

**§ 218.16 Judicial proceedings.**

Any filing for Federal judicial review of a decision covered by this subpart is premature and inappropriate unless the plaintiff has exhausted the administrative review process set forth in this part (see 7 U.S.C. 6912(e) and 16 U.S.C. 6515(c)).

**§ 218.17 Severability.**

(a) **Severability.** The sections of this part are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is the agency's intention that the validity of the remainder of those parts will not be affected, with the remaining sections and all applications thereof to continue in effect.

**Courtney Stevens,**

*Acting Deputy Under Secretary, Natural Resources and Environment.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R03-OAR-2025-2831; FRL-13067-01-R3]

**Air Plan Approval; Pennsylvania; Proposed Revision to Philadelphia Gas Works, Richmond Plant Reasonably Available Control Technology Plan Under the 1997 8-Hour Ozone National Ambient Air Quality Standards**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA or “the Agency”) is proposing to approve a State implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. In this rulemaking, the EPA proposes to approve a revision to the reasonably available control technology (RACT) Plan for the Philadelphia Gas Works, Richmond Plant (PGW Richmond), a major source of nitrogen oxides (NO<sub>x</sub>). The proposed revision would remove a condition from the RACT Plan Approval, previously incorporated into Pennsylvania’s SIP on October 7, 2016. The proposed revision results in no change of emission allowances under RACT. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before March 9, 2026.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2025-2831 at [www.regulations.gov](http://www.regulations.gov), or via email to [talley.david@epa.gov](mailto:talley.david@epa.gov). For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit [www.epa.gov/dockets/commenting-epa-dockets](http://www.epa.gov/dockets/commenting-epa-dockets).

**FOR FURTHER INFORMATION CONTACT:**

Katharine Payne, Permits Branch (3AP10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2183. Ms. Katharine Payne can also be reached via electronic mail at [payne.katharine@epa.gov](mailto:payne.katharine@epa.gov).

**SUPPLEMENTARY INFORMATION:** On September 7, 2023, the Pennsylvania Department of Environmental Protection (PADEP) submitted on behalf of the City of Philadelphia, Department of Public Health, Air Management Services (AMS) a proposed revision to the Pennsylvania SIP to satisfy the RACT requirements for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) for Philadelphia.

**I. Background**

*A. General*

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM) for attainment of the NAAQS, including emissions reductions from existing sources through adoption of RACT. Sections 182(b)(2) and (f)(1) of the CAA require

States with moderate, or worse, ozone nonattainment areas to implement RACT controls on each category of stationary sources covered by a control technique guideline (CTG) document issued by the EPA and on all major stationary sources of volatile organic compounds (VOC) and NO<sub>x</sub> emissions located in the nonattainment area.<sup>1</sup>

On July 18, 1997 (62 FR 38856), the EPA revised the NAAQS for ground-level ozone, setting the standard at 0.08 parts per million (ppm) averaged over an 8-hour time frame. On April 15, 2004, the EPA issued final designations for the 1997 8-hour ozone NAAQS, which included Philadelphia County as part of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE moderate ozone nonattainment area. See 69 FR 23858, at 23931 (April 30, 2004). The nonattainment designation for Philadelphia under the 1997 8-hour ozone NAAQS, and its location in the ozone transport region (OTR), triggered Pennsylvania’s obligation to submit a SIP revision addressing how it meets the CAA RACT requirements in Philadelphia under this standard.

On March 27, 2008 (73 FR 16436), the EPA significantly strengthened the 8-hour ozone NAAQS by revising the primary 8-hour ozone standard to a level of 0.075 ppm. On March 6, 2015 (80 FR 12264), the EPA published a final rule for the implementation of the 2008 8-hour ozone NAAQS, while at the same time revoking the 1997 8-hour ozone NAAQS, effective on April 6, 2015.<sup>2</sup> The EPA’s previous approach, the 2008 8-hour ozone Implementation Rule established anti-backsliding principles to transition from implementing the revoked 1997 8-hour ozone NAAQS to the 2008 8-hour ozone NAAQS, the EPA clarified that RACT under the 1997 8-hour ozone NAAQS, among other requirements, continues to apply to a nonattainment area, in accordance with its designation and classification for the 1997 8-hour ozone NAAQS at the time of the revocation of the standard. Therefore, 1997 8-hour ozone RACT continues to be an applicable requirement for Philadelphia.

