

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for fireworks barge and accompanying vessels, will be allowed to transit the safety zone without the permission of the COTP.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated representative via VHF channel 16 or 718-354-4353 (Sector New York command center) to obtain permission to do so.

(5) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP or the designated representative.

(6) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(7) The COTP or the designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

Dated: August 17, 2012.

**G. Loebel,**

*Captain, U.S. Coast Guard, Captain of the Port New York.*

[FR Doc. 2012-21193 Filed 8-27-12; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2012-0296; FRL-9720-6]

#### Approval and Promulgation of Air Quality Implementation Plans; State of New York; Regional Haze State Implementation Plan and Federal Implementation Plan

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action on the Regional Haze State Implementation Plan (SIP) submitted by the State of New York. EPA is approving seventeen source-specific SIP revisions containing permits for Best Available Retrofit Technology, revisions for Title 6 of the New York Codes, Rules and Regulations, Part 249, "Best Available Retrofit Technology (BART)" and section 19-0325 of the New York Environmental Conservation Law which regulates the sulfur content of fuel oil. These revisions to the SIP addressing regional haze were submitted by the State of New York on March 15, 2010, and supplemented on August 2, 2010, April 16, 2012 and July 2, 2012. These SIP revisions were submitted to address Clean Air Act requirements and EPA's rules for states to prevent and remedy future and existing anthropogenic impairment of visibility in mandatory Class I areas through a regional haze program. Although New York State addressed most of the issues identified in EPA's proposal, EPA is promulgating a Federal Implementation Plan to address two sources where EPA is disapproving New York's BART determinations.

**DATES:** This rule is effective on September 27, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2012-0296. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, e.g., 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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212-637-4249.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Kelly, Air Planning Section, Air Programs Branch, EPA Region 2, 290 Broadway, New York, New York 10007-1866. The telephone number is (212) 637-4249. Mr. Kelly can also be reached via electronic mail at [kelly.bob@epa.gov](mailto:kelly.bob@epa.gov).

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Throughout this document, wherever "Agency," "we," "us," or "our" is used, we mean the EPA.

### I. What action is EPA taking?

EPA is approving New York's State Implementation Plan (SIP) revisions addressing regional haze submitted on March 15, 2010, and supplemented on August 2, 2010, April 16, 2012, and July 2, 2012. EPA is supplementing New York's SIP with a Federal Implementation Plan (FIP) for three units at two BART sources where EPA is disapproving these BART determinations. The following paragraphs summarize each of EPA's actions.

EPA is approving aspects of New York's Regional Haze SIP revision as follows:

- The measures enacted by New York are shown to produce emission reductions that are sufficient to meet New York's share of the emission reductions needed to meet reasonable progress goals (found at 40 CFR 51.308(d)(1)) at Class I areas affected by New York's emissions.

- New York's Long Term Strategy, since New York submitted final approvable permit modifications for all facilities on April 16, 2012 and July 2, 2012 (except for the Roseton and Danskammer Generating Stations), in a timely manner with the level of control in EPA's April 25, 2012 proposal. EPA's FIP contains BART determinations and emission limits for the Roseton and Danskammer Generating Stations.

- New York's SIP revision consisting of Title 6 of the New York Codes, Rules and Regulations (6 NYCRR), Part 249, "Best Available Retrofit Technology (BART)."

- New York's SIP revision consisting of section 19-0325 of the New York Environmental Conservation Law which regulates the sulfur content of fuel oil.

EPA is approving the following facility BART determinations and

emissions limits since New York submitted final permit modifications to EPA as SIP revisions on April 16, 2012 and July 2, 2012, and the revisions match the terms of our April 25, 2012 proposal published in the **Federal Register** (77 FR 24794):

- ALCOA Massena Operations (West Plant)
- Arthur Kill Generating Station [NRG]
- Bowline Generating Station [GenOn]
- Con Edison 59th Street Station
- EF Barrett Power Station [National Grid (NG)]
- Holcim (US) Inc—Catskill Plant
- International Paper Ticonderoga Mill
- Kodak Operations at Eastman Business Park
- Lafarge Building Materials
- Lehigh Northeast Cement
- Northport Power Station [NG]
- Oswego Harbor Power [NRG]
- Owens-Corning Insulating Systems Feura Bush
- Ravenswood Generating Station [TC]
- Ravenswood Steam Plant [Con Edison]
- Roseton Generating Station—Dynegy (NO<sub>x</sub> and PM limits only)
- Samuel A Carlson Generating Station [Jamestown Board of Public Utilities (BPU)]
- Syracuse Energy Corporation [GDF Suez]

EPA is disapproving the following BART determinations:

- New York's Sulfur Dioxide (SO<sub>2</sub>) BART determinations and emissions limits for Units 1 and 2 of Dynegy's Roseton Generating Station.
- New York's SO<sub>2</sub>, Nitrogen Oxide (NO<sub>x</sub>) and Particulate Matter (PM) BART determinations and emissions limits for Unit 4 of Dynegy's Danskammer Generating Station.

EPA is promulgating a FIP to address the BART determinations identified above in our partial disapproval of New York's Regional Haze SIP.

EPA is taking this action pursuant to section 110 of the Clean Air Act (the Act or CAA). For additional details on EPA's analysis and findings, the reader is referred to the April 25, 2012 proposal (77 FR 24794) and the May 9, 2012 Notice of Data Availability (77 FR 27162). New York's entire Regional Haze SIP revisions and the full text of the public comments are included in the Docket (EPA-R02-OAR-2012-0296) and available at [www.regulations.gov](http://www.regulations.gov).

## II. What additional SIP revisions did New York submit consistent with EPA's proposal?

On April 25, 2012, EPA proposed to take action on a revision to the SIP addressing regional haze submitted by

New York. In that proposal, EPA proposed to address through a FIP certain requirements not addressed in New York's regional haze SIP submission or, alternatively, to approve a substantively identical SIP revision by New York, should the state timely submit such a revision. In two letters, both dated April 16, 2012, New York submitted the additional materials relevant to our proposed action on its regional haze SIP submission, including proposed SIP revisions addressing the requirements for BART for a number of sources and addressing the New York State Law that regulates the sulfur content of fuel oil. Subsequently, on May 9, 2012 (77 FR 27162), EPA published a notice of data availability to notify the public that New York submitted additional information to supplement New York's Regional Haze SIP.

As discussed in the May 9, 2012 notice, EPA was aware that New York intended to submit additional information relevant to the action EPA was proposing on New York's Regional Haze SIP. EPA, therefore, discussed in its proposal the possible actions EPA would take should this information be timely submitted. EPA included in the record the draft information that New York was in the process of finalizing and submitting as part of its SIP revision. EPA evaluated this draft information as part of the Agency's proposed action on New York's Regional Haze SIP. EPA's May 9, 2012 notice indicated that EPA's final action will be based on the proposed rulemaking, the additional information identified in the notice of data availability, and an assessment of any public comments that may be received. On July 2, 2012, New York submitted the remaining adopted permits implementing BART which were not included in the April 16, 2012 submission.

### A. SIP Revisions for BART Determinations

New York's April 16, 2012 SIP revisions requested that EPA take action on proposed SIP revisions from New York in parallel with the state's processing of the following draft Title V permits that the state intended to submit as SIP revisions to meet the BART requirement: Bowline Generating Station, Danskammer Generating Station, Kodak Operations at Eastman Business Park, Oswego Harbor Power, Owens-Corning Insulating Systems, and Syracuse Energy Corporation.

New York's April 16, 2012 SIP revisions also requested processing of the following adopted Title V permits

implementing BART for the following facilities: ALCOA Massena Operations (West Plant), Arthur Kill Generating Station, Con Edison 59th Street Station, EF Barrett Power Station, Holcim (US) Inc—Catskill Plant, International Paper Ticonderoga Mill, Lafarge Building Materials, Lehigh Northeast Cement, Northport Power Station, Ravenswood Generating Station, Ravenswood Steam Plant, Roseton Generating Station<sup>1</sup>, and Samuel A Carlson Generating Station.

Lastly, New York submitted a letter dated July 2, 2012 containing SIP revisions for the remaining adopted Title V permits implementing BART for five of the following facilities previously discussed in New York's April 16, 2012 letter: Bowline Generating Station, Kodak Operations at Eastman Business Park, Oswego Harbor Power, Owens-Corning Insulating Systems, and Syracuse Energy Corporation. As further discussed in the Response to Comments below, New York also submitted an updated permit for Lehigh Northeast Cement.

New York did not make any substantive changes to the source specific Title V permits to incorporate BART other than those discussed in EPA's April 25, 2012 proposal and May 9, 2012 notice or as discussed in the Response to Comments below. Since the SIP revisions match the terms of our proposed FIP, and the SIP revisions have been adopted by New York and submitted formally to EPA for incorporation into the SIP, EPA is approving the following facility BART determinations and emissions limits: ALCOA Massena Operations (West Plant), Arthur Kill Generating Station, Bowline Generating Station, Con Edison 59th Street Station, EF Barrett Power Station, Holcim (US) Inc—Catskill Plant, International Paper Ticonderoga Mill, Kodak Operations at Eastman Business Park, Lafarge Building Materials, Lehigh Northeast Cement, Northport Power Station, Oswego Harbor Power, Owens-Corning Insulating Systems, Ravenswood Generating Station, Ravenswood Steam Plant, Roseton Generating Station (NO<sub>x</sub> and PM limits only as contained in the adopted Title V permit), Samuel A Carlson Generating Station, and Syracuse Energy Corporation.

### B. SIP Revision for 6 NYCRR, Part 249, "Best Available Retrofit Technology (BART)"

New York promulgated Part 249 to require BART eligible facilities to

<sup>1</sup>Notwithstanding the submission of the permit, EPA is promulgating a FIP for SO<sub>2</sub> BART for Roseton as explained in this action.

perform an analysis of potential controls for each visibility-impairing pollutant. EPA evaluated New York's general BART rule submittal for consistency with the CAA and EPA's regulations, including public notice and hearing requirements, and determined that the rule met these requirements. EPA is approving New York's Part 249 as part of the SIP.

