

§ 165.T01-002 Safety Zone; New York Super Boat Race, Hudson River, New York and New Jersey.

(a) *Location.* The following area is a safety zone: All waters of the Lower Hudson River between Pier 76 in Manhattan and a point on the New Jersey shore in Weehawken, New Jersey at 40°45'52"N 074°01'01"W, and north of a line connecting the following points:

Latitude	Longitude
40°42'16.0"N	074°01'09.0"W, then south to
40°41'55.0"N	074°01'16.0"W, then west to
40°41'47.0"N	074°01'36.0"W, then northwest to
40°41'55.0"N	074°01'59.0"W, then to shore at
40°42'20.5"N	074°02'06.0"W.

(b) *Effective period.* This safety zone is in effect on Sunday, September 13, 1998, from 11:30 a.m. until 4 p.m., unless terminated sooner by the Captain of the Port New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 8, 1998.

L.M. Brooks,

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

[FR Doc. 98-13581 Filed 5-20-98; 8:45 am]

BILLING CODE 4910-15-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH115-1; FRL-6100-7]

Approval and Promulgation of Maintenance Plan Revisions; Ohio

AGENCY: Environmental Protection Agency, (USEPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is proposing to approve an April 27, 1998, request from Ohio, for State Implementation Plan (SIP) maintenance plan revisions for the

following maintenance areas in Ohio: Canton (Stark County), Cleveland (Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit and Portage Counties), Columbus (Franklin, Delaware and Licking Counties), Steubenville (Jefferson County), Toledo (Lucas and Wood Counties), Youngstown (Mahoning and Trumbull Counties) as well as Clinton County, Columbiana County and Preble County. The revisions would remove the air quality triggers from each area's contingency plan. The contingency plans were included in these areas' maintenance plans to correct violations of the one hour ozone National Ambient Air Quality Standard (NAAQS).

DATES: Written comments on this proposal must be received on or before June 22, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Scott Hamilton at (312) 353-4775 before visiting the Region 5 office.

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Scott Hamilton, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4775.

SUPPLEMENTARY INFORMATION:

I. Attainment Areas in Ohio

Since the Clean Air Act (CAA) attainment status designations were made, all of the Ohio areas listed in the summary section of this **Federal Register** Notice have attained the one hour ozone standard and have been redesignated to attainment for ozone. As a requirement to being redesignated to attainment, these areas developed maintenance plans. The purpose of the maintenance plans is to assure maintenance of the one hour ozone NAAQS for at least ten years. Included in the maintenance plans were contingency provisions. The purpose of the contingency provisions are to identify and correct any violation of the one hour ozone NAAQS in a timely

fashion. Triggers are included in the contingency provisions to identify the need to implement measures and correct air quality problems until such time as a revised maintenance or attainment plan could be developed to address the level of the air quality problem. Triggering events in the contingency plans could be linked to ozone air quality and/or an emission level of ozone precursors.

The maintenance plan approvals were finalized by USEPA and published in the **Federal Register** for these Ohio areas as follows: Canton and Youngstown (61 FR 3319; January 31, 1996), Cleveland (61 FR 20458; May 7, 1996), Columbus (61 FR 3591; February 1, 1996), Steubenville, Columbiana County and Preble County (60 FR 7453; February 8, 1995), Toledo (60 FR 39115; August 1, 1995) and Clinton County (61 FR 11560; March 21, 1996).

II. One Hour Ozone Standard Revocation

On July 18, 1998, USEPA finalized a revision to the NAAQS for ozone which changed the standard from 0.12 parts per million (ppm) averaged over one hour, to 0.08 ppm, averaged over eight hours. USEPA is revoking the one hour standard in separate rulemakings based on an area's attainment of the one hour ozone standard. The first round of revocations will be for areas attaining the one hour standard based on quality assured air monitoring data for the years 1994-1996. The second round of one hour ozone standard revocations will be for areas attaining the one hour standard based on quality assured air monitoring data for the years 1995-1997. After these two rulemakings are finalized, the USEPA intends to publish rulemakings on an annual basis revoking the one hour ozone standard for additional areas that come into attainment of the one hour standard.

