

concurrently with operation permits. EPA has determined that this revision is approvable under the Act.

(i) *Incorporation by reference.* The following sections of the Wisconsin Administrative Code are incorporated by reference:

(A) NR 400.02 Definitions. NR 400.02(162)(a)49 and NR 400.02(162)(a)50, as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

(B) NR 406.04 Direct sources exempt from construction permit requirements. NR 406.04(2m)(b) and NR 406.04(2m)(b)(note), as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

(C) NR 406.15 Relocation of portable sources. NR 406.15(3)(a), as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

(D) NR 407.02 Definitions. NR 407.02(3e), and NR 407.02(4)(b)27, as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

(E) NR 407.10 General operation permits. NR 407.10(4)(a)2 and NR 407.10(4)(a)2(note), as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

(F) NR 410.03 Application fee. NR 410.03(4), as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2006-0379; FRL-8732-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Reasonably Available Control Technology Requirements for Volatile Organic Compounds and Nitrogen Oxides

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

**ACTION:** Final rule.

**SUMMARY:** EPA is converting its limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania consisting of regulations that require all

major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) to implement reasonably available control technology (RACT) to a full approval as they apply throughout the Commonwealth. In prior final rules, EPA has fully approved Pennsylvania's VOC and NO<sub>x</sub> RACT regulations for the Philadelphia-Wilmington-Trenton area, and for the Pittsburgh-Beaver Valley area. The intended effect of this action is to convert EPA's limited approval of Pennsylvania's VOC and NO<sub>x</sub> RACT regulations to full approval as they apply throughout the remainder of the Commonwealth. This action is being taken under the Clean Air Act (CAA or the Act).

**DATES:** *Effective Date:* This final rule is effective on November 21, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2006-0379. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy 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. Copies of the State submittal are available at the Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Marcia Spink, (215) 814-2104, or by e-mail at [spink.marcia@epa.gov](mailto:spink.marcia@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On February 4, 1994, the Pennsylvania Department of Environmental Protection (DEP) submitted a revision to the Pennsylvania SIP, consisting of 25 PA Code Chapters 129.91 through 129.95, to require major sources of NO<sub>x</sub> and major sources of VOC emissions not covered by a CTG (non-CTG sources) to implement RACT. The February 4, 1994 submittal was amended on May 3, 1994 to correct and clarify certain presumptive NO<sub>x</sub> RACT requirements

under Chapter 129.93. On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of 25 PA Code Chapters 129.91 through 129.95, and removed the conditional aspect of the approval on May 3, 2001 (66 FR 22123). On October 16, 2001 (66 FR 52533), EPA published a final rulemaking for the Commonwealth removing the limited status of its approval of 25 PA Code Chapters 129.91 through 129.95 as it applied in the Pittsburgh-Beaver Valley ozone nonattainment area (Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland counties), because EPA had approved all of the case-by-case RACT determinations submitted by DEP for affected major sources of NO<sub>x</sub> and/or VOC sources located in the area. In so doing, EPA converted its limited approval of 25 PA Code Chapters 129.91 through 129.95 to full approval as it applied to that area. That rulemaking became effective on November 15, 2001. On October 30, 2001, (66 FR 54698), EPA published a final rulemaking for the Commonwealth removing the limited status of its approval of 25 PA Code Chapters 129.91 through 129.95 as it applied in the Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area (Bucks, Chester, Delaware, Montgomery, and Philadelphia counties) because EPA had approved all of the case-by-case RACT determinations submitted by DEP for affected major sources of NO<sub>x</sub> and/or VOC sources located in the area. In so doing, EPA converted its limited approval of 25 PA Code Chapters 129.91 through 129.95 to full approval as it applied to that area. That rulemaking became effective on November 29, 2001.