### C. SIP Revision for New York's Low Sulfur Fuel Oil Strategy

New York's April 16, 2012 SIP revisions request that EPA include in New York's Regional Haze SIP the New York State legislation regulating the sulfur content of fuel oil, Bill Number S1145C, which amends the New York Environmental Conservation Law to include a new section 19-0325, effective July 15, 2010. EPA's May 9, 2012 notice discussed New York's SIP revision request and EPA's proposed approval of this request.

Major SO<sub>2</sub> emission reductions are obtained as a result of the legislation being implemented. These reductions are occurring in 2012, well before the 2016 "ask" by MANE-VU<sup>2</sup>. EPA proposed to determine that New York's low sulfur fuel oil strategy in combination with the other planned reductions will provide the necessary reductions from New York for other Class I areas to meet their respective Reasonable Progress Goals. Please refer to the April 25, 2012 proposal for additional information regarding New York's Low Sulfur Fuel Oil Strategy. In addition, existing provisions of 6 NYCRR, Subpart 225-1, "Fuel Composition and Use—Sulfur Limitations," are incorporated in the current federally approved New York SIP, and Subpart 225-1 contains provisions regarding enforcement and compliance, emissions and fuel monitoring, reporting, recordkeeping, sampling and analysis. EPA is approving New York's request to incorporate section 19-0325 of New York's Environmental Conservation Law as part of the SIP. As we noted in our proposal, New York's section 19-0325, sulfur in fuel rule, does not completely fulfill the sulfur in fuel requirements MANE-VU modeled to show progress toward reducing haze. EPA is approving New York's submittal of its sulfur in fuel law as it helps meet its progress requirements. We describe later how

New York meets its share toward making the regional haze progress goal without the full program.

### III. What is contained in EPA's federal implementation plan for New York's regional haze program?

As discussed in EPA's April 25, 2012 proposal, in the event New York did not submit a SIP revision with final permit modifications for all BART sources, which match the terms of our proposed FIP, EPA proposed to publish a final rulemaking with a FIP for those BART sources. While New York's revised SIP covered most of the units addressed in EPA's proposal, it did not include final BART permit modifications consistent with our proposed FIP for certain of the units at Dynegy's Roseton and Danskammer Generating Stations. Therefore EPA is disapproving those portions of the SIP and promulgating a FIP addressing the SO<sub>2</sub> BART requirements and setting emissions limits for Units 1 and 2 of Dynegy's Roseton Generating Station, and addressing the SO<sub>2</sub>, NO<sub>x</sub> and PM BART requirements and setting emissions limits for Unit 4 of Dynegy's Danskammer Generating Station. New York did submit a SIP revision with final BART permit modifications consistent with EPA's proposed FIP with respect to NO<sub>x</sub> and PM for Units 1 and 2 at Dynegy's Roseton Generating Station. EPA therefore is not adopting a FIP for the NO<sub>x</sub> and PM BART determinations for Roseton Units 1 and 2.

The final FIP includes the following elements:

- NO<sub>x</sub> BART determination and an emission limit for Danskammer Generating Station Unit 4 of 0.12 pounds per million British thermal units (lb/MMBtu), to be met on a 24-hour average during the ozone season (May through September)<sup>3</sup> and a 30-day rolling average the rest of the year, and a requirement that the owners/operators comply with this NO<sub>x</sub> BART limit by July 1, 2014.
- SO<sub>2</sub> BART determination and an emission limit for Danskammer Generating Station Unit 4 of 0.09 lb/MMBtu, to be met on a 24-hour average, and a requirement that the owners/operators comply with this SO<sub>2</sub> BART limit by July 1, 2014.
- PM BART determination and an emission limit for Danskammer Generating Station Unit 4 of 0.06 lb/MMBtu, to be met on a one-hour average, and a requirement that the

owners/operators comply with this PM BART limit by July 1, 2014.

- SO<sub>2</sub> BART determination and an emission limit for Roseton Generating Station Unit 1 and Unit 2 of 0.55 lb/MMBtu, to be met on a 24-hour average, and a requirement that the owners/operators comply with this SO<sub>2</sub> BART limit by January 1, 2014.

- Monitoring, record-keeping, and reporting requirements for the above three units to ensure compliance with these emission limitations.

EPA's April 25, 2012 proposal contained proposed regulatory language for § 52.1686 of title 40 of the Code of Federal Regulations (CFR) for the purpose of adding new provisions containing EPA's FIP for Regional Haze. EPA notes that since New York submitted SIP revisions to address most of EPA's proposed FIP, EPA is finalizing only the regulatory language in section 51.1686 that covers EPA's FIP for the Roseton and Danskammer Generating Stations.

We encourage New York at any time to submit a SIP revision to incorporate provisions that match the terms of our FIP, or relevant portion thereof. If EPA were to approve such a SIP revision, after public notice and comment, the SIP approved provisions could replace the FIP provisions.

### IV. What comments did EPA receive on its proposal and what were EPA's responses?

EPA received several comments from the following parties in response to our April 25, 2012 proposal and May 9, 2012 notice of data availability: ALCOA Massena Operations (ALCOA), Dynegy Northeast Generation, Inc. (Dynegy), Earthjustice on behalf of the National Parks Conservation Association and Sierra Club (Earthjustice), GenOn Bowline, LLC (Bowline), Lehigh Northeast Cement Group (Lehigh), New York State Department of Environmental Conservation (New York), and the United States Forest Service (US Forest Service). A summary of the comments and EPA's responses are provided below.

#### BART Comments—BART Permit Modifications

*Comment:* New York commented that EPA should update the number of BART permits that have been issued in final form by New York.

*Response:* We agree and we have taken the permits into account. In section II. of this action—"What Additional SIP revisions did New York Submit Consistent with EPA's Proposal?" EPA discusses those final BART permits issued by New York.

<sup>2</sup> MANE-VU is the Mid-Atlantic/North East Visibility Union, a regional planning organization, comprising Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, the District of Columbia, the Penobscot Nation, and the St. Regis Mohawk Tribe.

<sup>3</sup> Note the averaging times for the FIP are modeled on New York's applicable SIP in order to coordinate the FIP with other existing New York limitations.

*Comment:* New York commented it will not be finalizing revisions to permits for the Roseton and Danskammer Generating Stations to address EPA's proposed emission limits prior to EPA's deadline for a final FIP.

*Response:* EPA's April 25, 2012 proposal contained BART emission limits for Roseton and Danskammer Generating Stations which differed from the BART limits identified by New York for Roseton and proposed for Danskammer. In section III. of this action—"What is Contained in EPA's Federal Implementation Plan for New York's Regional Haze Program?" EPA discusses the final FIP for the Roseton and Danskammer Generating Stations.

*Comment:* New York provided several comments regarding EPA's proposed regulatory language for section 52.1686 of title 40 of the CFR and how the monitoring requirements and other provisions should be revised to better reflect the monitoring requirements that are characteristic for the different types of emissions sources. These include electric generating units, large industrial boilers and other types of source categories.

*Response:* As noted above, since New York submitted SIP revisions to address EPA's proposed FIP, EPA is finalizing the regulatory language in section 51.1686 accordingly. Therefore, the regulatory language in section 51.1686 contains provisions to only cover EPA's FIP for the Roseton and Danskammer Generating Stations. These changes to section 51.1686 address New York's comments.

*Comment:* ALCOA commented that the monitoring, recordkeeping, and reporting requirements which EPA proposed in section 52.1686 for the proposed FIP were inappropriate for a primary aluminum production facility. ALCOA stated EPA should either approve the New York BART SIP requirements for the facility, or adopt the monitoring, recordkeeping and reporting requirements in New York's BART permit verbatim into the final FIP.

*Response:* Following our proposed rule, New York adopted the final Title V permit for the ALCOA Massena Operations (West Plant) facility implementing BART. New York's permit included the appropriate monitoring, recordkeeping and reporting requirements and the state formally submitted the BART permit as a SIP revision to EPA. EPA is approving the New York BART SIP requirements for the ALCOA Massena Operations (West Plant) facility.

*Comment:* Dynegy objected to any permit condition which would require

the Danskammer or Roseton Units to burn a particular fuel or switch fuel forms.

*Response:* EPA agrees and is not adopting any such conditions. As indicated in the April 25, 2012 proposal, EPA has determined that these emission limits can be reasonably met with any of the fuels and/or combination of fuels evaluated for this BART determination and available to the plant.

*Comment:* Bowline commented that as a result of a clerical error unrelated to EPA's rulemaking, the draft Title V permit referred to by EPA in the April 25, 2012 proposal for New York's Regional Haze SIP was not the same version of the draft Title V permit that New York provided to Bowline and did not accurately reflect the BART requirements proposed to be imposed on the Bowline Units. More specifically, Bowline presented the correct NO<sub>x</sub> BART emission limits and permit conditions in the comment letter to EPA. Bowline requested EPA to revise the SIP approval or, if necessary, the FIP, to reflect the correct Title V permit requirements for the Bowline Units which were arrived at in New York's BART Determination.

*Response:* EPA acknowledges that the draft Title V permit for Bowline included with the April 25, 2012 proposal was not the correct version of the draft Title V permit developed by New York for Bowline. After further inspection of the files contained in the Docket, and the additional information presented to EPA by Bowline and New York, EPA confirmed that the other documents used as the basis for EPA's April 25, 2012 proposal, with the exception of the draft Title V permit, were correct and acceptable for the purpose of proposing a BART determination. The clerical error made at the state-level of the BART permit modification, did not change the underlying technical BART determination analysis, and New York's February 15, 2012 Environmental News Bulletin contained the correct BART determination and permit conditions that were noticed for public review by the state. Upon further review, EPA agrees with Bowline and New York that our April 25, 2012 proposal presented NO<sub>x</sub> BART emission limits that were different from the limits and permit conditions which were available for public review at the state-level, and which New York ultimately adopted for the Bowline Units.

