

3. *Temporary Certificate of Documentation.* For various reasons, a permanent Certificate of Documentation cannot be issued immediately upon application for documentation or re-documentation. This prevents vessel owners from operating their vessels during processing of applications. The delays in processing are due to the need to first get a Satisfaction of Mortgage or a Mortgage Consent, to the seasonal fluctuations in the volume of applications received, and to the limited amount of equipment and staff available to process applications. To enable owners to operate their vessels during the application process, a temporary certificate of documentation could be issued. This would not only reduce down-time for vessels but also assist law enforcement and relieve States from having to issue temporary motorboat registrations. What information should the certificate contain? For how long should it be valid? Who should be authorized to issue it? How can its use be controlled? How much should the issuing person charge?

Procedural

The meeting will be in the form of an informal workshop open to the public. It is intended to bring together persons knowledgeable about the three issues addressed in this notice to assist the Coast Guard in answering the questions raised.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Dennis M. Nelson as soon as possible.

Dated: August 13, 1997.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97-21811 Filed 8-15-97; 8:45am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 058-4039; FRL-5876-5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Proposed Disapproval of the NO_x RACT Determination for Pennsylvania Power Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania's Department of Environmental Protection (PADEP). This revision withdraws EPA's previously proposed approval of the nitrogen oxide (NO_x) reasonably available control technology (RACT) determination submitted by PADEP for Pennsylvania Power Company—New Castle plant (PPNC), located in Lawrence County, Pennsylvania and, instead, proposes to disapprove the SIP revision pertaining to this facility. The intended effect of this action is to propose disapproval of the NO_x RACT determination submitted by PADEP for PPNC.

DATES: Comments must be received on or before September 17, 1997.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 566-2180, at the EPA Region III office above or via e-mail at stahl.cynthia@epamail.epa.gov. While information may be requested via e-mail, all comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 1995, PADEP submitted a revision to the Pennsylvania SIP requesting EPA approve RACT determinations it had made for several facilities, including PPNC. Only the RACT determination submitted for PPNC is the subject of this rulemaking action. The revision consists of an operating permit, OP 37-023, for PPNC. The other plan approvals and operating permits submitted on April 19, 1995 are the subject of other rulemaking actions.

On April 9, 1996, EPA published a direct final rule in the **Federal Register** (61 FR 15709). This document stated that EPA was approving, without prior proposal, 21 source-specific RACT determinations made and submitted by PADEP for facilities located in

Pennsylvania. Included among these 21 source-specific RACT determinations was one for PPNC. The document also stated that unless adverse comments were received within 30 days of publication, EPA's RACT determinations for these 21 facilities would become final. The accompanying proposed rulemaking, which appears with every direct final rule, was also published on April 9, 1996 (61 FR 15744).

On May 8, 1996, New York Department of Environmental Conservation submitted a letter stating that it intended to adversely comment on EPA's action to approve PADEP's RACT determination for PPNC. Therefore, on June 11, 1996, EPA published a document withdrawing the final rule approving PADEP's RACT determination for PPNC, among other facilities (61 FR 29483). At the request of the commenters, EPA also extended the comment period twice; the last time until August 2, 1996 (61 FR 29483 and 61 FR 37030).

On June 28, 1996, NYDEC submitted comments to EPA pertaining to PADEP's RACT determination for PPNC. On July 15, 1996 and August 1, 1996, PPNC submitted comments to EPA addressing issues raised by NYDEC. On August 2, 1996, Pennsylvania DEP submitted comments to EPA stating that EPA should proceed with final approval of the PPNC RACT determination. The comments received by EPA are summarized below and, in more detail, in the technical support document (TSD) prepared by EPA in support of this proposed action to disapprove PADEP's SIP revision for PPNC submitted on April 19, 1995. Copies of the TSD are available, upon request, from the EPA Region III office listed in the ADDRESSES section of this document.

This action proposing to disapprove PADEP's April 19, 1995 SIP revision request for PPNC being taken under section 110 of the Clean Air Act.

