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**James F. Lane,**

*Senior Advisor, Office of the Secretary Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary Office of Elementary and Secondary Education.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2022-0165; FRL-10132-02-R3]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Reasonably Available Control Technology Determinations for Case-by-Case Sources Under the 1997 and/or 2008 8-Hour Ozone National Ambient Air Quality Standards

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving multiple state implementation plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for six major volatile organic compound (VOC) and/or nitrogen oxide (NO<sub>x</sub>) emitting facilities pursuant to the Commonwealth of Pennsylvania's conditionally approved RACT regulations. In this rule action, EPA is approving source-specific RACT determinations (also referred to as case-by-case or CbC) for sources at six major NO<sub>x</sub> and VOC emitting facilities within the Commonwealth submitted by PADEP. These RACT evaluations were submitted to meet RACT requirements for the 1997 and/or 2008 8-hour ozone national ambient air quality standards (NAAQS). EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA) and EPA's implementing regulations.

**DATES:** This final rule is effective on September 19, 2022.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2022-0165. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, e.g., 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 through [www.regulations.gov](http://www.regulations.gov), or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Riley Burger, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2217. Mr. Burger can also be reached via electronic mail at [burger.riley@epa.gov](mailto:burger.riley@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On March 17, 2022, EPA published a notice of proposed rulemaking (NPRM). 87 FR 15161. In the NPRM, EPA

proposed approval of case-by-case RACT determinations for sources at eight facilities, as EPA found that the RACT controls for these sources met the CAA RACT requirements for the 1997 and/or 2008 8-hour ozone NAAQS. The case-by-case RACT determinations for sources at these facilities were initially included in PADEP's May 7, 2020 SIP submission and supplemented by submissions on February 9, 2021, July 20, 2021, and January 28, 2022. One facility is located in Allegheny County and was submitted by PADEP on behalf of the Allegheny County Health Department (ACHD), the government agency responsible for air permitting in that county.

As more fully explained in the NPRM, under certain circumstances, states are required to submit SIP revisions to address RACT requirements for both major sources of NO<sub>x</sub> and VOC and any source covered by control technique guidelines (CTG), for each ozone NAAQS. Which NO<sub>x</sub> and VOC sources in Pennsylvania are considered "major," and are therefore subject to RACT, is dependent on the location of each source within the Commonwealth. Sources located in nonattainment areas would be subject to the "major source" definitions established under the CAA based on the area's current classification(s). In Pennsylvania, sources located in any ozone nonattainment areas outside of moderate or above are subject to source thresholds of 50 tons per year (tpy) because of the Ozone Transport Region (OTR) requirements in CAA section 184(b)(2).

On May 16, 2016, PADEP submitted a SIP revision addressing RACT for both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. PADEP's May 16, 2016 SIP revision intended to address certain outstanding non-CTG VOC RACT, VOC CTG RACT, and major source VOC and NO<sub>x</sub> RACT requirements for both standards. The SIP revision requested approval of Pennsylvania's 25 Pennsylvania Code 129.96-100, *Additional RACT Requirements for Major Sources of NO<sub>x</sub> and VOCs* (the "presumptive" RACT II rule). Prior to the adoption of the RACT II rule, Pennsylvania relied on the NO<sub>x</sub> and VOC control measures in 25 Pa. Code 129.92-95, *Stationary Sources of NO<sub>x</sub> and VOCs*, (the RACT I rule) to meet RACT for non-CTG major VOC sources and major NO<sub>x</sub> sources. The requirements of the RACT I rule remain as previously approved in Pennsylvania's SIP and continue to be

implemented as RACT.<sup>1</sup> On September 26, 2017, PADEP submitted a supplemental SIP revision including a letter, dated September 22, 2017, which committed to address various deficiencies identified by EPA in PADEP’s original May 16, 2016 “presumptive” RACT II rule SIP revision.

