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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Region 2 Docket No. NY24-2-172b, FRL-5892-5]

#### Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for Specific Sources in the State of New York

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is announcing approval of three (3) revisions to the State Implementation Plan (SIP) for ozone submitted by the State of New York. These revisions consist of source-specific reasonably available control technology (RACT) determinations for controlling oxides of nitrogen (NO<sub>x</sub>) from these sources in New York. The intended effect of this action is to approve the source-specific RACT determinations made by New York in accordance with State provisions. This action is being taken in accordance with section 110 of the Clean Air Act (the Act).

**DATES:** This rule is effective on November 24, 1997 unless adverse or critical comments are received by October 23, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** All comments should be addressed to: Ronald J. Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007-1866.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.

New York Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Ted Gardella or Rick Ruvo, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The air quality planning requirements for the reduction of NO<sub>x</sub> emissions through RACT are set out in section 182(f) of the Act. Section 182(f) requirements are described by EPA in a **Federal Register**, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," published November 25, 1992 (57 FR 55620). The November 25, 1992 **Federal Register** should be referred to for detailed information on the NO<sub>x</sub> requirements. Additional guidance memoranda which have been released subsequent to the NO<sub>x</sub> Supplement should also be referred to.

The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762, September 17, 1979).

Section 182(f) of the Act requires states within ozone nonattainment areas classified moderate or above or areas within the ozone transport region to apply the same requirements to major stationary sources of NO<sub>x</sub> "major" as defined in section 302 and section 182(c), (d), and (e) as are applied to major stationary sources of volatile organic compounds (VOCs). For more information on what constitutes a major source, see section 2 of the NO<sub>x</sub> Supplement to the General Preamble.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technique guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO<sub>x</sub> CTGs issued before enactment and EPA has not issued a CTG document for any NO<sub>x</sub> sources since enactment. States, in their RACT rules, are expected to require final installation of the actual NO<sub>x</sub> controls by May 31, 1995 from those sources for which installation by that date is practicable.

States within the Northeast ozone transport region established by section 184(a) should have revised their SIPs to include the RACT measures by November 15, 1992. Because major sources in states in an ozone transport region are generally subject to at least

the same level of control as sources in moderate ozone nonattainment areas, EPA believes that the schedule for implementing these RACT rules in the ozone transport region should be consistent with the requirements of section 182(b)(2) which requires the state to provide for implementation of the actual NO<sub>x</sub> controls as expeditiously as practicable but no later than May 31, 1995. Based on sections 182(f) and 184(a) and (b), New York is required to apply the NO<sub>x</sub> RACT requirements Statewide.

##### B. New York's NO<sub>x</sub> RACT Regulations

New York held public hearings in April 1993 on 6 NYCRR subpart 227-2, the State's NO<sub>x</sub> RACT plan entitled "Reasonably Available Control Technology For Oxides of Nitrogen (NO<sub>x</sub> RACT)—Stationary Combustion Installations." Following the public hearings and the comment period, the plan was adopted and signed on January 19, 1994. On January 20, 1994, the plan was submitted to EPA as a revision to the SIP and EPA found it to be administratively and technically complete on April 15, 1994. Proposed EPA action on the January 20, 1994 submittal is expected to be published in the **Federal Register** soon.

##### C. Case-by-Case RACT Determinations

Provisions within subpart 227-2 establish a procedure for a case-by-case determination of what represents RACT for an item of equipment or source operation. This procedure is applicable in two situations: (1) If the major NO<sub>x</sub> facility contains any source operation or item of equipment of a category not specifically regulated in subpart 227-2, or (2) if the owner or operator of a source operation or item of equipment of a category that is regulated in subpart 227-2 seeks approval of an alternative maximum allowable emission limit.