Comments Received on EPA's April 9, 1996 Proposal to Approve PADEP's RACT Determination for PPNC

NYDEC Comments:

NYDEC states in its June 28, 1996 comment letter that it disagrees with EPA's proposal to approve PADEP's RACT determination for PPNC. NYDEC states that it believes that the control efficiencies for add-on emission controls are understated in the PADEP technical support document, the costs for add-on controls are overstated, the 15-year cost-recovery period used in the PPNC RACT analysis is too short, and that NO_x add-on control technology is technically and

economically feasible for the boilers at PPNC. In addition, NYDEC states that another indication that the economic analysis is flawed is the inconsistency in final NO_x emission limits depending on how the emission limits are calculated. NYDEC further states that PADEP's acceptance of PPNC's use of a lower NO_x emission rate (and non-enforceable emission rate) to perform the cost analysis to show that any emission controls are infeasible, but a higher NO_x emission rate (i.e. the proposed RACT emission limits) to determine total NO_x emissions allowed, is inconsistent with its (NYDEC's) State Implementation Plan (SIP) experience in establishing enforceable emission limits and determining the cost-effectiveness of controls for RACT. NYDEC's comments included a table of calculations showing the total NO_x emissions using the proposed RACT (SIP) emission limits and the calculated emission limits using the emission caps proposed as part of the PPNC RACT determination. NYDEC states that PPNC appears to have used lower emission limits to evaluate the economic feasibility of control options but did not agree to make those lower emission limits enforceable as part of the RACT determination. NYDEC states that the PADEP October 14, 1996 memorandum seriously underestimates the effectiveness of low NO_x burner (LNB) controls. PADEP estimates that emission reductions of approximately 30% are expected for the operation of LNB while NYDEC believes that emission reductions on the order of 40–50% are more realistic. NYDEC states that the Title IV Phase I limits (under the acid rain program) estimate that reductions of 40–50% are achievable and at costs well below those estimated in the PPNC RACT proposal submitted to PADEP.

Pennsylvania Power—New Castle Comments:

On July 15, 1996 and August 1, 1996, the firm of Fried, Frank, Harris, Shriver & Jacobsen submitted comments to EPA on behalf of their client, Pennsylvania Power Company. In summary, the commenter states that the Company pursued a Company-wide NO_x emission reduction strategy to achieve 55% NO_x reduction consistent with the goals of the Ozone Transport Commission's (OTC) NO_x Memorandum of Understanding (NO_x MOU). The commenter also states that the NO_x emission caps agreed to by PPNC for Units 3–5 represent a 55% NO_x emission reduction from potential emission levels. The commenter further states that the New Castle plant's emissions are small relative to the rest of the Pennsylvania Power System and

that PPNC's Units 3–5 represent 12% of the total Pennsylvania Power System NO_x emissions. The commenter, on behalf of the Company, states that its Mansfield plant has installed low-NO_x burners and, that these, in combination with lowered emissions from the shut down of PPNC's units 1 and 2, result in Pennsylvania Power achieving a 51% potential emission reduction. PPNC states that determination made by PADEP that any control technology is technically or economically infeasible, was based on existing Pennsylvania regulations. The commenter asserts that the determination was made by relying upon procedures approved by EPA for making NO_x RACT determinations and by relying on emission caps for units 3, 4, and 5 to restrict capacity and emissions. These emission caps were factored into the RACT determination, resulting in unreasonable costs for add-on controls. These procedures were referenced as: 25 Pa Code § 129.91 and "PADER, Guidance Document on Reasonably Available Control Technology for Sources of NO_x Emissions (March 10, 1994)." The commenter states that the RACT determination for PPNC submitted by PADEP was supported by accompanying documentation, which included a description of the control technology options, costs, and control effectiveness. The commenter cites the PA NO_x RACT guidance document and EPA's March 16, 1994 memorandum as part of its evidence that the technically feasible control options were properly deemed economically infeasible. The commenter included as part of its comments, additional vendor information, supplied to support the RACT determination, that add-on controls are economically infeasible for the PPNC units. The commenter states that the vendor has extensive experience in the design and installation of low NO_x burners including those at Ohio Edison/Penn Power's Edgewater, Sammis, and Mansfield plants. The commenter concludes that the selection of no controls as RACT for the PPNC boilers is a legitimate RACT determination using the PADEP and EPA policies and guidance. The Company believes that substituting NYDEC's analysis for the one done by PADEP, or substituting data submitted by NYDEC for that originally considered by PADEP, would be a violation of the principles of administrative law.