On May 9, 2019, EPA conditionally approved the RACT II rule based on the commitments PADEP made in its September 22, 2017 letter.<sup>2</sup> 84 FR 20274. In EPA’s final conditional approval, EPA established conditions requiring PADEP submit, for EPA’s approval, SIP revisions to address any facility-wide or system-wide NO<sub>x</sub> emissions averaging plans approved under 25 Pa. Code 129.98 and any case-by-case RACT determinations under 25 Pa. Code 129.99. PADEP committed to submitting these additional SIP revisions within 12 months of EPA’s final conditional approval (*i.e.*, by May 9, 2020). Through multiple submissions between 2017 and 2020, PADEP submitted to EPA for approval the various SIP submissions to implement its RACT II case-by-case determinations and alternative NO<sub>x</sub> emissions limits. This rule takes final action on SIP

revisions for sources at six facilities, based on EPA’s review.<sup>3</sup>

The SIP revisions in this action for ATI Flat Rolled products Holdings, LLC, the facility located in Allegheny County, only establish 2008 8-hour ozone NAAQS RACT requirements. Applicable RACT requirements under the CAA for sources located in Allegheny County for the 1997 8-hour ozone NAAQS were previously satisfied. See 78 FR 34584 (June 10, 2013).

**II. Summary of SIP Revision and EPA Analysis**

*A. Summary of SIP Revisions*

To satisfy a requirement from EPA’s May 9, 2019 conditional approval, PADEP submitted to EPA SIP revisions addressing alternative NO<sub>x</sub> emissions limits and/or case-by-case RACT requirements for major sources in Pennsylvania subject to 25 Pa. Code 129.98 or 129.99. Among the submitted SIP revisions were case-by-case RACT determinations for sources in Allegheny County, which PADEP submitted on behalf of ACHD. PADEP’s submission included SIP revisions pertaining to case-by-case RACT determinations for

the existing emissions units at each of the major sources of NO<sub>x</sub> and/or VOC that required a case-by-case RACT determination.

In the case-by-case RACT determinations submitted by PADEP, and PADEP on behalf of ACHD, an evaluation was completed to determine if previously SIP-approved, case-by-case RACT emissions limits or operational controls (herein referred to as RACT I and contained in RACT I permits) were more stringent than the RACT II presumptive or case-by-case requirements new to the SIP. If more stringent, the RACT I requirements would continue to apply to the applicable source. If case-by-case RACT II requirements that are new to the SIP are more stringent than the RACT I requirements, then the RACT II requirements would supersede the prior RACT I requirements.<sup>4</sup>

Here, EPA is approving SIP revisions pertaining to case-by-case RACT requirements for sources at six NO<sub>x</sub> and/or VOC emitting facilities in Pennsylvania, as summarized in Table 1 in this document. As indicated in the NPRM, EPA views each facility as a separable SIP revision.

**TABLE 1—SIX MAJOR NO<sub>x</sub> AND/OR VOC EMITTING FACILITIES IN PENNSYLVANIA SUBJECT TO CASE-BY-CASE RACT II DETERMINATIONS UNDER THE 1997 AND/OR 2008 8-HOUR OZONE NAAQS**

Major source (county)	1-Hour ozone RACT source? (RACT I)	Major source pollutant (NO <sub>x</sub> and/or VOC)	RACT II permit (effective date)
ArcelorMittal Plate LLC Coatesville (formerly Lukens Steel Co.—Coatesville) (Chester).	Yes .....	NO <sub>x</sub> and VOC .....	15-00010 (3/18/2020)
ATI Flat Rolled Products Holdings, LLC (formerly Allegheny Ludlum Corporation—Brackenridge) (Allegheny).	Yes .....	NO <sub>x</sub> and VOC .....	0059-1009a (12/3/2020) 0059-1008d (4/21/2021)
Boyertown Foundry Company (Berks) .....	Yes .....	VOC .....	06-05063 (8/1/2020)
Grove US LLC Shady Grove Plant (Franklin) .....	Yes .....	VOC .....	28-05004 (1/1/2021)
INDSPEC Chemical Corporation Petrolia (Butler) .....	Yes .....	NO <sub>x</sub> and VOC .....	10-00021 (12/17/2020)
Texas Eastern Transmission LP Lilly Station (Cambria) .....	Yes .....	NO <sub>x</sub> and VOC .....	11-00258 (12/10/2021)

The case-by-case RACT determinations submitted by PADEP,

<sup>1</sup> The EPA granted conditional limited approval of Pennsylvania’s case-by-case RACT I Rule on March 23, 1998 pending Pennsylvania’s submission of and EPA’s determination on proposals for facilities subject to case-by-case (source-specific) RACT requirements. 63 FR 13789. On May 3, 2001, EPA removed the conditional status of its 1998 approval once the state certified that it had submitted case-by-case RACT I proposals for sources subject to the RACT requirements, but retained the limited nature of the approval. 66 FR 22123. EPA granted full approval on October, 22, 2008 once it approved all case-by-case RACT I proposals submitted by Pennsylvania. 73 FR 62891.

and PADEP on behalf of ACHD, consist of an evaluation of all reasonably

Through this RACT II rule, certain source-specific RACT I requirements will be superseded by more stringent requirements. See Section II of this preamble.