EPA's April 25, 2012 proposal indicated NO<sub>x</sub> emissions from Bowline Units 1 and 2 would be limited to 0.15 lb/MMBtu on a 24-hour average during

the ozone season and a 30-day rolling average during the non-ozone season, with compliance by January 1, 2014. Bowline and New York provided further documentation to EPA that the correct BART determination and permit conditions that were noticed for public review by the state in the February 15, 2012 Environmental News Bulletin, were as follows:

- By July 1, 2014, NO<sub>x</sub> emission from Units 1 and 2 are limited to 0.15 lb/MMBtu when burning natural gas, measured on a 24-hour average during the ozone season and a 30-day rolling average during the non-ozone season.

- By July 1, 2014, NO<sub>x</sub> emission from Units 1 and 2 are limited to 0.25 lb/MMBtu when burning oil, measured on a 24-hour average during the ozone season and a 30-day rolling average during the non-ozone season

- By July 1, 2014, oil-firing is limited to 3.1 million barrels during the ozone season and 4.6 million barrels during the non-ozone season.

- The limit for oil and gas dual fuel firing periods will be heat input weighted between 0.15 lb/MMBtu and 0.25 lb/MMBtu.

The correct NO<sub>x</sub> BART determination requires an emission limit of 0.15 lb/MMBtu when burning natural gas and 0.25 lb/MMBtu when burning oil. These are the limits that reflect Bowline's implementation of BART. In response to the clerical error, EPA has determined that these emission limits are acceptable for BART, and are based on New York's BART determination for Bowline and merely are reflective of the limits that Bowline can achieve when implementing BART for different types of fuels. EPA notes these limits are also similar to other NO<sub>x</sub> BART emission limits EPA is approving in this action for other similar peaking units that are used only a small period of time each year. These limits are based on a detailed technical analysis which considers circumstances specific to Bowline, consistent with EPA's BART Guidelines.

With respect to the BART compliance date, EPA's April 25, 2012 proposal indicated a compliance date of January 1, 2014, consistent with the compliance date contained in New York's BART regulation Part 249. New York issued final BART permit modifications for the Bowline Units requiring compliance by July 1, 2014. While the July 1, 2014 compliance date is six months later than the January 1, 2014 compliance date in New York's Part 249, EPA has determined that the July 1, 2014 compliance date is still consistent with EPA's BART Guidance for compliance as expeditiously as possible but no later

than five years from EPA's approval of the state's Regional Haze SIP.

EPA notes that the previous versions of the BART Permit modifications indicated these emission limits do not apply during start-up and shut-down periods. However, EPA informed New York that the BART emission limits must apply at all times. Therefore, the final BART determinations and final BART Title V permit modification submitted to EPA as part of the July 2, 2012 SIP revisions do not contain any exclusions for start-up and shut-down periods. Lastly, EPA did not receive any other comments related to Bowline's BART determinations or permit limits, except from Bowline itself. In response to Bowline's comments and additional supporting analyses and documentation provided by Bowline and New York, EPA is therefore approving Bowline's BART determinations and BART emission limit permit conditions presented above.

*Comment:* New York and Lehigh both commented that the Title V permit referred to by EPA in the April 25, 2012 proposal for New York's Regional Haze SIP was being modified. New York and Lehigh requested that the requirement to install a baghouse on the rotary kiln be removed from the permit since the requirement to install a baghouse was not intended to meet BART, but to meet the federal Portland Cement Maximum Achievable Control Technology (MACT) which EPA is currently reevaluating to determine the deadlines for compliance. Lehigh and New York also requested the permit include a new SO<sub>2</sub> limit of 1.50 lb/MMBtu to supplement the fuel sulfur limits proposed as BART.

*Response:* EPA has determined that the amendments to Lehigh's Title V permit are acceptable. The permit amendments do not change the PM BART emission limit of 0.30 lb/ton feed proposed by EPA in the April 25, 2012 proposal for the rotary kiln. The permit amendments also provide a new SO<sub>2</sub> BART emission limit of 1.50 lb/MMBtu that will supplement the existing limits. Compliance with the new SO<sub>2</sub> limit will be determined by annual stack tests. These revisions to the permit are consistent with the underlying technical BART determination analysis. New York issued a new public notice of the permit revisions for public review, and then adopted the permit modifications.

EPA did not receive any other comments related to Lehigh's BART determinations or permit limits, except from Lehigh and New York. In response to these comments on EPA's April 25, 2012 proposal, and additional supporting analyses and documentation provided by Lehigh and New York, EPA

is therefore approving Lehigh's BART determinations and BART emission limit permit conditions presented above since the revised Title V permit is consistent with the terms of our proposed FIP, has been adopted by New York, and submitted formally to EPA for incorporation into the SIP.

#### *BART Comments—Emission Limits*

*Comment:* U.S. Forest Service supported EPA's proposals to require a 0.55 lb/MMBtu SO<sub>2</sub> emission limit for Roseton Units 1 and 2, 0.09 lb/MMBtu SO<sub>2</sub> emission limit for Danskammer Unit 4, and 0.20 lb/MMBtu NO<sub>x</sub> emission limit for Kodak Boiler 42 if the Boiler is repowered with natural gas.

*Response:* EPA acknowledges the support for the proposed BART emission limits. EPA is adopting these limits.

*Comment:* Dynegy pointed out that the operators of the Danskammer and Roseton Generating Stations are currently the subject of Chapter 11 bankruptcy proceedings, and therefore not in a position to select any of the SO<sub>2</sub> BART FIP emission limits proposed by EPA.

*Response:* EPA has an obligation to either approve New York's Regional Haze SIP or promulgate a FIP that establishes BART for the Danskammer and Roseton Generating Stations, regardless of other legal proceedings that may involve the Danskammer and Roseton Generating Stations. EPA is adopting SO<sub>2</sub> BART FIP emission limits for the Danskammer and Roseton Generating Stations.

#### *BART Comments—Specific to Dynegy BART Determinations*

*Comment:* Earthjustice urged EPA to finalize the proposed disapproval of the SO<sub>2</sub> BART determination for Danskammer Unit 4 and endorsed EPA's reasons for proposing to disapprove New York's BART analysis.

*Response:* EPA is finalizing our proposed disapproval of the SO<sub>2</sub> BART determination for Danskammer and is adopting SO<sub>2</sub> BART FIP emission limits for the facility.

*Comment:* Earthjustice commented that New York improperly allowed Dynegy to conduct the BART analysis and select its emission limitation.

*Response:* It is common practice for the facility to do the technical analysis in order to determine BART for eligible sources, submit that information to the state and then for the state to review and adopt or modify the BART determination. In fact, with respect to the Regional Haze program, New York adopted the regulation 6 NYCRR, Part 249, "Best Available Retrofit

Technology (BART)" to require BART eligible facilities to perform an analysis of potential controls for each visibility-impairing pollutant. Congress crafted the Clean Air Act to provide for states to take the lead in developing implementation plans but balanced that decision by requiring EPA to review the plans to determine whether a SIP meets the requirements of the Act. In undertaking such a review, EPA does not usurp a state's authority but ensures that such authority is reasonably exercised. BART determinations are the responsibility of the states, which have the freedom to determine the weight and significance of the statutorily required five-factors in a BART determination. EPA then reviews a state's determination as included in its regional haze plan. With respect to New York's Regional Haze plan, EPA determined that New York addressed the five factors for the BART determinations sufficiently to allow EPA to conclude that the state's BART determinations were reasonable, for all BART-eligible facilities except for Roseton and Danskammer facilities. In the case of the Roseton and Danskammer facilities, where EPA's review of New York's determination resulted in a different conclusion, EPA developed a FIP.

*Comment:* Earthjustice commented New York's failure to select a specific technology as BART for either its NO<sub>x</sub> or SO<sub>2</sub> determination for Danskammer results in an arbitrary emission limit that cannot be considered BART. Earthjustice argued that New York and EPA do not have the statutory authority under Section 169A(b)(2) of the Act to set an emission limitation for NO<sub>x</sub> and SO<sub>2</sub> without first designating a particular control technology as BART.

*Response:* EPA's BART Guidelines make clear that processes and practices, or a combination thereof, may be designated as BART. See 40 CFR part 51 App. Y, section IV.D. The applicable regional haze regulations and EPA's BART Guidelines define BART as "an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction."<sup>4</sup> The application of practices and processes to the operation of a facility can be considered the "best system."

New York's proposed BART determination for the Danskammer facility listed a combination of policies and practices as a control option for both SO<sub>2</sub> and NO<sub>x</sub>. To accomplish a side-by-side comparison with other

<sup>4</sup> See 40 CFR 51.301 (defining "BART"); 40 CFR part 51 App. Y.

control options, it calculated an emission limitation that could be achieved by employing those processes and practices. All control options were reviewed using the procedure set forth in EPA's BART Guidelines, and New York reached a determination that the combination of processes and practices was BART. It was not necessary for New York to set its emission limitations with reference to a specific technology. The chosen emission limitations for both NO<sub>x</sub> and SO<sub>2</sub> were set with reference to the application of a combination of practices and processes. This was done in accordance with the top-down BART determination analysis contained in EPA's BART Guidelines.<sup>5</sup> Although EPA objected to the emission limitation set for SO<sub>2</sub>, it did not object to New York's proposed determination that a combination of practices and processes was BART for the Danskammer facility. Earthjustice's comments do not accurately reflect the BART analysis conducted by New York or by EPA.

*Comment:* Earthjustice said EPA must impose a more stringent SO<sub>2</sub> BART FIP emission limit of 0.06 lb/MMBtu instead of EPA's proposed 0.09 lb/MMBtu because EPA failed to consider all available control technologies, including a wet scrubber or circulating dry scrubber. Earthjustice also commented that the proposed emission limit is not associated with any specific control technology.