On August 26, 2008 (73 FR 50267), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed to convert EPA's limited approval of 25 PA Code Chapters 129.91 through 129.95 to full approval as they apply throughout the remainder of the Commonwealth. EPA is converting its limited approval of Pennsylvania's VOC and NO<sub>x</sub> RACT regulations to full approval because EPA has approved all of the case-by-case RACT determinations that had been submitted by Pennsylvania such that there are no longer any such submissions pending before EPA. No public comments were received on the NPR.

##### II. Future Submissions of Case-by-Case RACT Determinations

The DEP has submitted and EPA has approved as SIP revisions case-by-case RACT determinations for nearly 600

non-CTG and NO<sub>x</sub> sources in Pennsylvania pursuant to Pennsylvania regulations Chapters 129.91–129.95. (See 40 CFR 52.2020(d) for the list of sources.) As stated previously, there are no source-specific RACT determination submissions from DEP currently pending before EPA. In the future, should DEP find it necessary to issue any additional or revised source-specific RACT determinations in plan approvals and/or permits pursuant to the fully approved Pennsylvania regulations Chapters 129.91–95 of the Pennsylvania SIP, those RACT determinations must still be submitted to EPA for approval as source-specific SIP revisions. In order for EPA to consider such submissions for approval, the DEP must ensure that:

*A. The Sources Are Not Subject to Any Ctg's or Alternative Control Techniques (Acts) Issued By EPA for Which Pennsylvania Has Adopted or Is Due to Adopt State-Wide Regulations for Approval as SIP Revisions*

Such sources should be subject to any applicable CTG or ACT regulation. In addition to the CTG documents issued between November 15, 1990 and the date of 1-hour ozone attainment, and the CTG documents issued prior to November 15, 1990; EPA issued CTG and ACT documents in 2006 and 2007. EPA is also due to issue additional control technique documents by September 2008. Pennsylvania is required to adopt statewide RACT regulations pursuant to these control technique documents and is mandated a schedule for doing so. A source in the Commonwealth that has been considered a non-CTG source may no longer be so defined if their source category is covered by the 2006, 2007, or 2008 CTGs or ACTs. At the time DEP adopts statewide RACT regulations pursuant to the 2006, 2007, and 2008 CTGs and ACTs, it must address the applicability of those RACT regulations to sources previously considered non-CTG sources under regulations 129.91–129.95.

*B. The RACT Plan Approvals and/or RACT Permits Do Not Relax Any Previously SIP Approved Source-Specific RACT Approved for the Source(s)*

Any request by such sources to modify (relax) their emission rates, equipments standards, work practice standards, or conditions on the type or amount of materials/fuels combusted or processed; or to seek relief from their daily, monthly and/or annual emission caps would not be approvable as RACT in 2008 or beyond. When such sources seek relief with the operating conditions

imposed in their SIP approved RACT plan approvals or RACT permits because they have modified to add additional emission units, or need to increase operation in light of market-based demand for their products; RACT needs to be re-assessed, re-determined and potentially made more stringent not less stringent.

*C. The RACT Determinations Are Not To Be Simply Based Upon an Arbitrary Dollar per Ton Figure in a State Guidance Document That Is Neither SIP-Approved Nor Approvable by EPA*

The very nature of a non-CTG and/or source-specific alternative RACT makes any “one size fits all” dollar per ton figure inappropriate when determining and imposing RACT.

*D. The RACT Plan Approvals or RACT Permits Have No Expiration Date*

No regulation, plan approval or permit submitted for approval as a SIP revision to be incorporated by reference and made part of a SIP may have an expiration or sunset provision. By federal statute, a state is responsible to implement and enforce all provisions of its approved SIP at all times.