<sup>2</sup> On August 27, 2020, the Third Circuit Court of Appeals issued a decision vacating EPA’s approval of three provisions of Pennsylvania’s presumptive RACT II rule applicable to certain coal-fired power plants. *Sierra Club v. EPA*, 972 F.3d 290 (3d Cir. 2020). None of the sources in this final rule are subject to the presumptive RACT II provisions at issue in that *Sierra Club* decision.

<sup>3</sup> In its March 17, 2022 NPRM (87 FR 15161), EPA had proposed approval of SIP revisions pertaining

available controls at the time of evaluation for each affected emissions

to case-by-case RACT requirements for sources at eight major NO<sub>x</sub> and/or VOC emitting facilities. At this time, EPA is only approving such SIP revisions at six of those facilities and is not taking final action on the SIP revisions related to Procter & Gamble Paper Products Company Mehoopany and ArcelorMittal Plate LLC Monessen.

<sup>4</sup> While the prior SIP-approved RACT I permit will remain part of the SIP, this RACT II rule will incorporate by reference the RACT II requirements through the RACT II permit and clarify the ongoing applicability of specific conditions in the RACT I permit.

unit, resulting in a determination of what specific emissions limit or control measures satisfy RACT for that particular unit. The adoption of new, additional, or revised emissions limits or control measures to existing SIP-approved RACT I requirements were specified as requirements in new or revised federally enforceable permits (hereafter RACT II permits) issued by PADEP or ACHD to the source. These RACT II permits have been submitted as part of the Pennsylvania RACT SIP revisions for EPA's approval in the Pennsylvania SIP under 40 CFR 52.2020(d)(1). The RACT II permits being approved in this action are listed in the last column of Table 1 of this preamble, along with the permit effective date, and are part of the docket for this rule, which is available online at [www.regulations.gov](http://www.regulations.gov), Docket No. EPA-R03-OAR-2022-0165.<sup>5</sup> For certain sources at major NO<sub>x</sub> and VOC emitting facilities, EPA is incorporating by reference in the Pennsylvania SIP the source-specific emissions limits and control measures and/or alternative NO<sub>x</sub> emissions limits in the RACT II permits, and is determining that these provisions satisfy the RACT requirement under the 1997 and/or 2008 8-hour ozone NAAQS.

#### B. EPA's Final Action

This CbC RACT SIP revision incorporates determinations by PADEP and ACHD of source-specific RACT II controls for individual emission units at major sources of NO<sub>x</sub> and/or VOC in Pennsylvania, where those units are not covered by or cannot meet Pennsylvania's presumptive RACT regulation. After thorough review and evaluation of the information submitted to EPA by PADEP, in its SIP revision submittals for sources at six major NO<sub>x</sub> and/or VOC emitting facilities in Pennsylvania, EPA found that: (1) PADEP's and ACHD's case-by-case RACT determinations and conclusions establish limits and/or controls on individual sources that are reasonable and appropriately considered technically and economically feasible controls; and (2) PADEP's and ACHD's determinations are consistent with the CAA, EPA regulations, and applicable EPA guidance.

In the NPRM, EPA proposed to find that all the proposed revisions to previously SIP-approved RACT I requirements would result in equivalent or additional reductions of NO<sub>x</sub> and/or

<sup>5</sup> The RACT II permits included in the docket for this rule are redacted versions of the facilities' federally enforceable permits. They reflect the specific RACT requirements being approved into the Pennsylvania SIP via this final action.

VOC emissions. Consistent with section 110(l) of the CAA the proposed revisions will not result in additional NO<sub>x</sub> emissions and thus should not interfere with any applicable requirement concerning attainment.

Below is a summary of information that was set forth in the NPRM, associated technical support document (TSD), and supporting documents in the record regarding the source-specific RACT II NO<sub>x</sub> determinations for the four facilities with major NO<sub>x</sub> sources and how those particular requirements are at least as stringent as the RACT I requirements. Additional material regarding this source determination is available in the NPRM, associated TSD, and other support documents in the record, and are not set forth herein.

