Seven specific sources are addressed in these SIP revisions. New Jersey revised and submitted these revisions in response to a Clean Air Act (CAA) requirement that states require

Reasonably Available Control Technology (RACT) at all major stationary sources of NO<sub>x</sub>. The seven sources addressed are: American Ref-Fuel Company/Essex County Resource Recovery Facility; Co-Steel Corporation of Sayreville (formerly New Jersey Steel Corporation); Co-Steel Raritan Corporation; Homasote Company; Milford Power Limited Partnership; University of Medicine and Dentistry of Newark, and Roche Vitamins, Inc.

Additionally, on February 21, 2001, in a letter to EPA, New Jersey indicated that with regard to the Township of Wayne, in accordance with a previously submitted and approved SIP revision the State had changed the permitted NO<sub>x</sub> limit to a more stringent limit. The previously approved SIP revision for this source indicated that the emission limits may be revised to reflect results from required stack testing. The permit required tests had been completed and New Jersey established a new, more stringent emission limit based upon the results of these tests and the new limit is also being incorporated into the SIP.

The specific NO<sub>x</sub> emission limitations that EPA is approving in today's rulemaking and the full evaluation can be found in actions (68 FR 47532 and 68 FR 47477) published in the **Federal Register** on August 11, 2003.

## II. What Comments Did EPA Receive in Response to Its Proposal?

### A. Background Information

On August 11, 2003, EPA announced, in proposed and direct final rules published in the **Federal Register** (68 FR 47532 and 68 FR 47477, respectively), approval of New Jersey's NO<sub>x</sub> RACT determinations for the same eight sources which are subject to today's final rulemaking. On August 11, 2003, EPA received an adverse comment on the direct final rule. EPA had indicated in its August 11, 2003 direct final rule that if EPA received adverse comments, it would withdraw the direct final rule. Consequently, EPA informed the public, in a withdrawal notice published in the **Federal Register** (68 FR 54163) on September 16, 2003, that EPA received an adverse comment and that the direct final rule did not take effect. EPA did not receive any other comments. EPA is addressing the adverse comment in today's final rule based upon the proposed action published on August 11, 2003.

### B. Comments Received and EPA's Response

EPA received one adverse comment on its August 11, 2003 direct final rule to approve New Jersey's NO<sub>x</sub> RACT

determinations for eight facilities located throughout the State from a concerned citizen. That comment and EPA's response follows.

*Comments:* A concerned citizen commented that "the standards for New Jersey should be set higher and require fewer tons per year emissions" and the citizen "did not feel these standards are high enough." The comments did not address any specific source or any specific NO<sub>x</sub> emission limitation. In addition, no supporting information or justification was provided.

*Response:* The 1990 CAA requires states, in which areas are designated as nonattainment for the one-hour ozone standard and are classified as moderate or higher, to submit SIP provisions, for EPA approval, which establish RACT for major stationary sources of NO<sub>x</sub>. EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762, September 17, 1979).

In this regard, New Jersey determined that each of the eight sources were major stationary sources of NO<sub>x</sub> and therefore subject to the CAA requirement to implement RACT. As discussed in the August 11, 2003 direct final rule, New Jersey submitted SIP revisions, for EPA approval, that established RACT, including NO<sub>x</sub> emission limitations for each of the eight sources subject to the citizen's comment. It should be noted that EPA requires some new sources to be subject to more stringent requirements than the RACT requirements for existing sources, such as Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER). One of the eight sources addressed in the SIP submission is subject to BACT requirements, but the remaining seven sources are not subject to these more stringent requirements. New Jersey submitted its RACT determinations, for EPA approval, for the eight sources, to fulfill the CAA requirements for RACT and not to meet any other more stringent requirement.

EPA evaluated each RACT determination and documented its findings in "Technical Support Document—NO<sub>x</sub> RACT Source Specific SIP Revisions—State of New Jersey" dated May 23, 2003. The August 11, 2003 direct final rule announced the availability of this technical support document to the public. However, EPA did not receive any requests for a copy. In the Technical Support Document for this rule, EPA indicates that New Jersey's submittals are consistent with

relevant EPA guidance and the requirements of the State's RACT regulation (Subchapter 19) and provide sufficient justification to support the established NO<sub>x</sub> requirements. For the reasons provided in this section and in the Technical Support Document, EPA is approving the NO<sub>x</sub> emission limitations for the eight sources subject to today's rulemaking as consistent with the RACT requirements of the CAA.