*E. Any RACT Plan Approvals' or RACT Permits' Redactions Are Done in Such a Way as To Be Able To Read the Redacted Text*

When a plan approval or permit is issued by DEP to a source, it may impose additional requirements or conditions completely unrelated to the RACT requirements for NO<sub>x</sub> and/or VOCs. In those instances, DEP may submit the plan approval or permit as a SIP revision with those unrelated portions of the plan approval or permit redacted. Those redactions must be done in such a way as to be able to read the redacted text. This is necessary to ensure that the redacted language is not contrary to the portions being submitted for approval as RACT, does not render the RACT portions less stringent, does not remove or make less stringent any conditions related to enforcement of RACT, or make the RACT requirements subject to change without a SIP revision.

*F. When Requesting That RACT Plan Approvals or RACT Permits Be Approved as SIP Revisions, the DEP's Formal SIP Revision Submissions Include Signed/Dated Technical Support Documents or Memoranda Prepared by DEP in Support of Its RACT Determinations and the SIP Revision Requests*

Sources in Pennsylvania subject to 25 PA Code Chapters 129.91 through 129.95 are not to send their RACT plan

proposals directly to EPA. Under the CAA, SIP revision submissions in their entirety must be submitted by the State requesting that the SIP be revised. EPA will consider only the materials formally submitted by DEP in its SIP revision request and any comments submitted during the public comment period provided by EPA on its proposed rule when determining its final action to approve or disapprove a source-specific SIP revision submitted by DEP pursuant to 25 PA Code Chapters 129.91 through 129.95.

*G. The SIP Revision Submissions Do Not Include Any Materials That Are Considered “Confidential Business Information” in Nature or Entitled to Any Proprietary Treatment*

Moreover, the DEP plan approvals and permits cannot include conditions that cite to the source's RACT Plan proposal where that proposal includes materials which the company has requested be treated as confidential and proprietary. No materials that are considered “confidential business information” in nature or entitled to any proprietary treatment are to be included in a SIP revision submittal because the materials that constitute SIP revisions are required to be made available to the public by both the State and EPA.

### III. Final Action

EPA is converting its limited approval of 25 PA Code Chapters 129.91 through 129.95 to a full approval as they apply throughout the Commonwealth of Pennsylvania.

### IV. Statutory and Executive Order Reviews

*A. General Requirements*

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### 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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

#### 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 December 22, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action converting 25 PA Code Chapters 129.91 through 129.95 to full approval as they apply throughout the remainder of the Commonwealth 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, Volatile organic compounds.

Dated: October 9, 2008.

W.T. Wisniewski,

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 NN—Pennsylvania

##### § 52.2023 [Amended]

■ 2. In § 52.2023, paragraph (k) is removed and reserved.

■ 3. Section 52.2027 is amended by adding paragraph (c) to read as follows:

##### § 52.2027 Approval Status of Pennsylvania's Generic NO<sub>x</sub> and VOC RACT Rules.

\* \* \* \* \*

(c) Effective November 21, 2008, EPA removes the limited nature of its approval of 25 PA Code of Regulations, Chapter 129.91 through 129.95 as those regulations apply to the following areas: Adams, Bedford, Berks, Blair, Bradford, Cambria, Cameron, Carbon, Centre, Clarion, Clearfield, Clinton, Columbia, Crawford, Cumberland, Dauphin, Elk, Erie, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Luzerne, Lycoming, McKean, Mercer, Mifflin, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Potter, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Venango,

Warren, Wayne, Wyoming, and York Counties.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2007-0522; FRL-8731-8]

### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Major New Source Review for Nonattainment Areas

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

**ACTION:** Final rule.

**SUMMARY:** EPA is granting limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision action establishes the limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia on February 12, 2007. The intended effect of this action is to grant limited approval of the September 1, 2006 regulatory amendments to Virginia's existing new source review permit program for owners of sources located or locating in new source review nonattainment areas. This action is also providing full approval of a related SIP revision submitted by the Commonwealth on December 16, 2003, pertaining to amendments made to Virginia's existing nonattainment new source review permit program at that time. This action is being taken under the Clean Air Act (CAA or the Act).

**DATES:** *Effective Date:* This final rule is effective on November 21, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2007-0522. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650