

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 52

[EPA-R05-OAR-2014-0206; FRL-9908-93-Region 5]

Approval and Promulgation of Implementation Plans; Wisconsin; Nitrogen Oxide Combustion Turbine Alternative Control Requirements for the Milwaukee-Racine Former Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On February 24, 2014, the Wisconsin Department of Natural Resources (WDNR) submitted revisions to its nitrogen oxide (NO_x) combustion turbine rule for the Milwaukee-Racine former nonattainment area. This revision is contained in “2013 Wisconsin Act 91—Senate Bill 371” which allows alternative NO_x emission requirements for simple cycle combustion turbines that undergo a modification on or after February 1, 2001, if dry low NO_x combustion is not technically or economically feasible. This revision is approvable because it provides for alternative NO_x requirements subject to Environmental Protection Agency (EPA) approval on a case-by-case basis and therefore satisfies the reasonably available control technology (RACT) requirements of the Clean Air Act (CAA).

DATES: This direct final rule will be effective June 30, 2014, unless EPA receives adverse comments by May 30, 2014. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2014-0206, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.

2. *Email*: aburano.douglas@epa.gov.

3. *Fax*: (312) 408-2279.

4. *Mail*: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2014-0206. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at

(312) 886-6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Steven Rosenthal, Environmental Engineer, Attainment Planning & Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6052, rosenthal.steven@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. What is the background for this action?
- II. What are Wisconsin's NO_x rule revisions and what is EPA's analysis of the revisions?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

I. What is the background for this action?

The WDNR established a stationary source NO_x control program in 2000 to meet rate-of-progress (ROP) requirements that are applicable to the Milwaukee-Racine former nonattainment area under the 1990 1-hr ozone national ambient air quality standard (NAAQS). The entire NO_x control program consists of emission limits for new sources, existing sources, and existing sources that undergo a major modification. These NO_x control requirements are set forth in chapter NR 428, Wisconsin Administrative Code (NR 428). EPA approved this NO_x control program as part of Wisconsin's ozone State implementation plan (SIP) on November 13, 2001, 66 FR 56931. Also, EPA approved RACT requirements, set forth in NR 428.22(1)(g)1.a and b., on March 24, 2010, 75 FR 14116.

The Milwaukee-Racine former nonattainment area was designated attainment for the 1997 8-hr ozone NAAQS on February 9, 2012, 77 FR 6739. As part of the designation to attainment, a maintenance plan was required that showed daily NO_x emissions will not exceed levels consistent with attainment. The NR 428 ROP and RACT requirements, among other requirements, are part of this maintenance plan.

Under the current SIP approved NR 428 NO_x control program, existing simple cycle combustion turbines larger than 84 megawatts (MW) that undergo a major modification after February 2001 must meet the emission limitations set forth in s. NR 428.04(2)(g)1.a. and 2.a. This provision sets NO_x emission limits of 12 or 25 parts per million dry volume (ppmdv) at 15% oxygen (O₂), on a 30-

day rolling basis, when firing natural gas or distillate oil, respectively.

II. What are Wisconsin's NO_x rule revisions and what is EPA's analysis of the revisions?

The WDNR originally set the NO_x emission limitations for combustion turbines in NR 428.04(2)(g)1.a. and 2.a. based on the assumption that dry low NO_x (DLN) combustion technology was both feasible and available for new and modified combustion turbines. As previously stated, the emission limitations in NR 428.04(2)(g)1.a. and 2.a. apply to simple cycle combustion turbines that are larger than 84 MW and undergo a major modification. There are only four existing combustion turbines in the Milwaukee-Racine former nonattainment area that may meet these criteria. These combustion turbines are the model 11N turbines that were manufactured by ASEA Brown-Boveri (ABB) and operated by We Energies at its Paris generating facility.

In 2008, the WDNR conducted a best available control technology (BACT) assessment for a set of ABB 11N

combustion turbines operated by We Energies at its Concord facility. This BACT analysis is applicable to the NR 428 and alternative emission requirements as it applies to the same model combustion turbine. In performing this top-down BACT control analysis, selective catalytic reduction (SCR) was the most effective control technology considered. However, the WDNR determined that SCR was not cost-effective for BACT as the cost would likely exceed 8,236 dollars per ton of controlled NO_x. The analysis also noted that the cost would likely be even higher due to intermittent operating profiles and high flue gas temperatures associated with simple cycle combustion turbines. After excluding SCR, the analysis showed that the next best available technology is DLN combustion technology. In this case, the WDNR determined that DLN was not commercially available for the ABB 11N simple cycle combustion turbines. After SCR and DLN, the Concord BACT analysis indicates that the next best technology for the 11N ABB combustion turbines is water injection. Therefore

water injection was determined by the WDNR to be BACT for the Concord simple cycle combustion turbines. Thus, the best control technology available that is consistent with the intent of NR 428 in meeting ROP and RACT requirements is water injection for those simple cycle combustion turbines for which DLN is not available.