#### Arcelor Mittal Plate LLC Coatesville

EPA proposed to approve PADEP's RACT II CbC NO<sub>x</sub> determination for twenty-seven sources at this facility. For all twenty-seven sources, PADEP determined that CbC RACT II NO<sub>x</sub> requirements would be continuing use of good operating and maintenance practices. This RACT II requirement now being incorporated into the SIP is as stringent as the RACT I SIP requirement because the RACT I SIP also required good operating and maintenance practices. PADEP also will continue to require the same throughput restrictions as follows: 267 million cubic feet of natural gas each year (mmcf/yr) for the EMS boiler, 1.55 million tons of steel processed per year for the "D" electric furnace, and 3,942 mmcf/yr of natural gas for fifteen soaking pits. These throughput restrictions being incorporated into the SIP as RACT are as stringent because they are the same as the RACT I restrictions incorporated into the current SIP.

For two NAB furnaces and eight BHT furnaces, EPA is approving more stringent RACT II requirements now being incorporated into the SIP that will supersede the RACT I requirements in the SIP. PADEP established throughput restrictions for the 145' NAB furnace and the 200' NAB furnace of 481.8 and 510 mmcf/yr of natural gas respectively, which together are more stringent than the prior SIP RACT I collective limit of 1331.52 mmcf/yr for the two NAB furnaces together. For the eight BHT furnaces, PADEP established a throughput restriction of 2495.7 mmcf/yr of natural gas, which is less than the prior RACT I SIP collective limit of 2688.88 mmcf/yr for nine BHT furnaces, and is therefore more stringent. Finally, PADEP established a monthly limit of 34.1 tons per month NO<sub>x</sub> that is new to

the SIP for the "D" electric furnace.<sup>6</sup> This short-term emission limit now being incorporated into the SIP is more stringent because EPA never approved a prior short-term emission limit in the SIP before for this source. Through its establishment of as stringent and more stringent RACT, and related testing, monitoring, and recordkeeping requirements, Pennsylvania has demonstrated that the status quo in NO<sub>x</sub> emissions has been maintained if not improved. As such, EPA's approval of Pennsylvania's SIP revision is consistent with CAA section 110(l).

#### Texas Eastern Transmission LP Lilly Station

EPA proposed to approve PADEP's CbC RACT II NO<sub>x</sub> determination for three sources at this facility.<sup>7</sup> For two of the three sources, Westinghouse turbines, PADEP determined that the RACT CbC NO<sub>x</sub> is good combustion practices, defined as following manufacturer's procedures, routine maintenance, a preventative maintenance schedule, and inspection as well as an operating hours limit of 8,000 hr/yr, fuel throughput limit of 491.3 MMScf/year, and a NO<sub>x</sub> emissions rate of 116 ppmvd (parts per million volume, dry) corrected to 15% oxygen. For the remaining source, a General Electric turbine, PADEP determined that RACT CbC NO<sub>x</sub> consists of good combustion practices, defined as following manufacturer procedures, routine maintenance, a preventative maintenance schedule, inspection as well as an operating hours limit of 8,000 hr/yr, and a NO<sub>x</sub> emission rate of 120 ppmvd corrected to 15% oxygen. Because EPA had not previously approved any RACT for this source into the SIP, these RACT requirements now being incorporated into the SIP are more stringent than the current SIP. Through its establishment of more stringent RACT for these sources, and related testing monitoring and recordkeeping requirements, Pennsylvania has demonstrated that the status quo in NO<sub>x</sub> emissions has been maintained, if not improved. As such, EPA's approval of Pennsylvania's SIP

<sup>6</sup> EPA included the following annual NO<sub>x</sub> emission limits only as SIP strengthening measures for each CbC NO<sub>x</sub> source that were not incorporated into the prior SIP: 19.62 tpy for the EMS boiler, 340.6 tpy for the "D" electric furnace, 173.6 tpy for the eight BHT furnaces, 33.7 tpy for the 145' NAB furnace, 30.6 tpy for the 200' NAB furnace, 502.8 tpy for fifteen soaking pits.

<sup>7</sup> As SIP strengthening measures EPA has also approved PADEP's annual emission limits of 107 tons per year for the Westinghouse turbines and 292 tons per year for the GE turbine as well as a requirement to shut down operation of the GE turbine by January 1, 2024.

revision is consistent with section 110(l).