Subpart 227-2 requires the owners and/or operators of the affected facility to submit either a RACT proposal if they are not covered by specific emission limitations or a request for an alternative maximum allowable emission limit if they are covered by specific emission limitations. For each situation, the owners/operators must include a technical and economic feasibility analysis of the possible alternative control measures. RACT determinations for an alternative maximum allowable emission limit must consider alternative control strategies (i.e., system wide averaging and fuel switching) in addition to considering control technologies (e.g., low NO<sub>x</sub> burners). In either case, subpart 227-2 provides for New York to

establish emission limits based upon a RACT determination specific to the facility. The resulting alternative maximum allowable emission limit must be submitted to EPA for approval as a SIP revision.

#### D. Analysis of State Submittals

The three (3) source-specific SIP revisions that are the subject of this action were all adopted by New York at different times during 1995 and 1996 and were found by EPA to be administratively and technically complete. Each of the three SIP revisions were requests by New York for EPA approval of alternative emission limits in accordance with provisions of subpart 227-2 for stationary combustion sources. Prior to adoption, New York published their proposed RACT determinations in local newspapers and/or their *Environmental Notice Bulletin* and provided 30 days for public comment and an opportunity to request a public hearing. There were no requests for public hearings and New York reviewed and responded to all comments made. New York determined that the alternative maximum allowable emission limits proposed by the owners conform with the applicable provisions of Subpart 227-2. New York has issued to each owner a permit to construct and/or certificate to operate incorporating approved permit conditions which are fully enforceable by the State and which contain conditions consistent with subpart 227-2. These permitted documents are identified in the "Incorporation by reference" section at the end of this rulemaking.

EPA has determined that the NO<sub>x</sub> emission limits identified in New York's approved permits to construct and/or certificates to operate represent RACT for each source identified in this action. The permit conditions include emission limits, work practice standards, testing, monitoring, and recordkeeping/reporting requirements. These permit conditions are consistent with the NO<sub>x</sub> RACT requirements specified in subpart 227-2 and conform to EPA's NO<sub>x</sub> RACT guidance. Therefore, EPA is approving the three source-specific SIP revisions submitted by New York dated February 22, 1996, June 21, 1996 and June 25, 1996 as identified in this **Federal Register**.

EPA's evaluation of each RACT submittal is detailed in a document dated June 19, 1997, entitled "Technical Support Document-NO<sub>x</sub> RACT Source-Specific SIP Revisions-State of New York." A copy of that document is available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this document.

The following is a summary of EPA's findings of each source-specific SIP revision where the owner or operator of a source operation or item of equipment seeks approval of a RACT emission limit different from that which is established in subpart 227-2. This rulemaking takes action only on the permitted emission limits and conditions of approval related to emissions of NO<sub>x</sub>; action is not being taken on any other pollutants which may be permitted by New York with regard to these sources.

##### 1. University of Rochester

The University of Rochester operates two oil-fired boilers in Rochester, Monroe County. Boiler # 3 is categorized as a mid-size boiler and Boiler # 5 is categorized as a large boiler. The facility's RACT analysis concluded, and New York agreed, that RACT for each boiler is the application of burner tuning with oxygen trim and limiting the annual fuel consumption to 1,000,000 gallons per boiler. The alternative NO<sub>x</sub> emission limit is 0.425 pounds NO<sub>x</sub> per million BTUs (lbs/MM BTU).

##### 2. Morton International, Incorporated

Morton International, Incorporated operates a mid-size standby gas-fired boiler at its Silver Springs facility in Wyoming County. The facility's RACT analysis concluded, and New York agreed, that RACT is limiting the hours of operation to 500 during any consecutive twelve (12) month period. A rolling 12-month total is to be computed monthly. The alternative NO<sub>x</sub> emission limit is 3.1 tons per year, equivalent to 0.135 lbs/MM BTU.

##### 3. Algonquin Gas Transmission Company

Algonquin Gas Transmission Company operates four 2700-horsepower natural gas-fired, reciprocating lean-burn internal combustion engines at its Stony Point Compressor Station in Rockland County. The facility's RACT analysis concluded, and New York agreed, that RACT is the use of a high energy ignition system combined with air-to-fuel ratio control for each engine. The alternative NO<sub>x</sub> emission limit for each engine is 5.1 grams per horsepower-hour (g/hp-hr).