The Wisconsin Legislature enacted Wisconsin statute s. 285.27 (3m) on December 13, 2013 to establish different emission requirements for simple cycle combustion turbines that are modified and that do not have the necessary DLN combustion control technology available. Under the proposed requirement, the affected combustion turbines must operate water injection and meet NO_x emission limits of 25 or 65 ppmvd at 15% O₂, on a 30-day rolling basis, when firing natural gas or distillate oil, respectively. The emission limitations originally applicable under NR 428 for modified combustion turbines and the alternative requirements enacted under s. 285.27 (3m), Wis. Stats., are compared in Table 1.

TABLE 1—NO_x EMISSION REQUIREMENTS FOR SIMPLE CYCLE COMBUSTION TURBINE >84 MW THAT UNDERGO A MAJOR MODIFICATION

	NR 428 Emission limits	s. 285.27 (3m) Wis. Stats. alternative requirements
Emission Limitations: ¹		
Natural Gas	12	25.
Distillate Oil	25	65.
Technology Requirement	None Specified	Operation of Water Injection.

¹ Emission limitations in parts per million dry volume @ 15% O₂ on a 30-day rolling basis.

In order to be subject to the alternative requirements under s. 285.27 (3m), Wis. Stats., the owner/operator of the combustion turbine must satisfactorily demonstrate that equipping the turbine with a DLN combustion system is not technologically or economically feasible or that a DLN combustion system is not commercially available from the manufacturer of the combustion turbine and the owner/operator must obtain a written confirmation of this demonstration from EPA.

Based on the use of water injection NO_x control technology, s. 285.27 (3m), Wis. Stats. sets forth emission limitations of 25 or 65 ppmvd at 15% O₂, on a 30-day rolling basis, when

firing natural gas or distillate oil, respectively. These emissions limitations are appropriate for two reasons. First, these emission limits are consistent with the Concord combustion turbines BACT emission limits. Second, these are the same emission limitations for using water injection in meeting RACT requirements under the NR 428 control program. These RACT requirements are set forth in NR 428.22(1)(g)1.a. and b., Wis. Adm. Code, and were approved by the WDNR and EPA on March 24, 2010, 75 FR 14116.

The alternative emission requirements established in s. 285.27 (3m), Wis. Stats., will not increase allowable NO_x emission rates above current levels for the affected combustion turbines. This

determination is based on looking at the ROP and RACT emission limitations for simple cycle combustion turbines under the NR 428 NO_x control program. As shown in Table 2, the alternative emission limits in s. 285.27 (3m), Wis. Stats. are significantly more stringent than the ROP emission limitations and are equivalent to the applicable NO_x RACT emission limitations. The combustion turbines in question at the Paris facility have been subject to the NO_x RACT emission limitations since May 2009. Therefore, as shown in Table 2, the alternative emission limitations do not relax current allowable emission requirements.

TABLE 2—COMPARISON OF EXISTING COMBUSTION TURBINE AND ALTERNATIVE NO_X EMISSION LIMITS

	Emission limitations @ 15% O ₂ on a 30-day rolling basis		
	Effective 2001 NR 428 ROP Limits ¹	Effective 2009 NR 428 RACT Limits ²	s. 285.27 (3m) Wis. Stats. Alternative Limits
Natural Gas	75	25	25
Distillate Oil	110	65	65

¹ ROP emission limitations for existing simple cycle combustion turbines larger than 85 MW are set forth in NR 428.05(3)(d)1. and 2., Wis. Adm. Code.

² RACT emission limitations for existing simple cycle combustion turbines larger than 85 MW are set forth in NR 428.22(1)(g)1.a. and b., Wis. Adm. Code.

In conclusion, the WDNR established more stringent NO_X emission limits for simple cycle combustion turbines in the Milwaukee-Racine former nonattainment area that undergo a major modification than for other existing simple cycle combustion turbines, but subsequently determined that these more stringent limits are not feasible for the four existing combustion turbines to which these limits will likely apply. The Wisconsin legislature adopted s. 285.27 (3m), which became effective on December 15, 2013, to allow these units to meet the existing RACT limits instead of the more stringent limits, if EPA agrees in writing that equipping these turbines with a DLN combustion system is not technologically or that economically feasible or a DLN combustion system is not commercially available from the manufacturer of the combustion turbine.