ATI Flat Rolled Products Holdings, LLC (Allegheny County)

EPA proposed to approve ACHD's CbC RACT II NO<sub>x</sub> determination for five sources at this facility. A number of NO<sub>x</sub> sources under RACT I are now shut down. For two sources currently still in use, consisting of two electric arc furnaces, ACHD determined that the RACT II CbC NO<sub>x</sub> is the continued requirement for good work practices, such as minimizing intake of outside air and the opening of the slag. For the Argon-Oxygen Decarburization Vessel source, ACHD determined that the RACT II CbC NO<sub>x</sub> is to continue the requirement to implement good operating practices and the requirement to comply with manufacturer's specifications. These RACT II requirements for these three sources are as stringent as the current SIP because the RACT I requirements in the SIP also consisted of good operating practices for these sources and have been retained. For the two remaining sources, No. 1 and No. 2 A&P lines HNO<sub>3</sub>/HF pickling operations, ACHD determined the RACT II CbC NO<sub>x</sub> is to continue good operating and maintenance practices as well as several requirements new to the SIP: direct emissions to the wet scrubber (while tracking and maintaining specific operating parameters related thereto), meet emission limits of 15.5 lbs NO<sub>x</sub>/hr and 11.07 lbs NO<sub>x</sub>/hr, and annual production limits of 262,800 tons of steel and 148,920 tons of steel.<sup>8</sup> The good operating and maintenance practice requirement being incorporated into the SIP for these sources is as stringent because the current RACT I SIP for these sources also required good operating practices. The requirement to direct emissions to the wet scrubber as well as the numerical emission and production limits now being incorporated are new to the SIP for these two sources and do not supersede any prior RACT requirements in the current SIP, and thus are more stringent. Through its establishment of as or more stringent RACT, and related monitoring, testing, and recordkeeping requirements, Pennsylvania has demonstrated that the status quo in NO<sub>x</sub> emissions has been maintained, if not improved. As such EPA's approval of Pennsylvania's SIP revision is adequately justified under section 110(l).

<sup>8</sup> In addition, for those two sources, EPA included as SIP strengthening measures only annual NO<sub>x</sub> emission limits of 67.8 tpy and 48.49 tpy which EPA has not approved into the SIP before.

INDSPEC Chemical Corporation Petrolia

EPA proposed to approve PADEP's CbC RACT II NO<sub>x</sub> determinations for two sources at this facility, spray dryers No. 1 and No. 3. PADEP determined that the RACT II CbC NO<sub>x</sub> for both sources is use of good combustion practices and minimizing excess air. These RACT requirements now being incorporated into the SIP are more stringent because EPA has never approved RACT requirements into the SIP before for the spray dryers. The existing RACT I conditions in the SIP are unrelated to these two CbC NO<sub>x</sub> sources and remain as RACT requirements. INDSPEC ceased manufacturing in September 2017, and the NO<sub>x</sub> and VOC sources subject to PADEP's RACT II determination have all permanently shut down.<sup>9</sup> Through imposition of these more stringent operating practices for these now permanently shut down sources, Pennsylvania has demonstrated that the status quo in NO<sub>x</sub> emissions has been maintained, if not improved. As such, EPA's approval of Pennsylvania's SIP revision is consistent with section 110(l).

Other specific requirements of the 1997 and 2008 8-hour ozone NAAQS case-by-case RACT determinations and alternative NO<sub>x</sub> emissions limits and the rationale for EPA's proposed action are explained thoroughly in the NPRM, and its associated technical support document (TSD), and will not be restated here.

### III. Public Comments and EPA Responses

EPA received three sets of comments on the March 17, 2022 NPRM. 87 FR 15161. A summary of the comments and EPA's responses are discussed in this section. A copy of the comments can be found in the docket for this rule action.

*Comment 1:* This comment from ACHD identifies that the permits for ATI Flat Rolled Products Holdings, LLC in the notice of proposed rulemaking should be identified as No. 0059–I009a (December 3, 2020) and No. 0059–I008d (April 21, 2021).

*Response 1:* The permits included in the submission to EPA are No. 0059–I009a (December 3, 2020) and No. 0059–I008d (April 21, 2021) as indicated by the commenter. References to these permits in this rule have been updated.

*Comment 2:* The comment from Cleveland-Cliffs Monessen Coke LLC

<sup>9</sup> PADEP requested that the operating permit conditions, which pertain to the implementation of NO<sub>x</sub> and VOC CbC RACT II requirements under 25 Pa. Code § 129.99, be incorporated into the Commonwealth's SIP to determine baseline emissions for the purpose of issuing emission reduction credits (ERC).

requests that EPA not take final action on the revisions pertaining to ArcelorMittal Monessen LLC Monessen Coke Plant as certain RACT requirements are involved in the appeal of the facility's permit before the Pennsylvania Environmental Hearing Board. The comment requests EPA delay action until the appeal is adjudicated or resolved, and any modifications to the permit are finalized. The comment indicates there is a settlement agreement in principle with PADEP to prepare and issue a modification of the permit.