Pennsylvania DEP Comments:

On August 2, 1996, Pennsylvania DEP submitted a short statement that it sees no justifiable reason to change its RACT determination and urged EPA to approve the PPNC RACT determination

as it was submitted. In addition to PADEP's August 2, 1996 letter, EPA received, via fax on July 29, 1996, a document showing how PADEP calculated the NO_x RACT emission limitation for PPNC unit 3 using continuous emission monitoring (CEM) data. The actual methodology is contained in the March 1996 Pennsylvania NO_x RACT Guidance Document, which has not been submitted or approved as part of the Pennsylvania SIP. The faxed material shows the data used by PADEP to calculate the PPNC NO_x emission limits. Briefly, the PADEP formula used to calculate a NO_x emission limit specifies the use of the mean 30-day NO_x CEM average plus 2.78 standard deviations. Using this formula, PADEP calculated the NO_x emission limit for unit 3 (using first- and second-quarter 1995 CEM data) to be 0.531 + 2.78(0.0929) = 0.79 lbs/mmBTU. The NO_x emission limits for units 4 and 5 were calculated similarly.

Relevant Information

A survey of other boilers similar to PPNC's (dry-bottom, wall-fired, coal burning) show that in the ozone transport region (OTR), which includes the states in the northeast U.S., uncontrolled emission levels average 0.54 lbs NO_x/mmBTU. Controlled emission levels for this same group of boilers can meet, on average, 0.47 lbs NO_x/mmBTU. The add-on controls generally used for these boilers are low NO_x burners. Across the country, which would include areas that are designated attainment for ozone and are, therefore, not required to implement NO_x RACT, uncontrolled emission levels for boilers similar to PPNC average 0.72 lbs NO_x/mmBTU. Controlled emissions for this nationwide group of boilers average 0.47 lbs NO_x/mmBTU. In EPA Region III (consisting of the states Pennsylvania, Maryland, Delaware, Virginia, West Virginia and the District of Columbia), there are 31 boiler units that are of similar type to PPNC's boilers. Forty-five percent of these 31 boilers have low NO_x burners installed. There are 20 boiler units that are similar to PPNC's boilers in Pennsylvania; 55% of these boilers have low NO_x burners or LNB with overfired air installed as emission controls.

A review of the CEM data for PPNC shows that NO_x emissions at this facility, which does not have any NO_x add-on controls, have been between 14 and 58% lower than the RACT emission limits proposed by the Company and determined by PADEP to be RACT. No CEM data is available for units 1 and 2 since the CEM requirement did not start

until after those units were shut down. The CEM data for units 3 through 5 are available from the last quarter of 1993 through the last quarter of 1996. The CEM data is required to be reported by the Company to both PADEP and EPA.

Under the Clean Air Act's Title IV (Acid Rain) requirements, EPA conducted final rulemaking for the Phase I, Group I boilers (including dry-bottom, wall-fired units such as PPNC's) (60 FR 18751, April 13, 1995). This final rule was the result of a court ordered remand of the March 22, 1994 Phase I, Group I boilers final rulemaking (FR CITE). Both the March 22, 1994 and the April 13, 1995 rulemakings state that LNB technology is a technically feasible and cost effective option for utility boilers such as PPNC's. The April 1995 rule states that LNB costs are on the order of \$226/ton NO_x removed and proposes an emission limit of 0.5 lbs NO_x/mmBTU. The information gathered under the acid rain provisions of the Act are relevant and pertinent to the PPNC RACT determination. Other literature pertaining to utility boilers and feasibility of controls also indicate that the installation of NO_x controls is cost effective. This information is discussed in more detail in the TSD prepared for this proposal which is included in the rulemaking docket and available to the public.