*Response:* EPA disagrees that the BART analysis failed to consider all available control technologies and EPA disagrees that the limit is not associated with a control technology. In Dynegey's submission to New York, it determined that BART was lowering Unit 4's current SO<sub>2</sub> permit limit from 1.10 lbs/MMBtu to 0.50 lbs/MMBtu. This limit was based on the facility putting in place a combination of processes/practices, including: (1) Use of alternative coal, (2) co-firing with natural gas, and (3) installation of post combustion controls. Dynegey identified this particular limit as a control option based on an engineering study that identified and evaluated the available SO<sub>2</sub> control options. This was done in accordance with Step One of the BART Guidelines, which requires the state to identify all possible control options that could be used as BART. 40 CFR part 51 App. Y. Dynegey's consultants used a fuel cost table and calculations contained in an attached excel worksheet titled "Fuel Costs" to determine the emission limitation that could be achieved by applying the above practices/processes as BART.

Those calculations make clear that the estimated emission limitation for SO<sub>2</sub> was set using factors based on the use of alternative fuels, co-firing with natural gas, and installing post combustion controls.

The engineering study identified other control options, including Flue Gas Desulfurization ("FGD") options with Lime Based Spray Dryer; Circulating Dry Scrubber and Wet Limestone; options for Dry Sorbent Injection of minerals such as Trona; combustion of alternative coals; 100% combustion of natural gas; and co-firing natural gas. In accordance with Step Two of the BART Guidelines, the facility evaluated the technical feasibility of each control option, concluding that all options were technically feasible for the Danskammer facility. It then evaluated each control option's cost effectiveness, conducted impact analyses on cost of compliance, energy impacts, and nonair quality environmental impacts, and modeled selected control option's visibility impact using the CALPUFF modeling program; all in accordance with Steps Two through Four of the BART Guidelines. 40 CFR part 51 App. Y.

As required by New York's BART regulation, Part 249, the facility conducted a side-by-side comparison and the facility showed that the use of an emission limitation based on the application of the above practices/processes was BART for the Danskammer facility.<sup>6</sup> Dynegey's analysis showed that an emission limit of 0.50 lbs/MMBtu, accomplished through the use of a combination of processes/practices, would achieve a greater impact on regional visibility than the remaining control options. Dynegey then selected the 0.50 lbs/MMBtu as the facility's SO<sub>2</sub> emission limitation. New York reviewed Dynegey's analysis and determined that BART was lowering the SO<sub>2</sub> emission limit from 1.1 lb/MMBtu to 0.50 lb/MMBtu by implementing the combination of processes/practices discussed above.

However, EPA's own analysis of the combination of processes/practices identified by Dynegey and the proposed determination by New York as BART showed that a lower emission limitation than that contained in the state's plan is achievable with this technology. EPA conducted its own evaluation and set a lower estimated emission limitation, 0.09 lb/MMBtu, as a control option. It concluded that "these same control

option strategies can achieve a more stringent SO<sub>2</sub> emission limit than the 0.5 lb/MMBtu limit, on a more cost-effective basis, and therefore result in more visibility improvement." 77 FR 24792, 24813. The 0.09 lb/MMBtu limit was calculated using the fuel costs contained in Dynegey's own fuel costs worksheets. EPA then used Dynegey's own side-by-side comparisons to demonstrate that its proposed 0.09 lb/MMBtu limit was BART for the Danskammer facility.

Since EPA's proposed BART emission limitation was set with reference to processes/practices evaluated using the BART Guidelines, and since processes/practices can be considered as the "best system of emission reduction" pursuant to those same guidelines, EPA's proposed emission limitation is not arbitrary. 40 CFR part 51 App. Y. Therefore EPA is finalizing the SO<sub>2</sub> BART FIP emission limit of 0.09 lb/MMBtu for Danskammer.

*Comment:* Earthjustice commented there is no way to justify EPA's proposed option to approve New York's 0.50 lb/MMBtu SO<sub>2</sub> limit for Danskammer given the ready availability of cost-effective controls.

*Response:* EPA's proposed option that allowed New York to submit additional information to support its higher estimated emission limitation was not improper. New York conducted its BART analysis in accordance with BART Guidelines, but failed to properly support its emission limitation for SO<sub>2</sub> based on the analysis of Dynegey's own fuel cost worksheet. At the time of EPA's April 25, 2012 proposal, New York had not yet issued a final BART permit, so there remained the possibility that additional information could be provided to further support New York's proposed BART determination. If New York had demonstrated that its 0.50 lb/MMBtu limit was accurate by submitting additional material to EPA, it may have been appropriate for EPA to approve New York's proposed BART determination. Regardless, neither New York nor Dynegey submitted additional information specific to the 0.50 lb/MMBtu SO<sub>2</sub> limit. Consequently, EPA is finalizing the SO<sub>2</sub> BART FIP emission limit of 0.09 lb/MMBtu for Danskammer.

*Comment:* Earthjustice commented that other nonair quality environmental impacts and additional power requirements are an improper basis for rejecting wet scrubber or circulating dry scrubber control or Selective Catalytic Reduction (SCR) as BART.

*Response:* Although Dynegey appears to reject certain pollution controls on the basis of nonair quality

<sup>6</sup> See Regulations.gov for EPA-R02-OAR-2012-0296, file marked "final permits," attachment identified as "2012-12-02 Dynegey Final BART Analysis—Redacted Copy."

<sup>5</sup> 40 CFR part 51 App. Y.

environmental impacts and additional energy requirements, EPA went back and reanalyzed Dynegy's analysis. Dynegy did a full five factor analysis and considered the cost effectiveness of controls and the visibility improvement of possible controls. EPA concluded that the controls resulting from Dynegy's analysis were not BART, and adopted much more stringent SO<sub>2</sub> emissions limits and determined the NO<sub>x</sub> emissions limits based on visibility. In EPA's determination of BART, we did not disqualify any SO<sub>2</sub> or NO<sub>x</sub> control strategies because of any energy or nonair quality environmental impacts.

*Comment:* Earthjustice provided extensive comments to support its position that EPA must disapprove New York's NO<sub>x</sub> BART determination for Dynegy's Danskammer Unit 4. Earthjustice contends that New York's and EPA's proposed NO<sub>x</sub> emission limit of 0.12 lb/MMBtu is unattached to any selected BART technology and therefore must be rejected. Earthjustice comments that BART for this facility should be the installation of SCR with a NO<sub>x</sub> emission limit not higher than 0.05 lb/MMBtu (on a 30-day rolling average). Earthjustice states SCR is cost-effective, feasible, and will result in significant visibility benefits.

*Response:* EPA disagrees with Earthjustice's conclusion that the proposed NO<sub>x</sub> emission limit of 0.12 lb/MMBtu and associated controls cannot be considered BART. First, Dynegy and New York evaluated nineteen different controls for BART (including SCR) at Danskammer and, after conducting the 5-factor analysis as required by section 169A(g)(2) of the Act, New York's proposed determination that BART consists of optimization of existing Level II Low NO<sub>x</sub> Burners emission controls, co-firing with natural gas, installation of post-combustion controls, use of alternative coals, or any combination thereof to achieve a NO<sub>x</sub> emission limit of 0.12 lb/MMBtu. Dynegy's proposal committed to meeting a specific emission limit with a combination of specific controls and therefore Earthjustice's contention that

this selection of BART technology is arbitrary is without merit. BART is an emission limit (See 40 CFR 51.301) and Dynegy's BART analysis commits to lowering the NO<sub>x</sub> emission limit from 0.42 lb/MMBtu to 0.12 lb/MMBtu (24-hour average during the ozone season, 30-day average during the non-ozone season) based upon the use of a combination of specific possible controls.

Secondly, Earthjustice comments and provides detailed technical reasons as to why SCR should be considered BART for this facility with a NO<sub>x</sub> emission limit not higher than 0.05 lb/MMBtu on a 30-day rolling average. EPA agrees with Earthjustice that SCR technology is cost effective for the Danskammer facility and it has been demonstrated at numerous coal fired utilities that achieved an emission limit of this magnitude. However, as explained in the following paragraphs, EPA has concluded that the implementation of Earthjustice's recommendation of SCR technology with an emission limit of 0.05 lb/MMBtu provides only minimal visibility improvement (8th high cumulative at the seven Class I areas) when compared to EPA's proposed FIP that BART is an emission limit of 0.12 lb/MMBtu when implementing the combination of controls described above.

Dynegy evaluated SCR plus flue gas recirculation (FGR) using a control efficiency of 91.0% that is equivalent to a NO<sub>x</sub> emission limit of 0.038 lb/MMBtu (note that in EPA's April 25, 2012 proposal, there was a calculation error for this control option and the correct emission limit for NO<sub>x</sub> associated with SCR + FGR is 0.038 lb/MMBtu, not 0.38 lb/MMBtu). As required by section 169A(g)(2) of the Act, one of the five factors to be evaluated for BART is the visibility impact of the emissions from a particular control technology being considered for BART. Dynegy evaluated the visibility benefits at the seven Class I areas impacted by the facility and as noted in Table 6 of EPA's April 25, 2012 proposed rule for New York (77 FR at

24814), the total visibility improvement across the seven Class I areas from SCR + FGR is only better by 0.08 deciviews as compared to Dynegy's proposed combination of controls associated with a BART emission limit of 0.12 lb/MMBtu.<sup>7</sup> As pointed out by Earthjustice, the maximum cumulative visibility improvement is significantly better by 0.534 dv (2.477 dv versus 1.943 dv) for SCR + FGR compared to Dynegy's proposed BART emission limit of 0.12 lb/MMBtu. However, EPA's Guidelines document calls for the use of the 98th percentile (essentially the 8th highest day) rather than the maximum modeled daily impact. These Guidelines further state that while "the use of the 98th percentile of modeled visibility values would appear to exclude roughly 7 days per year from consideration, in our judgment, this approach will effectively capture the sources that contribute to visibility impairment in a Class I area, while minimizing the likelihood that the highest modeled visibility impacts might be caused by unusual meteorology or conservative assumptions in the model." See 70 FR 39104, 39121 (July 6, 2005). Accordingly, EPA used the 98th percentile (8th high) visibility to compare the visibility impacts of different control technologies for the Danskammer facility.