On January 16, 1998, USEPA published a proposed rule (63 FR 2726) in the **Federal Register** proposing to revoke the one hour ozone standard in areas attaining the standard based on quality assured air monitoring data for the years 1994-1996 (first round of revocations). In that proposal, USEPA proposed to revoke the one hour ozone standard in the Ohio areas subject to this proposed action [Canton (Stark County), Cleveland (Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit and Portage Counties), Columbus (Franklin, Delaware and Licking Counties), Steubenville (Jefferson County), Toledo (Lucas and Wood Counties), Youngstown (Mahoning and Trumbull Counties)] as

well as Clinton, Columbiana and Preble Counties.

On July 16, 1997, President Clinton issued a directive to Administrator Browner on implementation of the new ozone standard, as well as the current one hour ozone standard (62 FR 38421). In that directive the President laid out a plan on how the new ozone and particulate matter standards, as well as the current one hour standard, are to be implemented. A December 29, 1997, memorandum entitled "Guidance for Implementing the 1-Hour and Pre-Existing PM10 NAAQS" signed by Richard D. Wilson, USEPA's Acting Assistant Administrator for Air and Radiation reflected that directive. The purpose of this guidance document is to ensure that the momentum gained by States to attain the one hour ozone NAAQS was not lost when moving toward implementing the eight hour ozone NAAQS.

The guidance document explains that maintenance plans will remain in effect for areas where the one hour standard is revoked; however, those maintenance plans may be revised to withdraw certain contingency measure provisions that have not been triggered or implemented prior to USEPA's determination of attainment and revocation. Where the contingency measure is linked to the one hour ozone standard or air quality ozone concentrations, the measures may be removed from the maintenance plan. Measures linked to non-air quality elements, such as emissions increases or vehicle miles traveled, may be removed if the State demonstrates that removing the measure will not affect an area's ability to attain the eight hour ozone standard.

In other words, after the one hour standard is revoked for an area, USEPA believes it is permissible to withdraw contingency measures designed to correct violations of that standard. Therefore, since such measures were designed to address future violations of a standard that no longer exists, it is no longer necessary to retain them. Furthermore, USEPA believes that future attainment and maintenance planning efforts should be directed toward attaining the eight hour ozone NAAQS.

III. Review of the State Submittal

In a letter from Donald R. Schregardus, Director, Ohio Environmental Protection Agency (OEPA) received by USEPA on April 27, 1998, OEPA officially requested that all air quality triggers be deleted from the maintenance plans for the areas in Ohio now attaining the one hour ozone

standard and where USEPA has proposed to revoke the one hour standard (the areas listed in the Summary Section). As part of the implementation of the eight hour ozone standard, the State's ozone air quality will be evaluated and eight hour attainment and nonattainment designations will be made. USEPA believes that Ohio's request is consistent with the December 29, 1997, guidance document and the July 16, 1997, Presidential Directive, and that the request is approvable.

The OEPA has officially announced a public hearing on this matter to be held on June 1, 1998.

This revision is being proposed under a procedure called parallel processing, whereby USEPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the proposed revision is substantially changed USEPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than any consistent with this notice, the USEPA will publish a final rulemaking on the revisions. The final rulemaking action by USEPA on Ohio's request to revise the maintenance plans to remove air quality triggers will occur only after the one hour ozone standard has been revoked in final and Ohio's public hearing documentation is submitted to the USEPA.

While Ohio requested that the air quality triggers in Dayton's maintenance plan be removed, USEPA has yet to propose revocation of the one hour standard for Dayton. Revocation of the one hour standard is a prerequisite for revising maintenance plans to remove contingency provisions. USEPA will address Dayton in a future rulemaking.

IV. USEPA Proposed Action

The USEPA is proposing to approve the requested revision to the above mentioned maintenance plans in Ohio. The USEPA is parallel processing this request concurrent with the state proceedings. Written comments must be received by USEPA on or by June 22, 1998.

V. Administrative Requirements

(A) Future Requests

Nothing in this action should be construed as permitting, 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.

(B) Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

(C) Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, USEPA 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. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

(D) Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with 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 the private sector, of \$100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

(E) Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (Sections 3745.70-3745.73 of the Ohio Revised Code). USEPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs,

including those under the Clean Air Act, and taking appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio Clean Air Act program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, federal approval for the Clean Air Act program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Nitrogen oxides, Implementation plans.

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

Dated: May 7, 1998.