## III. What Is EPA's Conclusion?

The EPA is approving the source-specific SIP revisions described above as RACT for the control of NO<sub>x</sub> emissions from the seven sources identified in the three source-specific SIP revisions and for an eighth source, is approving the stricter limit revised by the State in accordance with a SIP revision which EPA previously approved. EPA is approving the State's RACT determinations because New Jersey established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulation applicable to these sources and because they conform with CAA requirements and EPA guidance. New Jersey has also established recordkeeping and testing requirements for these sources sufficient to determine compliance with the applicable RACT determinations.

## IV. Statutory and Executive Order Reviews

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 (Pub. L. 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.*).

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or

practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

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 January 12, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 22, 2003.

**Jane M. Kenny,**  
*Regional Administrator, Region 2.*

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

**PART 52—[AMENDED]**

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

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

**Subpart FF—New Jersey**

■ 2. Section 52.1570 is amended by adding new paragraph (c)(73) to read as follows:

**§ 52.1570 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(73) Revisions to the State Implementation Plan submitted by the New Jersey Department of Environmental Protection on January 21, 1998, June 12, 1998 and April 26, 1999; and a letter which notified EPA of a revised permit limit submitted by the New Jersey Department of Environmental Protection on February 21, 2001.

(i) Incorporation by reference:

(A) Conditions of Approval Documents (COAD) or modified prevention of significant deterioration (PSD) permit: The following facilities have been issued COADs or modified PSD permit by New Jersey:

(1) American Ref-Fuel Company/Essex County Resource Recovery Facility, Newark, Essex County, NJ PSD permit modification dated July 29, 1997. Incorporation by reference includes only the NO<sub>x</sub> emission limits in section A.6 of the July 29, 1997 PSD permit.

(2) Co-Steel Corporation's (formerly New Jersey Steel Corporation) electric arc furnace/melt shop and billet rehear furnace, Sayreville, Middlesex County, NJ COAD approval dated September 3, 1997.

(3) Co-Steel Raritan Corporation's electric arc furnace/ladle metallurgy system and billet rehear furnace, Perth Amboy, Middlesex County, NJ COAD approval dated June 22, 1998.

(4) Homasote Company's natural gas dryer (wet fibreboard mat dryer), West Trenton, Mercer County, NJ COAD approval dated October 19, 1998.

(5) Milford Power Limited Partnership's combined cycle cogeneration facility, Milford, Hunterdon County, NJ COAD approval dated August 21, 1997.

(6) University of Medicine and Dentistry of New Jersey's cogeneration units and Cleaver Brooks non-utility boilers, Newark, Essex County, NJ COAD dated June 26, 1997.

(7) Roche Vitamins Inc's cogeneration facility and Boiler No. 1, Belvidere, Warren County, NJ COAD dated June 10, 1998. The cogeneration facility consists of one reciprocal engine (21.5 MW) and one heat recovery steam generator (HRSG) equipped with a duct burner (Boiler No. 6).

(8) Township of Wayne, Mountain View Water Pollution Control Facility's sewage sludge incinerators, Passaic County, NJ permit revision dated December 21, 2000.

(ii) Additional information— Documentation and information to support NO<sub>x</sub> RACT facility-specific emission limits, alternative emission limits, or repowering plan in three SIP revisions addressed to Regional Administrator Jeanne M. Fox from New Jersey Commissioner Robert C. Shinn, Jr. and one letter addressed to Acting Regional Administrator William J. Muszynski from Dr. Iclal Atay, Chief Bureau of Air Quality Engineering dated:

- (A) January 21, 1998 SIP revision for two sources,
- (B) June 12, 1998 SIP revision for one source,
- (C) April 26, 1999 SIP revision for four sources,
- (D) February 21, 2001 for a revised permit limit for one source.