Furthermore, Dynegy's visibility analysis included a summary of the number of days that exceed 1.0 dv, 0.5 dv and 0.1 dv for each NO<sub>x</sub> control strategy at each of the seven impacted Class I areas. This visibility analysis shows only a small improvement in days exceeding the three respective dv thresholds for the SCR + FGR case compared to Dynegy's proposed combination of BART controls with an emission limit of 0.12 lb/MMBtu. The cumulative number of days exceeding each of the dv thresholds for the SCR + FGR (with NO<sub>x</sub> emissions of 0.038 lb/mm BTU) and Dynegy's proposed combination of controls (with NO<sub>x</sub> emissions of 0.12 lb/MMBtu) is summarized in the following table:

Class I area	Difference in the number of days when the visibility impact exceeds 1.0, 0.5, and 0.1 deciviews for each Class I area for two different control strategies								
	1.0 deciview			0.5 deciview			0.1 deciview		
	SCR + FGR	0.12 lb/MMBtu NO <sub>x</sub>	Difference in days between control strategies	SCR + FGR	0.12 lb/MMBtu NO <sub>x</sub>	Difference in days between control strategies	SCR + FGR	0.12 lb/MMBtu NO <sub>x</sub>	Difference in days between control strategies
Lye Brook, VT .....	6	6	0	15	16	1	59	62	3

<sup>7</sup> Difference between 0.651 deciviews and 0.569 deciviews is 0.08 deciviews, 8th high.

Class I area	Difference in the number of days when the visibility impact exceeds 1.0, 0.5, and 0.1 deciviews for each Class I area for two different control strategies								
	1.0 deciview			0.5 deciview			0.1 deciview		
	SCR + FGR	0.12 lb/MMBtu NO <sub>x</sub>	Difference in days between control strategies	SCR + FGR	0.12 lb/MMBtu NO <sub>x</sub>	Difference in days between control strategies	SCR + FGR	0.12 lb/MMBtu NO <sub>x</sub>	Difference in days between control strategies
Brigantine, NJ .....	1	1	0	7	7	0	56	59	3
Acadia Nat'l Park, ME .....	0	0	0	3	4	1	50	52	2
Presidential Range, NH .....	0	1	1	4	4	0	38	43	5
Great Gulf, NH .....	0	0	0	4	4	0	31	37	6
Otter Creek, WV .....	0	0	0	0	0	0	8	8	0
Dolly Sods, WV .....	0	0	0	0	0	0	10	11	1
<b>Total days .....</b>	<b>7</b>	<b>8</b>	<b>1</b>	<b>33</b>	<b>35</b>	<b>2</b>	<b>252</b>	<b>272</b>	<b>20</b>

Based upon the two visibility analyses described above, EPA concludes that Earthjustice's recommended BART technology, i.e., SCR, with an emission limit of 0.05 lb/MMBtu, would not be expected to provide any significant improvement in visibility at the seven Class I areas over Dynegy's proposed BART implementation of a combination of specific possible controls with an emission limit of 0.12 lb/MMBtu. Therefore, EPA concludes that NO<sub>x</sub> BART for Danskammer Unit 4 is unchanged from our April 25, 2012 proposal, i.e., an emission limit of 0.12 lb/MMBtu by the optimization of existing Level II Low NO<sub>x</sub> Burners emission controls, co-firing with natural gas, installation of post-combustion controls, use of alternative coals, or any combination thereof.

*Comment:* Earthjustice took issue with EPA's inclusion in the Docket of the redacted version of Dynegy's BART analysis and suggested that EPA relies on, but fails to review or provide critical costs and energy impacts and failed to obtain or withheld critical projected capacity factor information.

*Response:* In establishing the Agency's determination of BART for Danskammer Unit 4, EPA relied on the same information from Dynegy's BART analysis that was available to the public. EPA disagrees that we failed to review, provide, or obtain information relevant to our review of the Dynegy BART analysis. EPA's review and analysis focused on Danskammer's potential to emit and did not involve the need for information regarding Dynegy's future, projected utilization rates for the Danskammer facility. EPA determined this information was not relevant to this rulemaking.

*Comment:* Earthjustice commented that EPA failed to establish a historical emissions baseline and that EPA should have corrected Dynegy's use of a ten year useful life of pollution control.

*Response:* EPA agrees that Dynegy did not establish a historical emissions baseline or use a reasonable lifetime for pollution control equipment, but the Agency does not agree that these errors affected EPA's analysis and determination as to appropriate BART limits for the Dynegy facilities. EPA used Dynegy's potential to emit rather than its historical emissions, which resulted in a more conservative approach that increased the estimated cost-effectiveness of controls. As for Earthjustice's comment regarding the ten year useful life of control equipment, Dynegy used a 10-year useful life for the Danskammer emission unit itself. While we agree that a 10-year remaining useful life is not an appropriate assumption unless there is an enforceable commitment to shut down, our review of this alleged discrepancy between a 10-year or a 30-year useful life of the facility did not change our conclusions, since the controls are cost effective either way. EPA did not discuss the remaining useful life in the April 25, 2012 proposal because the controls are cost-effective.

*Comment:* Dynegy supported EPA's proposed compliance date of July 1, 2014 for the Danskammer Unit 4 BART emission limits, EPA's proposed NO<sub>x</sub> and PM BART determinations for the Danskammer and Roseton Units and the form (lbs/MMBtu) of the proposed emission limits for the Danskammer and Roseton units.

*Response:* EPA acknowledges the support for the proposed compliance date, the proposed BART determinations and the proposed form of the BART emission limits. In this action, EPA is finalizing these limits.

*Comment:* New York indicated revisions are being developed to New York's fuel sulfur limitations under Part 225-1 which will likely supersede EPA's SO<sub>2</sub> BART limit for the Roseton

Generating Station, soon after EPA's January 1, 2014 compliance date.

*Response:* EPA fully supports New York's development and adoption of these regulations.

*Comment:* New York disagreed with EPA's determination in the April 25, 2012 proposal that Dynegy incorrectly analyzed visibility impacts at only the maximally-impacted federal Class I area, rather than at all impacted Class I areas. Earthjustice agreed with EPA's determination to consider the cumulative visibility impacts at all impacted Class I areas.

*Response:* In reviewing New York's BART determinations for Dynegy's Roseton and Danskammer Generating Stations, EPA took into account the visibility benefits of requiring controls by considering the improvements at both the most impacted Class I area as well as the improvements at all impacted Class I areas and Dynegy's own conclusions regarding the impacts on visibility from the controls under consideration. With regard to New York's comment that consideration of the BART Guidelines do not require the consideration of visibility benefits at all Class I areas, the state cited to text indicating that consideration of visibility impacts at all impacted Class I areas "might be unwarranted." This language in the BART Guidelines is clearly meant to provide a common sense approach to streamlining a complex and difficult modeling exercise where "an analysis may add a significant resource burden to a State." See 70 FR 39126. While the BART Guidelines indicate that a detailed analysis of the visibility impacts at each area in a cluster of Class I areas may not be necessary, this is not because the visibility impacts at Class I areas other than the most impacted are irrelevant but rather because the visibility benefits at the most impacted Class I area alone may be sufficient to justify the selection



of the most stringent control technology as BART. Where, as here, the benefits of controls have been modeled for a number of surrounding areas and consideration of these benefits is useful in determining the appropriate level of controls, EPA does not agree that these benefits should be ignored.

EPA concludes that it appropriately took into account the visibility impacts across all seven of the impacted Class I areas in deciding to adopt more stringent BART limits. There are many large sources of pollutants that reduce visibility and impact several Class I areas in the northeastern United States. EPA has included, in our review of the multi-factor analysis, the impact these major sources have on more than one Class I area. The smaller impacts from these major sources combine with impacts from other major sources in the northeast to have important impacts on visibility in these protected areas. While EPA is primarily concerned with impacts at the Class I area nearest each major source, EPA encourages cost-effective control strategies that improve visibility across many Class I areas. Reductions in visibility-impairing pollutants from a major facility, with reduced impacts from similarly large sources in other areas and other states, will go a long way toward improving visibility in these areas.

*Comment:* Earthjustice commented that EPA offers no explanation for ruling out a hybrid SCR/SNCR control option and a FGR+SCR control option as BART even though the maximum cumulative visibility improvement across seven affected Class I areas is shown to be 2.244 dv and 2.477 dv, respectively. Earthjustice questions how EPA arrived at this decision for NO<sub>x</sub> when it arrived at a different decision for SO<sub>2</sub>.

*Response:* The visibility improvement cited to by Earthjustice is based on the maximum anticipated visibility improvements at the seven Class I areas impacted by the Danskammer facility. EPA did not base its decision to approve New York's BART determinations on these maximum cumulative visibility improvement values; rather EPA focused on the 8th high (98th percentile) visibility impacts predicted by the visibility modeling in evaluating a particular control option. In this case, the visibility benefits based on consideration of the 8th high visibility impacts for the hybrid SCR/SNCR and FGR+SCR options are far less than 2.0 deciviews. The visibility impacts measured cumulatively across the seven impacted Class I areas based on the 8th high number are 0.689 dv for SCR/SNCR and 0.651 dv for FGR+SCR. EPA concluded that these control options

provide minimal visibility improvement when compared to the BART level of control of 0.12 lbs of NO<sub>x</sub>/MMBtu, with a 8th high cumulative visibility improvement of 0.569 dv. As for SO<sub>2</sub>, in contrast, the visibility improvement associated with the BART limit set by EPA based on the 8th high impacts is 2.174 dv of improvement, as measured across the seven Class I areas.

*Comment:* Earthjustice commented that EPA did not establish any significance thresholds for costs or for visibility improvement in making BART determinations.

*Response:* EPA's BART guidelines in the BART Rule do not require EPA to develop a specific threshold, but rather to evaluate each BART determination on a case-by-case basis for each source. All five factors must be compared to determine the level of control that is BART on a case-by-case basis.