III. What action is EPA taking?

For the reasons stated above, EPA is approving Section 1. 285.27(3m), into Wisconsin's NO_X SIP.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective June 30, 2014 without further notice unless we receive relevant adverse written comments by May 30, 2014. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph,

or section of this rule and if that provision is severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective June 30, 2014.

IV. Statutory and Executive Order Reviews

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 30, 2014. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements.

Dated: March 20, 2014.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

- 2. Section 52.2570 is amended by adding paragraph (c)(131) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(131) On February 24, 2014, the Wisconsin Department of Natural Resources submitted revisions to its nitrogen oxide (NO_x) combustion turbine rule for the Milwaukee-Racine former nonattainment area. This revision is contained in "2013 Wisconsin Act 91—Senate Bill 371" which allows alternative NO_x emission requirements for simple cycle combustion turbines, that undergo a modification on or after February 1, 2001, if dry low NO_x combustion is not technically or economically feasible. This revision is approvable because it provides for alternative NO_x requirements subject to EPA approval on a case-by-case basis and therefore satisfies the reasonably available control technology (RACT) requirements of the Clean Air Act (Act).

(i) *Incorporation by reference.*

Wisconsin statute, Section 285.27 (3m), Exemption from Standards for Certain Combustion Turbines, as revised by 2013 Wisconsin Act 91 enacted December 13, 2013. (A copy of 2013

Wisconsin Act 91 is attached to Section 285.27(3m) to verify the enactment date.)

[FR Doc. 2014-09724 Filed 4-29-14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2012-0002; FRL-9910-06-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is reissuing its final limited approval of the Pennsylvania State Implementation Plan (SIP) to implement the regional haze program for the first planning period through 2018. EPA originally finalized a limited approval of the Pennsylvania regional haze SIP on July 13, 2012. In response to a petition for review of that final action in the United States Court of Appeals for the Third Circuit, EPA successfully moved for a voluntary remand, without vacatur, to more adequately respond to certain public comments. EPA is providing new responses to those comments in this rulemaking notice.

DATES: This final rule is effective on May 30, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2012-0002. All documents in the docket are listed in the 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 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 Commonwealth's 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:

Asrah Khadr, U.S. EPA, Region 3, (215) 814-2071, or by email at kadr.asrah@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us," and "our" refer to EPA.

Table of Contents

- I. Background
- II. Public Comments and EPA Responses
- III. Summary of Final Action
- IV. Statutory and Executive Order Reviews

I. Background

On January 26, 2012, EPA proposed a limited approval of the Pennsylvania regional haze SIP as meeting most of the applicable requirements of sections 169A and 169B of the Clean Air Act (CAA) and EPA's implementing regulations at 40 CFR 51.308–309 (Regional Haze Rule) and 40 CFR 51, appendix Y (BART Guidelines). 77 FR 3984. In that same action, EPA proposed to approve the Pennsylvania regional haze SIP as meeting the infrastructure requirements of section 110(a)(2) of the CAA relating to visibility protection for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the 1997 and 2006 fine particulate matter (PM_{2.5}) NAAQS. EPA received several adverse comments on its proposed limited approval, including comments from Earthjustice on behalf of Sierra Club, the National Parks Conservation Association, and the Clean Air Council.

In a separate but related action, EPA had previously proposed a limited disapproval of the Pennsylvania regional haze SIP for relying on the Clean Air Interstate Rule (CAIR)¹ to satisfy the best available retrofit technology (BART) requirement for emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) from Pennsylvania's BART-eligible electric generating units (EGUs). 76 FR 82219. In that same action, EPA proposed a Federal Implementation Plan (FIP) that replaced Pennsylvania's reliance on CAIR with reliance on the Cross-State Air Pollution Rule (CSAPR).²

¹ CAIR required certain states, including Pennsylvania, to reduce emissions of SO₂ and NO_x that significantly contribute to downwind nonattainment of the 1997 NAAQS for ozone and PM_{2.5}. 70 FR 25162 (May 12, 2005).

² EPA promulgated CSAPR (76 FR 48208, August 8, 2011) as a replacement to CAIR in response to the United States Court of Appeals for the District of Columbia Circuit's decision in *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008).