

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.*).

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**. 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 January 23, 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 4, 2003.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

■ 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 F—California**

■ 2. Section 52.220 is amended by adding paragraphs (c)(293) (i)(A)(3) and (c)(308)(i)(D) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(293) \* \* \*

(i) \* \* \*

(A) \* \* \*

(3) Rule 1634, adopted on November 9, 2001.

\* \* \* \* \*

(c) \* \* \*

(308) \* \* \*

(i) \* \* \*

(D) South Coast Air Quality Management District.

(1) Rule 1631, amended on October 4, 2002.

\* \* \* \* \*

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**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[PA203-4217a; FRL-7588-1]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO<sub>x</sub> RACT Determinations for Hercules Cement Company**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for Hercules Cement Company. Hercules Cement Company is a major source of nitrogen oxides (NO<sub>x</sub>) located in Northampton County, Pennsylvania. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

**DATES:** This rule is effective on January 23, 2004 without further notice, unless EPA receives adverse written comment by December 24, 2003. 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:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov) or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part IV of the Supplementary Information section. 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 Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO<sub>x</sub> sources. The major source size is determined by its location, the classification of that area, and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT, as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

**II. Summary of SIP Revision**

On August 15, 2003, the Pennsylvania Department of Environmental Protection (PADEP) submitted formal revisions to its SIP to establish and impose case-by-case RACT for several major sources of VOC and NO<sub>x</sub>. This rulemaking pertains to one of those sources. The other sources are subject to separate rulemaking actions. The RACT determinations and requirements in this SIP revision are included in an operating permit (OP) issued by PADEP.

Hercules Cement Company owns and operates a Portland Cement producing facility located in Stokertown Borough, Northampton County, Pennsylvania and is considered a major source of NO<sub>x</sub>. In this instance, RACT has been established and imposed by PADEP in an operating permit. On August 15, 2003, PADEP submitted operating permit No. 48-0005A to EPA as a SIP revision. This operating permit addresses three Raw Mills, two HB Smith Boilers, and Cement Kilns 1 and 3.

NO<sub>x</sub> RACT for the three Raw Mills and the two HB Smith Boilers shall be the installation, maintenance and operation of these sources according to the manufacturer's specifications also in accordance with the emission limitations in 25 Pa. Code Chapter 129.93(c)(1). The facility will maintain records of these sources in accordance with the recordkeeping requirements of 25 Pa. Code Chapter 129.95.

The allowable NO<sub>x</sub> emissions limit established for both the operation of

Cement Kilns 1 and 3, including the No. 1 preheater Cement Kiln, is 492.0 pounds per hour on a 30-day rolling average. Continuous emission monitors (CEM) shall be installed, operated and maintained to monitor NO<sub>x</sub> emissions for Cement Kilns 1 and 3. Continuous monitoring shall be conducted in accordance with 25 Pa. Code Chapter 139 and 40 CFR part 60, subpart F. The recordkeeping and reporting requirements for the facility is to maintain a file containing all records and other data to be collected pursuant to the various provisions of the operating permit for Cement Kilns 1 and 3. This file shall include, but is not limited to, all air pollution control system performance evaluations and records of calibration checks, adjustments and maintenance performed on all equipment which is subject to this operating permit. All measurements, records and other data required to be maintained by the facility shall be retained for at least two years following the date on which such measurements, records or data are recorded. In addition, all CEM reports shall be submitted to PADEP within 30 days after each quarter but not later than the time frame established in PADEP's latest Continuous Source Manual.

**III. EPA's Evaluation of the SIP Revisions**

EPA is approving this SIP submittal because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT or for limiting a source's potential to emit. The Commonwealth has also imposed recordkeeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

**IV. Final Action**

EPA is approving revisions to the Commonwealth of Pennsylvania's SIP which establish and require RACT for Hercules Cement Company (48-0005A) located in Northampton County, Pennsylvania. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate 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 direct final rule will be effective on January 23, 2004 without further notice unless we receive adverse comment by December 24, 2003. 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.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA203-4217 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD-ROM you submit, and in any cover letter accompanying the disk or CD-ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. 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.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov), attention: PA203-4217. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through [Regulations.gov](http://Regulations.gov), EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of [Regulation.gov](http://Regulations.gov) is an alternative method of submitting electronic comments to EPA. Go directly to <http://www.regulations.gov>, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed.

Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

*iii. Disk or CD-ROM.* You may submit comments on a disk or CD-ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

*2. By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

#### *Submittal of CBI Comments*

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public

inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

#### *Considerations When Preparing Comments to EPA*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

#### **IV. 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 (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.*).

##### *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. 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 today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for Hercules Cement Company.

#### *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 January 23, 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, approving Pennsylvania's NO<sub>x</sub> RACT

determinations for Hercules Cement Company, 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, Reporting and recordkeeping requirements.

Dated: November 10, 2003.

**Donald S. Welsh,**

*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 NN—Pennsylvania**

■ 2. Section 52.2020 is amended by adding paragraph (c)(217) to read as follows:

#### **§ 52.2020 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(217) Revisions to the Pennsylvania Regulations pertaining to NO<sub>x</sub> RACT for a major source submitted on August 15, 2003 by the Pennsylvania Department of Environmental Protection.

(i) Incorporation by reference.

(A) Letter of August 15, 2003 from the Pennsylvania Department of Environmental Protection transmitting source-specific NO<sub>x</sub> RACT determinations.

(B) Operating Permit (OP) for Hercules Cement Company, Northampton County, 48-0005A, effective April 16, 1999.

(ii) Additional Material—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the source listed in paragraph (c)(217)(i)(B) of this section.

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**BILLING CODE 6560-50-P**