*Comment:* Earthjustice commented that EPA failed to conduct a BART analysis for particulate matter and that BART Guidelines (40 CFR part 51, Appendix Y, section IV.C) require BART limits to be at least as stringent as maximum available control technology (MACT), such as EPA's Mercury and Air Toxics Standards.

*Response:* The comments received do not convince us that our PM BART determination for Danskammer is unreasonable. EPA reviewed Dynegey's BART analysis and New York's proposed BART determination and we agreed that it represents BART. The existing electrostatic precipitator control is 99.98% effective in reducing PM emissions. We consider this level of control to be BART for the Danskammer facility. Neither EPA nor a state is required to set BART based on the limits in a MACT standard. MACT standards are established by EPA for reasons that are much different than the reasons for the limits established in Regional Haze SIPs. Further, that section of the BART Guidelines the comment refers to was not meant to require states to take into account MACT requirements in determining BART, but rather to provide states with the option to streamline the BART analysis for sources subject to the MACT standards by relying on the MACT standards for purposes of BART. In addition, EPA notes that compliance with the particulate matter emission limit in the FIP is based on a one-hour averaging time period, while the MACT is based on a 30 day rolling average. It is accordingly difficult to compare the two limits.

In summary, EPA determined the existing electrostatic precipitator control

represents the BART level of control for PM for this particular facility.

*Comment:* Earthjustice stated that BART determinations must consider filterable PM<sub>10</sub>, PM<sub>2.5</sub> and condensable PM. Earthjustice stated that EPA should have considered more stringent PM emission limits accepted as BART or as best available control technology known as BACT or even the maximum achievable control technology known as MACT. Earthjustice requested EPA to disapprove New York's PM BART determination and adopt a FIP that establishes BART limits for filterable PM<sub>10</sub>, PM<sub>2.5</sub> and condensable PM.

*Response:* EPA disagrees that the PM BART limits should be disapproved. The existing electrostatic precipitator control on the facility and the emission limit from the BART determination are effective in reducing filterable particulates. Condensable particulates will be reduced as a result of the reductions in SO<sub>2</sub> and NO<sub>x</sub> emissions at the facility. Separate emission limits for each form of particulates are not required for BART. EPA also disagrees that the FIP's BART limits should be consistent with BACT or MACT. BART, BACT and MACT are all specific statutorily defined approaches to establishing emissions limitations for sources under different CAA programs.

#### *Reasonable Progress Goals Comments*

*Comment:* Earthjustice commented that EPA's conclusion that New York will achieve its reasonable progress goals is based on an unidentified analysis performed by MANE-VU, resulting in the public's inability to assess the accuracy or reasonableness of MANE-VU's calculations and EPA's statements related to MANE-VU's analysis. Earthjustice recommended that EPA reject its conclusion that New York would achieve its reasonable progress goals since the analysis was not available for public review.

*Response:* EPA disagrees that the MANE-VU analysis was not available for public review and EPA disagrees we should reject our conclusion that New York would achieve its reasonable progress goals. MANE-VU's analysis titled *Documentation of 2018 Emissions from Electric Generating Units in the Eastern United States for MANE-VU's Regional Haze Modeling*, Revised Final Draft, April 2008<sup>8</sup> was originally

<sup>8</sup> The report was finalized as *Documentation of 2018 Emissions from Electric Generating Units in the Eastern United States for MANE-VU's Regional Haze Modeling Final Report*, 16 August 2009, with no changes that affect this analysis. It is available at <http://www.marana.org/technical-center/emissions-inventory/ei-improvement-projects/electricity-generating-units>.

available for public review during the New York rulemaking process for its Regional Haze SIP revision, as well as during many of the other MANE-VU states' rulemaking processes. As EPA included all of the documents associated with New York's Regional Haze SIP revision in the Docket, this MANE-VU document was also available for public review as part of EPA's April 25, 2012 proposal and included in the Docket for this rulemaking as Appendix W in New York's Regional Haze SIP Submittal documents.

Table 9 of Appendix W is the final MANE-VU emission inventory which was modeled to show that implementing the MANE-VU measures would improve visibility at MANE-VU's Class I areas sufficiently to meet the progress goals for 2018 for these areas. For the final emission inventory described in Appendix W, MANE-VU increased the emissions of SO<sub>2</sub> from power plants to account for the effects of EPA's Clean Air Interstate Rule (CAIR) program.<sup>9</sup> Applying the CAIR program to the New York emission inventory increases emissions by 23,142 tons per year of SO<sub>2</sub> from the previous MANE-VU inventory that represented New York's application of the controls agreed to by the MANE-VU states. Since New York is not using EPA's CAIR or subsequent transport rules for BART emission controls on sources in New York, the final MANE-VU emission inventory overestimates the projected emissions for New York by 23,142 tons per year of SO<sub>2</sub>.

New York's existing sulfur in fuel rule does not cover all of the types of fuel oil included in the program agreed to by the MANE-VU states. New York estimates that there is a difference of 17,669 tons per year of SO<sub>2</sub> between the program New York has in place now and full adoption of the sulfur in fuel measure agreed to by the MANE-VU states. The 17,669 tons per year of SO<sub>2</sub> reductions that New York would have if it adopted the entire MANE-VU sulfur in fuel rule is less than the excess 23,142 tons per year of SO<sub>2</sub> projected in the MANE-VU final modeling

<sup>9</sup> The MANE-VU document referenced in the previous footnote explains in Section 5.5 on page 29: " \* \* \* MANE-VU planners recognized that CAIR allows emissions trading, and that reductions at one unit could offset increases at another unit within the CAIR region. Because most states do not restrict trading, MANE-VU decided that emissions should be increased to represent the implementation of the strategy for the 167 stacks within the limits of the CAIR program. Therefore, NESCAUM increased the emissions from states subject to the CAIR cap and trade program. For MANE-VU, 75,809 tons were added back, leaving total regional emissions from the MANE-VU region greater than the original Inter-RPO IPM-based estimate but consistent with state projections."

inventory. These 23,142 tons will not be emitted since New York is not using CAIR for its Regional Haze Plan. Therefore, EPA can approve this portion of New York's Regional Haze Plan because New York's adopted emission reductions meet New York's portion of the emission reductions needed to reach the progress goals set for MANE-VU's Class I areas.

*Comment:* New York disagreed with EPA's discussion of the sulfur reductions achieved by New York's low sulfur fuel strategy and the timing of those reductions. New York commented that sulfur reductions are not required to be implemented by the time EPA takes final action on New York's Regional Haze SIP, but rather by the 2018 Reasonable Progress Goal deadline. New York stated it is in the process of developing regulations to expand the low sulfur fuel oil program to achieve reductions before 2018.

*Response:* EPA agrees sulfur reductions are not required to be implemented by the time EPA takes final action on New York's Regional Haze SIP, but rather as soon as reasonable and, at the latest, by the 2018 Reasonable Progress Goal deadline. However, EPA can only act on the measures that New York has adopted when it submitted its Regional Haze Plan, and cannot act on measures that may be adopted or enacted later. New York needs to adopt all of the measures to be used in its Regional Haze SIP.

New York indicates it is in the process of developing regulations to expand the low sulfur fuel oil program to achieve reductions before 2018. EPA fully supports New York's timely development and adoption of these regulations.

#### General Comments

*Comment:* US Forest Service complimented EPA and New York on the work to date on the Regional Haze program and the BART determinations and supported EPA's BART proposals.

*Response:* EPA agrees New York has successfully addressed the consultation process of the Regional Haze Program with the Federal Land Managers.

*Comment:* New York commented that, at the time of its letter, the fact that forty states do not have approved Regional Haze SIPs highlights the difficulties for states to complete their SIPs under the schedules set by EPA.

*Response:* EPA acknowledges that the deadlines established by Congress in the CAA for the regional haze program have been challenging, but notes that EPA has now either proposed or taken final action on full regional haze programs for all but seven states.

*Comment:* Earthjustice commented that EPA must affirm New York's decision to apply BART and not rely on the Cross State Air Pollution Rule.

*Response:* EPA can affirm that New York conducted case-by-case BART reviews and did not rely on the Cross State Air Pollution Rule based on the fact that New York adopted 6 NYCRR Part 249, a regulation requiring all facilities to conduct and submit a BART analysis to the state, and because New York submitted to EPA source-specific SIP revisions for 18 facilities to implement BART.

*Comment:* Earthjustice commented that with respect to New York, the Cross State Air Pollution Rule (CSAPR) will not achieve greater progress toward national visibility goals.

*Response:* Since New York is not relying on CSAPR, this comment is beyond the scope of this rulemaking.

#### V. What are EPA's conclusions?

EPA has evaluated the proposed revisions to the SIP submitted by the State of New York that address regional haze for the first planning period from 2008 through 2018. EPA is partially approving and partially disapproving the revisions to the SIP, which address the Regional Haze requirements of the Clean Air Act for the first implementation period. This approval includes the Reasonable Progress portion of the plan, New York's source-specific SIP revisions for implementation of BART for 17 BART-subject sources, 6 NYCRR Part 249, "Best Available Retrofit Technology (BART)," effective May 6, 2010, and section 19-0325 of the New York Environmental Conservation Law, effective July 15, 2010, which regulates the sulfur content of fuel oil.

EPA is finalizing amendments to 40 CFR 52.1670(d) "EPA-Approved New York Source-Specific Provisions" to incorporate those sources with new emission limitations or requirements that resulted from the BART determinations that are not part of the applicable SIP.

EPA is promulgating a partial FIP to address the deficiencies in the plan resulting from our partial disapproval of New York's Regional Haze SIP. Specifically, EPA's FIP contains BART determinations and emission limits for the Roseton and Danskammer Generating Stations.