*B. EPA’s Requirements Under the 1997 8-Hour Ozone RACT*

On November 29, 2005 (70 FR 71612), the EPA published the Phase 2 Ozone

<sup>1</sup> A major source in an ozone nonattainment area is defined as any stationary source that emits or has the potential to emit NO<sub>x</sub> and VOC emissions above a certain applicability threshold that is based on the classification of the ozone nonattainment area. See “major stationary source” in 40 CFR 51.165.

<sup>2</sup> “Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements” Final Rule, (80 FR 12264, March 6, 2015).

Implementation Rule to address nonattainment SIP requirements for the 1997 8-hour ozone NAAQS.<sup>3</sup> This rule addressed, among other things, control and planning obligations as they apply to nonattainment areas under the 1997 8-hour ozone NAAQS, including RACT and RACM. The EPA specifically required that States meet the RACT requirements, either through a certification that previously adopted RACT controls in their SIP revisions approved by the EPA under the 1-hour ozone NAAQS continue to represent adequate RACT control levels for 1997 8-hour ozone NAAQS attainment purposes, or through the adoption of new or more stringent regulations that represent RACT control levels.<sup>4</sup>

## II. Summary of Proposed SIP Revision

On October 7, 2016 (81 FR 69687), the EPA took final action to approve SIP revisions that were submitted by PADEP on behalf of AMS in order to satisfy RACT requirements of the 1997 ozone NAAQS applicable to sources located in Philadelphia. Included in that approval were source-specific requirements applicable to three 295 horsepower Caterpillar engines located at PGW Richmond. Specifically, Condition 1(B)(2) of AMS' July 9, 2015 RACT Plan Approval required that the timing of the engines be set and maintained at four degrees retarded relative to the standard timing.<sup>5</sup>

On September 7, 2023, PADEP submitted to the EPA for approval, a SIP package that contains a revision to Pennsylvania's SIP to amend the source-specific RACT requirements for PGW Richmond by removing condition 1(B)(2). In this submittal, PADEP indicated that Condition 1(B)(2) was mistakenly included in the RACT Plan Approval for PGW Richmond. 25 Pennsylvania Code (Pa. Code) 129.93(c) contains a list of source types that are required to meet RACT through the ". . . installation, maintenance and operation of the source in accordance with manufacturers specifications." Condition 1(B)(2) appears to have been included in order to constrain the engines in such a way that they would be subject to the presumptive RACT requirements of 25 Pa. Code 129.93(c). However, the engines as installed did

<sup>3</sup> "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2," (70 FR 71612, November 29, 2005).

<sup>4</sup> For more information, see the preamble of the final Phase 2 Ozone Implementation Rule for a discussion of the EPA's interpretation of the CAA RACT requirements for the 1997 8-hour ozone NAAQS, in 70 FR 71652 through 71659 (November 29, 2005).

<sup>5</sup> PGW RACT Plan Approval, 1/9/2015.

not have timing as described in 25 Pa. Code 129.93(c)(3). Modifying the timing to 4 degrees retarded relative to standard timing would damage the engines and would be contrary to the presumptive RACT requirement the condition was intended to meet (*i.e.*, installation in accordance with manufacturers specifications). Furthermore, based on the permitted use of the three Caterpillar Engines 135GU 295 horsepower Units at PGW Richmond, AMS determined that the three emission units meet the criteria of 25 Pa. Code 129.93(c)(5), and are therefore still subject to the presumptive RACT requirement to install, maintain and operate the engines in accordance with manufacturer's specifications.