Robert Springer,

Acting Regional Administrator, Region V.
[FR Doc. 98-13614 Filed 5-20-98; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY27-1-178, FRL-6101-5]

Approval and Promulgation of Implementation Plans; Emission Trade to Meet Reasonably Available Control Technology for the State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing approval of a revision to the New York State Implementation Plan for ozone. This revision proposes to establish and require an emission trade between Niagara Mohawk Power Corporation and Champion International Paper Corporation which will result in both sources meeting the requirements of Reasonably Available Control Technology for oxides of nitrogen. The intended effect of this proposed action is to approve source-specific permit conditions, requiring the sources to trade emissions in accordance with requirements of the Clean Air Act, and resulting in emission reductions which will help toward attaining the national ambient air quality standards for ozone.

DATES: Comments must be received on or before June 22, 1998.

ADDRESSES: All comments should be addressed to: Ronald Borsellino, Chief, Air Programs Branch, U.S. EPA, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Copies of the state submittal and other information are available for public inspection during normal business hours, by appointment, at the Air Programs Branch, U.S. EPA, Region II Office, 290 Broadway, 25th Floor, New York, New York; as well as the New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Richard Ruvo, Environmental Engineer, Air Programs Branch, U.S. EPA, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007-1866; (212) 637-4014.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (the Act) requires that States develop Reasonably Available Control Technology (RACT) regulations for all major stationary sources of oxides of nitrogen (NO_x) in areas which have been classified as "moderate," "serious," "severe," and "extreme," ozone nonattainment areas, and in all areas of the Ozone Transport Region (OTR). 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, Sept. 17, 1979). This requirement is established by sections 182(b)(2), 182(f), and 184(b) of the Act. The Act's NO_x requirements are further described in more detail in "The General Preamble for Implementation of Title I of the Clean Air Act Amendments," (57 FR 13498, April 16, 1992) and "The NO_x Supplement to the General Preamble" (57 FR 55620, November 25, 1992).

The entire State of New York is included in the OTR, therefore RACT must be applied to all major stationary sources of NO_x emissions. New York State has defined a major stationary source for NO_x as a source in the New York City metropolitan area and the lower Orange County metropolitan area which has the potential to emit 25 tons per year (TPY) and as a source in the rest of the State which has the potential to emit 100 TPY.

New York State adopted its NO_x RACT regulation, part 227-2, on January 19, 1994. Part 227-2, section 2.5(b)

allows for system-wide emissions averaging as a compliance strategy. The average must be weighted so the mass emission rate of the units in operation is equivalent to the mass emission rate that would be achieved if each operating unit individually met the applicable RACT emission limit. Averaging may include units owned and operated by the same person.

II. State Submittal

On November 8, 1995, New York proposed for comment special permit conditions for the Niagara Mohawk Power Corporation and the Champion International Paper Corporation for an emission trade to meet the NO_x RACT requirements of part 227-2. New York approved the special permit conditions on December 14, 1995, having received no public comments. On April 9, 1996, New York State submitted the special permit conditions to EPA as a source-specific revision to the State Implementation Plan (SIP) for ozone. New York submitted additional technical information on April 30, 1996, October 17, 1996 and December 5, 1996. The SIP revision was reviewed by EPA in accordance with the completeness criteria found at Title 40, part 51, appendix V of the *Code of Federal Regulations*. EPA determined the SIP revision to be administratively and technically complete in a June 4, 1996 letter to New York.

In the process of its review of the April 9, 1996 SIP revision, EPA noted deficiencies in the special permit conditions. In a February 6, 1997 letter, EPA requested New York to correct these deficiencies, delaying review of the SIP revision. New York re-proposed for comment the special permit conditions for the emission trade on September 24, 1997. New York approved the special permit conditions on December 2, 1997, having received no public comments. On February 2, 1998, New York submitted to EPA the December 2, 1997 special permit conditions. The February 2, 1998 submittal supplemented the original April 9, 1996 SIP revision.

For a more detailed discussion of New York's SIP submittal and EPA's proposed action, the reader is referred to the Technical Support Document (TSD) which was developed as part of this action. Copies of the TSD are found at the previously mentioned addresses.

III. Analysis of State Submittal

A. Facility Descriptions

Niagara Mohawk Power Corporation (NMPC) operates four fossil fuel-fired utility plants in New York State; the