We have fully considered all significant comments on our proposal, and, except as noted in sections II, III and IV above, have concluded that no other changes from our proposal are warranted. Our action is based on an evaluation of New York's SIP submittals

and our FIP relative to the regional haze requirements at 40 CFR 51.300–51.309 and Clean Air Act sections 169A and 169B. All general SIP requirements contained in section 110 of the Act, other provisions of the Act, and our regulations applicable to this action were also evaluated. The purpose of this action is to ensure compliance with these requirements. Our authority for action on New York's SIP submittals is based on section 110(k) of the Act. Our authority to promulgate our partial FIP is based on section 110(c) of the Act.

## VI. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action will promulgate emission requirements for two facilities and is therefore not a rule of general applicability. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a "collection of information" is defined as a requirement for "answers to \* \* \* identical reporting or recordkeeping requirements imposed on ten or more persons \* \* \*" 44 U.S.C. 3502(3)(A). Because the FIP applies to just two facilities, the Paperwork Reduction Act does not apply. *See* 5 CFR 1320(c).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid

Office of Management and Budget (OMB) control number. The OMB control numbers for our regulations in 40 CFR are listed in 40 CFR Part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The Regional Haze FIP that EPA is finalizing for purposes of the regional haze program consists of imposing Federal controls to meet the BART requirement for NO<sub>x</sub>, SO<sub>2</sub> and PM<sub>2.5</sub> from one facility and emissions of SO<sub>2</sub> from another facility in New York. The net result of these two FIP actions is that EPA is promulgating emission controls on selected units at only two sources. The sources in question are each large electric generating plants that are not owned by small entities, and therefore are not small entities. The partial approval of the SIP merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. *See Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985).

### D. Unfunded Mandates Reform Act (UMRA)

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. It is a rule of particular applicability that affects only two facilities in the State of

New York. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule only applies to two facilities in the State of New York.

### E. Executive Order 13132 Federalism

This action does not have federalism implications. It will 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. This action addresses the State not fully meeting its obligation to adopt a SIP that meets the regional haze requirements under the CAA. Thus, Executive Order 13132 does not apply to this action. Although section 6 of Executive Order 13132 does not apply to this action, EPA did consult with the state government in developing this action. A summary of the concerns raised during the comment period and EPA's response to those concerns is provided in section IV of this preamble.

### F. Executive Order 13175

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the action EPA is taking neither imposes substantial direct compliance costs on tribal governments, nor preempts tribal law. It will not have substantial direct effects on tribal government. Thus, Executive Order 13175 does not apply to this action.

### G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes. However, to the extent this rule will limit emissions, the rule will have a beneficial effect on children's health by reducing air pollution.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Today’s action does not require the public to perform activities conducive to the use of voluntary consensus standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority

populations and low-income populations in the United States.

We have determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This rule limits emissions of NO<sub>x</sub>, SO<sub>2</sub> and PM<sub>2.5</sub> from one facility and emissions SO<sub>2</sub> from another facility in New York. The partial approval of the SIP merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

*K. Congressional Review Act*

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 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.

*L. Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 2012. Pursuant to *Approval and Promulgation of Air Quality Implementation Plans; State of New York; Regional Haze State Implementation Plan and Federal*

*Implementation Plan [EPA–R02–OAR–2012–0296]* CAA section 307(d)(1)(B), this action is subject to the requirements of CAA section 307(d) as it promulgates a FIP under CAA section 110(c). 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 may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

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

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 16, 2012.

**Lisa P. Jackson,**  
*Administrator.*

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. 7401–7671q.

**Subpart HH—New York**

- 2. Section 52.1670 is amended by:
  - a. In paragraph (c), revising the table heading and adding a new entry for Title 6, Part 249, in numeric order and adding new subheading “Environmental Conservation Law” and table entry at end of table (c); and
  - b. In paragraph (d) by adding new entries to the end of table
  - c. In paragraph (e) by adding new entries to the end of table.

The additions and revisions reads as follows:

**§ 52.1670 Identification of plan.**  
\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS**

New York State regulation	State effective date	Latest EPA approval date	Comments
Part 249, Best Available Retrofit Technology (BART).	5/6/10	8/28/12 [Insert page number where the document begins].	

## EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS—Continued

New York State regulation	State effective date	Latest EPA approval date	Comments
* * * Environmental Conservation Law Section 19-0325 .....	7/15/10	8/28/12 [Insert page number where the document begins].	* * *

(d) \* \* \*

## EPA-APPROVED NEW YORK SOURCE-SPECIFIC PROVISIONS

Name of source	Identifier/emission point	State effective/approval date	EPA approval date	Explanation
* * * ALCOA Massena Operations (West Plant).	* * * Potline S-00001, Baking furnace S-00002, Package Boilers B-00001.	* * * Permit ID 6-4058-00003, effective 3/20/12.	* * * 8/28/12 [Insert page number where the document begins].	* * * Part 249 BART.
Arthur Kill Generating Station, NRG.	Boiler 30 .....	Permit ID 2-6403-00014, effective 3/20/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Bowline Generating Station, GenOn.	Boilers 1 and 2 .....	Permit Id 3-3922-00003, effective 6/28/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Con Edison 59th Street Station.	Steam Boilers 114 and 115.	Permit Id 2-6202-00032, Effective 3/20/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
EF Barrett Power Station, NG.	Boiler 2 .....	Permit Id 1-2820-00553, effective 3/27/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
International Paper Ticonderoga Mill.	Power Boiler and Recovery Furnace.	Permit Id 5-1548-00008, effective 3/19/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Kodak Operations at Eastman Business Park, Kodak.	Boilers 41, 42 and 43 .....	Permit Id 8-2614-00205, effective 5/25/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Lafarge Building Materials	Kilns 1 and 2 .....	Permit Id 4-0124-00001 effective 7/19/11.	8/28/12 [Insert page number where the document begins].	Condition 12-14.
Lehigh Northeast Cement, Lehigh Cement.	Kiln and Clinker cooler .....	Permit Id 5-5205-00013, effective 7/5/12.	8/28/12 [Insert page number where the document begins].	Part 220 and Part 249 BART.
Northport Power Station, NG.	Boilers 1, 2, 3, and 4 .....	Permit Id 1-4726-00130, effective 3/27/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Oswego Harbor Power, NRG.	Boilers 5 and 6 .....	Permit Id 7-3512-00030, effective 5/16/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Owens-Corning Insulating Systems Feura Bush, Owens Corning.	EU2, EU3, EU12, EU13, and EU14.	Permit Id 4-0122-00004 effective 5/18/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Ravenswood Generating Station, TC.	Boilers 10, 20, 30 .....	Permit Id 2-6304-00024, effective 4/6/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Ravenswood Steam Plant, Con Edison.	Boiler 2 .....	Permit Id 2-6304-01378 effective 3/20/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Roseton Generating Station—Dynergy.	Boilers 1 and 2 .....	Permit Id 3-3346-00075 effective 11/02/11.	8/28/12 [Insert page number where the document begins].	Excluding the SO <sub>2</sub> BART emissions limits for Boilers 1 and 2 and corresponding monitoring, recordkeeping, and reporting requirements, which EPA disapproved.
Samuel A Carlson Generating Station, James town Board of Public Utilities.	Boiler 12 .....	Permit Id 9-0608-00053 effective 2/8/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.

EPA-APPROVED NEW YORK SOURCE-SPECIFIC PROVISIONS—Continued

Name of source	Identifier/emission point	State effective/approval date	EPA approval date	Explanation
Syracuse Energy Corporation [GDF Suez].	Boiler 1 .....	Permit Id 7-3132-00052 effective 5/24/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.

(e) \* \* \*

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Action/SIP element	Applicable geographic or non-attainment area	New York submittal date	EPA approval date	Explanation
Implementation Plan for Regional Haze.	Statewide .....	3/15/00	8/28/12 [Insert page number where the document begins].	The plan is approved except for the BART determinations for Danskammer Generating Station Unit 4 and Roseton Generating Station Units 1 and 2. See 40 CFR 52.1686.
Regional Haze plan—Fuel Oil Sulfur Content.	Statewide .....	4/16/12	8/28/12 [Insert page number where the document begins].	
Regional Haze Plan—BART Permit modifications.	Statewide .....	4/16/12	8/28/12 [Insert page number where the document begins].	
Regional Haze Plan—BART Permit modifications.	Statewide .....	7/2/12	8/28/12 [Insert page number where the document begins].	

■ 3. Section 52.1686 is added as follows:  
**§ 52.1686 Federal Implementation Plan for Regional Haze.**

(a) *Applicability.* This section applies to each owner and operator of the following electric generating units (EGUs) in the State of New York: Danskammer Generating Station, Unit 4; and Roseton Generating Station, Units 1 and 2;

(b) *Definitions.* Terms not defined below shall have the meaning given them in the Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this section:

*Boiler operating day* means a 24-hour period between 12 midnight and the

following midnight during which any fuel is combusted at any time in the EGU, boiler or emission unit. It is not necessary for fuel to be combusted for the entire 24-hour period.

*Continuous emission monitoring system* or *CEMS* means the equipment required by this section to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of SO<sub>2</sub>, NO<sub>x</sub>, and PM emissions, other pollutant emissions, diluent, or stack gas volumetric flow rate.

*SO<sub>2</sub>* means sulfur dioxide.

*NO<sub>x</sub>* means nitrogen oxides.

*PM* means particulate matter

*Owner/operator* means any person who owns, leases, operates, controls, or supervises an EGU or boiler identified in paragraph (a) of this section.

*Ozone Season* means the time period from May 1 through September 30 of each year.

*Unit* means any of the EGUs or boilers identified in paragraph (a) of this section.

(c) *Emissions limitations*—(1) The owners/operators subject to this section shall not emit or cause to be emitted SO<sub>2</sub>, NO<sub>x</sub>, and PM in excess of the following limitations, averaged over a rolling 30-day period unless otherwise indicated below:

Facilities	BART unit	BART controls/limits		
		NO <sub>x</sub>	SO <sub>2</sub>	PM
Danskammer Generating Station—Dynegy.	4	0.12 lb/MMBtu 24 hr avg ozone season, 30 day avg rest of yr Compliance 7/1/2014.	0.09 lb/MMBtu 24 hr avg Compliance 7/1/2014.	0.06 lb/MMBtu 1 hr avg Compliance 7/1/2014.
Roseton Generating Station—Dynegy.	1 & 2	.....	0.55 lb/MMBtu 24 hr avg .....	