Removing Condition 1(B)(2) from the PGW Richmond RACT Plan Approval results in no change of emission allowances under RACT because the RACT requirement of 25 Pa. Code section 129.93(c) is the same for source categories listed in 25 Pa. Code section 129.93(c)(3) and (c)(5). Updating this source type will remove the source as a case-by-case RACT requirement from the Pennsylvania SIP.

## III. Proposed Action

The EPA's review of the materials indicate that Condition 1(B)(2) should be removed from the Philadelphia RACT Plan Approval for PGW Richmond that was previously incorporated into the Pennsylvania SIP. The EPA proposes to approve the Pennsylvania SIP revision, which was submitted on September 7, 2023. The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## IV. Incorporation by Reference

In this document, the EPA proposes to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the revised RACT Plan Approval for PGW Richmond, as described in section II of this document. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and

recordkeeping requirements, Volatile organic compounds.

**Amy Van Blarcom-Lackey,**

*Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 268

[EPA-HQ-OLEM-2025-2038; FRL-8504-02-OLEM]

RIN 2050-AH21

#### US Ecology Nevada, Inc. High Mercury Subcategory Wastes Land Disposal Restrictions Variance

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to grant, with conditions, US Ecology Nevada Inc.'s (USE) petition for a site-specific treatability variance from the Resource Conservation and Recovery Act (RCRA) Land Disposal Restrictions (LDR) treatment standards. USE's petition is for treatment and disposal of elemental mercury waste generated from retorting high mercury waste in accordance with the LDR technology-based standard of RMERC. The EPA believes that the petition demonstrates that the LDR standard for placing elemental mercury generated from RMERC back into commerce for reuse is inappropriate and the treatment variance is sufficient to minimize threats to human health and the environment posed by land disposal of the waste. If the variance is granted, the existing LDR treatment standard of RMERC will continue to apply to high mercury hazardous wastes, but the elemental mercury generated from this process will be treated and land disposed subject to specified conditions at both Bethlehem Apparatus in Hellertown, Pennsylvania and USE's Beatty, Nevada, Subtitle C treatment, storage, and disposal (TSD) facility where treated mercury wastes will be disposed in a designated monofill.

**DATES:** Comments must be received on or before March 9, 2026.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-HQ-OLEM-2025-2038, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Land and Emergency Management Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m. Eastern time, Monday–Friday (except Federal Holidays).

**Instructions:** All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Bethany Russell, Waste Characterization Branch, Waste Identification, Notice, and Generators Division, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–2233; email address: [russell.bethany@epa.gov](mailto:russell.bethany@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation

###### A. Docket

EPA has established a docket for this action under Docket ID No. EPA-HQ-OLEM-2025-2038. All documents in the docket are listed in the <https://www.regulations.gov> index. Publicly available docket materials are available either electronically at <https://www.regulations.gov> or in hard copy at the EPA Docket Center. The Public Reading Room for the docket is open from 8:30 a.m. to 4:30 p.m. Eastern, Monday through Friday, excluding holidays. The telephone number for the Public Reading Room and Docket Center is (202) 566–1744.

###### B. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2025-2038, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

###### C. Submitting CBI

Do not submit information that you consider to be CBI electronically through <https://www.regulations.gov> or email. Send or deliver information identified as CBI to only the following address: ORCR Document Control Officer, Mail Code 5305-P, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; Attn: Docket ID No. EPA-HQ-OLEM-2025-2038.

Clearly mark the part or all the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a CD-ROM or disk that does not contain CBI, mark the outside of the disk or CD-ROM clearly that it does not contain CBI. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

##### II. General Information

###### A. Does this document apply to me?

This action applies only to elemental mercury treated at Bethlehem Apparatus Hellertown, Pennsylvania and land disposed at USE's facility located at Highway 95, 11 Miles South of Beatty, Beatty, Nevada 98003.

###### B. What action is the Agency taking?

On September 22, 2025, the EPA received a complete petition from USE requesting a variance from the existing