Prior to PPNC's July 1994 NO_x RACT proposal to PADEP, and during the time that PPNC and PADEP were working to develop a RACT proposal for submittal to EPA, EPA proposed NO_x emission limitations under the Title IV acid rain program. EPA's acid rain proposal occurred in November 1992 and was finalized in March 1994. The March 1994 rule was later vacated and EPA reissued the final rule in December 1996. Under the acid rain program, on May 10, 1994, PPNC applied to accept federally enforceable permit conditions to limit the NO_x emissions at units 1 and 2 to no more than 0.5 lbs/mmBTU on an annual average. Units 1 and 2 were volunteered by the Company as Phase I substitution units, meaning that in exchange for the 0.5 lbs/mmBTU emission limits on those boilers, the Pennsylvania Power parent company would be allowed to have boilers elsewhere in the Company, subject to the acid rain Phase I requirements, continue to emit at higher than otherwise allowable levels. EPA approved the Company's request through a permit issued on November 28, 1994, prior to the PPNC NO_x RACT submittal date of April 19, 1995.

The currently operating units 3-5 are Phase II acid rain units and will be subject to compliance with a 0.5 lbs

NO_x/mmBTU, annual average, emission limit by the year 2000. On December 26, 1996, the Company requested early compliance with the Phase II requirements. In so doing, PPNC units 3 through 5 will be required to meet the Phase II requirements by January 1, 1997. The early election option allows sources to meet the Phase II requirements prior to the compliance date and relieves those sources from meeting the more stringent emission limit of 0.46 lbs/mmBTU until 2009. PPNC would have otherwise been required to meet this more stringent emission limitation by 2000.

EPA's Analysis

EPA has reviewed and considered all the information submitted by the commenters and has reconsidered its original decision based on those comments. The RACT determination, including the emission limits, as submitted by PADEP on April 19, 1995 and proposed for approval by EPA on April 9, 1996 (61 FR 15709) cannot be supported in light of all available information, including the additional information and comments submitted by PADEP and PPNC during the public comment period and other relevant publicly available information. Therefore, EPA is hereby withdrawing its April 9, 1996 proposed approval of PADEP RACT determination for PPNC and is proposing, instead, to disapprove PADEP's RACT determination for PPNC submitted to EPA on April 19, 1995.

EPA initially proposed to approve the emission limits determined by PADEP to be RACT because the PPNC RACT submittal, on its face, including the analysis done by PADEP (without reference to relevant information in existence but not contained in the submittal) appeared to meet the criteria for RACT determinations. EPA understood from PADEP that its analysis, as described in its technical support document for the PPNC RACT determination, was performed in accordance with proper procedures.

However, due to the submittal of adverse comments, EPA has reviewed the issues raised regarding the PPNC RACT proposal and determined that the information provided does not support PADEP's RACT determination for PPNC.

All five boilers, including units 1 and 2 that are now shut down, are dry-bottom, single-wall-fired, coal-burning boilers. Units 1 and 2 were the smallest boilers at this facility and were rated at 495 mmBTU/hr and 640 mmBTU/hr, respectively. Units 3 through 5 are rated at 1029, 1029, and 1325 mmBTU/hr, respectively. The cost infeasibility arguments for the installation of any

controls at PPNC are not supported by the body of literature and information available, particularly in light of the fact that many other dry-bottom, wall-fired, coal burning boilers have been able to install emission controls and meet lower emission limits. Fundamentally, neither PPNC nor PADEP has adequately demonstrated that the installation of emission controls is not technically or economically feasible. Details of the information pertaining to PPNC are discussed in the accompanying TSD available from the EPA Region III listed in the ADDRESSES section of this document.

Furthermore, although units 1 and 2 were shut down in 1993, the Company agreed to accept an effective, federally enforceable NO_x emission limit of 0.5 lbs/mmBTU under the acid rain program. Therefore, EPA has determined that the proposed RACT limits of 0.93 lbs NO_x/mmBTU and 0.90 lbs NO_x/mmBTU for units 1 and 2, respectively, are too high.

Additionally, PADEP has subsequently submitted a separate request to EPA to approve the early implementation of the acid rain Phase II emission limits of 0.5 lbs NO_x/mmBTU for units 3, 4 and 5. Therefore, the proposed NO_x RACT limits of 0.79 lbs/mmBTU, 0.72 lbs/mmBTU and 1.01 lbs/mmBTU are also too high. Without additional analysis and information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT. Therefore, any statements in this document regarding the acid rain requirements should not be construed as pre-determining what RACT might be for the PPNC boilers.