#### Final Action

EPA is approving three source-specific RACT determinations as described above as RACT for the control of NO<sub>x</sub> emissions and the corresponding permit conditions for the sources identified.

The EPA is publishing this direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is publishing a proposal to approve these same three source-specific SIP revisions. The final rule will be effective November 24, 1997 unless adverse or critical comments are received by October 23, 1997 in which case this direct final rule will be withdrawn. EPA will make all efforts to have the final action withdrawing this direct final rule published in the **Federal Register** prior to the effective date of the direct final action. All public comments received will be addressed in a subsequent final rule based on the proposed rule and the rationale in the preamble of this direct final rule. The EPA will not institute a second comment period on these actions. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this direct final rule will be effective November 24, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP 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

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. 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.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the state is already imposing. Moreover, this action does not involve generally applicable requirements, but specific requirements for each facility which both the source owner and the State have determined to be economically and technologically reasonable. This action only affects the sources which have requested the SIP revision and which are not small entities. Therefore, EPA certifies that this approval action does not have a significant impact on small entities.

*Unfunded Mandates Act*

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 annual 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 approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional annual costs to state, local, or tribal governments, or to the private sector, result from this action.

*Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*Petitions for Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 2, 1997.

**William J. Muszynski,**  
*Acting Regional 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 adding new paragraph (c)(91) to read as follows:

**§ 52.1670 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(91) Revisions to the State Implementation Plan submitted by the New York State Department of Environmental Conservation on February 22, 1996, June 21, 1996 and June 25, 1996.

(i) *Incorporation by reference.*

(A) Permits to Construct and/or Certificates to Operate: The following facilities have been issued permits to construct and/or certificates to operate by New York State and such permits and/or certificates are incorporated for the purpose of establishing NO<sub>x</sub> emission limits consistent with Subpart 227-2:

(1) Morton International Inc.'s mid-size gas-fired boiler, emission point 00027, Wyoming County; New York permit approval dated September 1, 1995 and Special Conditions letter dated August 23, 1995.

(2) University of Rochester's two oil fired boilers, emission points 00003 and

00005, Monroe County; New York permit approval dated April 25, 1996 and Special Permit Conditions issued March 19, 1996.

(3) Algonquin Gas Transmission Company's four gas-fired reciprocating internal combustion engines, emission points R0100, R0200, R0300, and R0400, Rockland County; New York permit and Special Conditions approval dated September 23, 1991; New York Special Conditions documents dated March 18, 1996 for emission points RO100, RO200, and RO300; and March 29, 1996 for emission point RO400; and Permit Correction dated August 8, 1996.

(ii) *Additional information.*

Documentation and information to support NO<sub>x</sub> RACT alternative emission limits in three letters addressed to EPA from New York State Department of Environmental Conservation and dated as follows:

(A) February 22, 1996 letter to Regional Administrator Jeanne Fox from Commissioner Michael D. Zagata for a SIP revision for Morton International, Inc.

(B) June 21, 1996 letter to Mr. Conrad Simon, Director of the Air and Waste Management Division from Deputy Commissioner David Sterman for a SIP revision for the Algonquin Gas Transmission Company.

(C) June 25, 1996 letter to Mr. Conrad Simon, Director of the Air and Waste Management Division from Deputy Commissioner David Sterman for a SIP revision for the University of Rochester.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 167**

[FRL-5897-3]

**Change of Address for Submission of Certain Reports; Technical Amendment**

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This document announces a technical amendment revising the address to be used by foreign pesticide producing establishments when submitting applications for registration and annual reports to EPA.

**DATES:** This document is effective September 23, 1997.

**FOR FURTHER INFORMATION CONTACT:** Foreign pesticide producing establishments should contact: Carol