(2) These emission limitations shall apply at all times, including startups,

shutdowns, emergencies, and malfunctions.

(d) *Compliance date.* The owners and operators subject to this section shall comply with the emissions limitations

and other requirements of this section by January 1, 2014 unless otherwise indicated in paragraph (c) of this section.

(e) *Compliance determination using CEMS*—(1) *CEMS*. At all times after the compliance date specified in paragraph (d) of this section, the owner/operator of each unit shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR part 75, to accurately measure SO<sub>2</sub>, NO<sub>x</sub>, and PM, diluent, and stack gas volumetric flow rate from each unit. The CEMS shall be used to determine compliance with the emission limitations in paragraph (c) of this section for each unit.

(2) *Method*. (i) For any hour in which fuel is combusted in a unit, the owner/operator of each unit shall calculate the hourly average SO<sub>2</sub>, NO<sub>x</sub>, and PM concentration in lb/MMBtu at the CEMS in accordance with the requirements of 40 CFR part 75. At the end of each boiler operating day, the owner/operator shall calculate and record a new average emission rate, consistent with paragraph (c) averaging period, in lb/MMBtu from the arithmetic average of all valid hourly emission rates from the CEMS for the current boiler operating day.

(ii) An hourly average SO<sub>2</sub>, NO<sub>x</sub>, or PM emission rate in lb/MMBtu is valid only if the minimum number of data points, as specified in 40 CFR part 75, is acquired by the SO<sub>2</sub>, NO<sub>x</sub>, or PM pollutant concentration monitor and the diluent monitor (O<sub>2</sub> or CO<sub>2</sub>).

(iii) Data reported to meet the requirements of this section shall not include data substituted using the missing data substitution procedures of subpart D of 40 CFR part 75, nor shall the data have been bias adjusted according to the procedures of 40 CFR part 75.

(f) *Compliance determination using fuel certification*—The owner or operator of each affected facility subject to a federally enforceable requirement limiting the fuel sulfur content may use fuel supplier certification to demonstrate compliance. Records of fuel supplier certification, as described under paragraphs (f)(1), (2), (3), and (4) of this section, as applicable, shall be maintained and reports submitted as required under paragraph (h). In addition to records of fuel supplier certifications, the report shall include a certified statement signed by the owner or operator of the affected facility that the records of fuel supplier certifications submitted represent all of the fuel combusted during the reporting period.

Fuel supplier certification shall include the following information:

(1) For distillate oil:  
(i) The name of the oil supplier;  
(ii) A statement from the oil supplier that the oil complies with the specifications under the definition of distillate oil in § 60.41c; and  
(iii) The sulfur content or maximum sulfur content of the oil.

(2) For residual oil:  
(i) The name of the oil supplier;  
(ii) The location of the oil when the sample was drawn for analysis to determine the sulfur content of the oil, specifically including whether the oil was sampled as delivered to the affected facility, or whether the sample was drawn from oil in storage at the oil supplier's or oil refiner's facility, or other location;

(iii) The sulfur content of the oil from which the shipment came (or of the shipment itself); and  
(iv) The method used to determine the sulfur content of the oil.

(3) For coal:  
(i) The name of the coal supplier;  
(ii) The location of the coal when the sample was collected for analysis to determine the properties of the coal, specifically including whether the coal was sampled as delivered to the affected facility or whether the sample was collected from coal in storage at the mine, at a coal preparation plant, at a coal supplier's facility, or at another location. The certification shall include the name of the coal mine (and coal seam), coal storage facility, or coal preparation plant (where the sample was collected);  
(iii) The results of the analysis of the coal from which the shipment came (or of the shipment itself) including the sulfur content, moisture content, ash content, and heat content; and  
(iv) The methods used to determine the properties of the coal.

(4) For other fuels:  
(i) The name of the supplier of the fuel;  
(ii) The potential sulfur emissions rate or maximum potential sulfur emissions rate of the fuel in nanograms per joule (ng/J) heat input; and  
(iii) The method used to determine the potential sulfur emissions rate of the fuel.

(g) *Compliance determination with an annual emission limit*—The owner or operator of each affected facility subject to a federally enforceable requirement limiting the annual emissions shall calculate the annual emissions individually for each fuel combusted, as applicable. The annual emission limitation is determined on a 12-month rolling average basis with a new annual emission limitation calculated at the end of the calendar month, unless a

different reporting period is identified in paragraph (c).

(h) *Recordkeeping*. Owner/operator shall maintain the following records for at least five years:

(1) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

(2) All fuel supplier certifications and information identified in paragraph (f)(1), (2), (3), or (4) of this section, as applicable.

(3) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR Part 75.

(4) Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.

(5) Any other records required by 40 CFR part 75.

(i) *Reporting*. All reports under this section shall be submitted to the Director, Division of Enforcement and Compliance Assistance, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007-1866.

(1) Owner/operator shall submit quarterly excess emissions reports no later than the 30th day following the end of each calendar quarter. Excess emissions means emissions that exceed the emissions limits specified in paragraph (c) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(2) Owner/operator shall submit quarterly CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, any CEMS repairs or adjustments, and results of any CEMS performance tests required by 40 CFR part 75 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).

(3) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, such information shall be stated in the report.

(4) Owner/operator shall submit semi-annual fuel certification reports no later

than the 30th day following the end of each six month period.

(5) Owner/operator shall submit an annual emissions limitation calculation report no later than the 30th day following the end of the calendar year or quarter if a rolling average is required in paragraph (c).

(j) *Notifications.* (1) Owner/operator shall submit notification of commencement of construction of any equipment which is being constructed to comply with the emission limits in paragraph (c) of this section.

(2) Owner/operator shall submit semi-annual progress reports on construction of any such equipment.

(3) Owner/operator shall submit notification of initial startup of any such equipment.

(k) *Equipment operation.* At all times, owner/operator shall maintain each unit, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

(l) *Credible Evidence.* Nothing in this section shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with requirements of this section if the appropriate performance or compliance test procedures or method had been performed.

[FR Doc. 2012-21056 Filed 8-27-12; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2010-0391; FRL-9719-4]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Attainment Plan for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware 1997 Fine Particulate Matter Nonattainment Area

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania on April 12, 2010, as amended on August 3, 2012. The SIP revision demonstrates attainment of the 1997 annual fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standard (NAAQS) for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware (PA-NJ-DE) nonattainment

area (Philadelphia Area). This Pennsylvania SIP revision (herein called the "attainment plan") includes the Philadelphia Area's attainment demonstration and the motor vehicle emission budgets (MVEBs) used for transportation conformity purposes in Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania. The attainment plan also includes a base year emissions inventory and contingency measures. On August 3, 2012, Pennsylvania withdrew the analysis of reasonably available control measures and reasonably available control technology (RACM/RACT) from the attainment plan because the requirement was suspended by a clean data determination for the Philadelphia Area. Furthermore, EPA has determined that a reasonable further progress (RFP) plan is not required because Pennsylvania projected that attainment of the 1997 PM<sub>2.5</sub> NAAQS occurred in the Philadelphia Area by the attainment date of April 2010. This action is being taken in accordance with the Clean Air Act (CAA) and the Clean Air Fine Particulate Implementation Rule (PM<sub>2.5</sub> Implementation Rule) published on April 25, 2007.

**DATES:** This final rule is effective on September 27, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2010-0391. All documents in the docket are listed in the [www.regulations.gov](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 [www.regulations.gov](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 Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

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

**SUPPLEMENTARY INFORMATION:**

## I. Background

On November 2, 2011 (76 FR 67640), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of the Pennsylvania 1997 annual PM<sub>2.5</sub> NAAQS attainment plan for the Philadelphia Area.

On November 27, 2009 (74 FR 62251), EPA published findings of failure to submit a SIP revision that demonstrates attainment of the 1997 PM<sub>2.5</sub> NAAQS for the Philadelphia Area. On April 12, 2010, the Commonwealth of Pennsylvania through the Department of Environmental Protection (PADEP) submitted a formal SIP revision and on June 19, 2010, EPA determined that this SIP revision met the requirements for completeness found in section 110(k)(1) of the CAA. On May 16, 2012 (77 FR 28782), EPA published a clean data determination and determination of attainment of the 1997 annual PM<sub>2.5</sub> NAAQS by the attainment date of April 5, 2010.

On May 12, 2005 (76 FR 70093), EPA published the Clean Air Interstate Rule (CAIR) that addresses the interstate transport requirements of the CAA with respect to the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS. As originally promulgated, CAIR required significant reductions in emissions of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) to limit the interstate transport of these pollutants. In 2008, however, the DC Circuit Court of Appeals ("the Court") remanded CAIR back to EPA. *See North Carolina v. EPA*, 550 F.3d 1176. The Court found CAIR to be inconsistent with the requirements of the CAA, *North Carolina v. EPA*, 531 F.3d 896 (*D.C. Cir. 2008*), but ultimately remanded the rule to EPA without vacatur because it found that "allowing CAIR to remain in effect until it is replaced by a rule consistent with [the Court's] opinion would at least temporarily preserve the environmental values covered by CAIR." *See North Carolina v. EPA*, 550 F.3d at 1178. CAIR thus remained in place following the remand, and was in place and enforceable through the April 5, 2010 attainment date. In response to the Court's decision, EPA has issued a new rule to address interstate transport of NO<sub>x</sub> and SO<sub>2</sub> in the Eastern United States (i.e., the Transport Rule, also known as the Cross-State Air Pollution Rule). *See* 76 FR 48208, August 8, 2011. In the Transport Rule, EPA finalized regulatory changes to sunset (i.e., discontinue) CAIR and the CAIR Federal Implementation Plans (FIPs) for control