The CEM data for units 3 through 5 indicate that even without emission controls, the NO_x emission rates for these units are well below the proposed NO_x RACT emission limits of 0.79 lbs/mmBTU, 0.72 lbs/mmBTU and 1.01 lbs/mmBTU for units 3, 4 and 5, respectively. Please refer to the TSD for a summary of the CEM data. Therefore, EPA believes that the proposed NO_x RACT emission limits are too high and do not represent the "lowest emission rate [PPNC] is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility."¹

The public notice and comment procedures required by the Federal rulemaking process for actions taken to approve or disapprove SIP revisions,

¹ 25 Pennsylvania Code, Chapter 121, definition of RACT; December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to all Regional Administrators.

including PADEP's source-specific SIP revisions to determine RACT on a case-by-case basis for companies such as PPNC, allows interested parties to comment on whether the information, rationale, procedure and conclusions are appropriate for the subject source(s). The process is designed to allow interested parties to question the proposal by challenging EPA's rationale for its rulemaking action, including pointing out gaps in information or information that may have been overlooked in the original proposal. By its re-analysis, performed subsequent to and in consideration of the issues raised by NYDEC's comments, EPA has determined that PPNC did not follow the Pennsylvania RACT regulation or EPA's requirements when it submitted its RACT proposal to PADEP. Furthermore, EPA has determined that PADEP, in reviewing and analyzing PPNC's RACT proposal, did not determine and impose RACT in accordance with its regulation's definition and the Federal definition of RACT. EPA's reconsideration of the PPNC RACT as a result of such public comment is the kind of action supported by the law.

Both Pennsylvania and the Company indicated that they relied on the Pennsylvania's March 10, 1994 RACT guidance document in developing the PPNC RACT proposal. This RACT guidance document was not submitted by PADEP with the April 19, 1995 PPNC RACT package nor at any other time as part of the SIP revision. The Company included this document in its July 15, 1996 response to EPA's proposed rulemaking notice. In a June 26, 1997 letter to PA DEP, EPA stated that it had no record of this document being subjected to public notice and comment. Furthermore, EPA stated that the March 10, 1994 DEP RACT guidance document contained procedures and methods that EPA finds inconsistent with the definition of RACT. Consequently, following the procedures in the March 10, 1994 DEP RACT guidance document does not guarantee that the RACT proposal is approvable by EPA. EPA has determined that the PPNC RACT proposal is not supported by the information in the record. EPA's review of this material indicates the proposed RACT emission limits for PPNC submitted on April 19, 1995 are unsubstantiated and cannot be approved. EPA is soliciting public comments on the issues discussed in this document and on other relevant matters. These comments will be fully considered before taking final action. Interested parties may participate in the

Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document.

Proposed Action

EPA is withdrawing the proposed approval published on April 9, 1996 in the **Federal Register** and is, instead, proposing to disapprove the RACT determination submitted by PADEP on April 19, 1995 for the Pennsylvania Power—New Castle plant, located in Lawrence County.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This proposed action impacts one source, Pennsylvania Power's New Castle plant. Therefore, EPA certifies that this disapproval action does not have a significant impact on small entities. Furthermore, as explained in this document, the request does not meet the requirements of the Clean Air Act and EPA cannot approve the request. Therefore, EPA has no option but to propose to disapprove the submittal.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the

aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the disapproval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

The Administrator's decision to approve or disapprove the SIP revision submitted by PADEP for Pennsylvania Power's New Castle plant will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 8, 1997.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405, 410, and 414

[BPD-884-CN]

RIN 0938-AH94

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule, Other Part B Payment Policies, and Establishment of the Clinical Psychologist Fee Schedule for Calendar Year 1998; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects technical errors that appeared in the proposed rule published in the **Federal Register** on June 18, 1997 entitled "Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule, Other Part B Payment Policies, and Establishment of the Clinical Psychologist Fee Schedule for Calendar Year 1998."