*Response 2:* EPA is not taking final action on the ArcelorMittal Monessen LLC Monessen Coke Plant RACT determination at this time and will act on this SIP revision in a later rulemaking. EPA will respond to the comment at that time.

*Comment 3:* A comment from the Center for Biological Diversity (CBD) claims that EPA cannot approve the proposed Pennsylvania RACT II CbC determinations under the 2008 8-hour ozone NAAQS because the CAA section 110(l) analysis is inadequate. In particular, the comment focuses on the proposed NO<sub>x</sub> limitations and whether they will cause or contribute to violations of the 2010 1-hour NO<sub>x</sub> NAAQS. (The 2010 1-hour NAAQS is for oxides of nitrogen, as measured by nitrogen dioxide (NO<sub>2</sub>).)

*Response 3:* As described in the proposed rulemaking, Pennsylvania was required through implementation of the 1997 and 2008 8-hour ozone NAAQS to determine RACT II requirements for major NO<sub>x</sub> and VOC emitting sources within the Commonwealth. PADEP had previously established CbC.<sup>10 11</sup> As part of the EPA's conditional approval, PADEP was required to complete source-specific RACT II determinations for subject NO<sub>x</sub> or VOC sources that could not meet the presumptive requirements or for which a presumptive limit did not exist. For subject sources located in Allegheny County, ACHD makes such determinations. As required by Pennsylvania's RACT II regulations, PADEP and ACHD then conducted, for sources seeking a CbC determination, an analysis examining what air pollution controls were available for those individual sources to determine the lowest emissions limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering

<sup>10</sup> 40 CFR 52.2020(d)(1).

<sup>11</sup> 84 FR 20274 (May 9, 2019).

technological and economic feasibility.<sup>12</sup>

Through its source-specific RACT II determinations, PADEP and ACHD through PADEP have established NO<sub>x</sub> and VOC limits and requirements for various sources that either reaffirm existing emissions limits or make the limits more stringent. PADEP, on behalf of itself and ACHD, submitted those determinations to EPA as bundled packages of individual SIP revisions. EPA is now approving the RACT II CbC SIP revisions for individual NO<sub>x</sub> and VOC sources at six facilities throughout Pennsylvania (including one in Allegheny County). For the reasons explained below, EPA concludes that the arguments presented by the comment do not prohibit approval of these SIP revisions.

CAA section 110(l) prohibits EPA from approving a SIP revision if the revision would “interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of this chapter.” 42 U.S.C. 7410(l). While EPA interprets section 110(l) as applying to all NAAQS that are in effect, including those for which a relevant SIP submission may not have been made, the level of rigor needed for any CAA section 110(l) demonstration will vary depending on the nature and circumstances of the revision. For example, an in-depth section 110(l) analysis is more appropriate where there is a reasonable expectation that an existing SIP standard is being weakened or that there will be a net emissions increase because of approval of the SIP revision under consideration. However, here, the Pennsylvania CbC RACT II SIP revisions are either retaining an existing standard or establishing a more stringent one. For these reasons, EPA did not include a detailed section 110(l) analysis at the proposal stage. Since the comment raised the issue, EPA is responding in this final action by explaining why its approval is consistent with section 110(l).

In circumstances where an existing SIP standard is being weakened or a net emissions increase is expected, there are two generally recognized paths for satisfying CAA section 110(l). First, a state may demonstrate through an air quality analysis, including modeling, that the revision will not interfere with the attainment of the NAAQS, reasonable further progress, or any other

applicable requirement. This is the approach the comment claims is required for the Pennsylvania CbC RACT II SIP revisions. Second, a state may substitute equivalent or greater emissions reductions to compensate for any change to a plan to ensure actual emissions to the air are not increased and thus preserve status quo air quality. In the context of substitution, courts have upheld the concept that substitute measures resulting in a net zero increase in emissions, *i.e.* status quo emissions, is sufficient to demonstrate noninterference. *Kentucky Resources Council, Inc. v. EPA*, 467 F.3d 986 (6th Cir. 2006); *Indiana v. EPA*, 796 F.3d 803 (7th Cir. 2015).

In a more analogous case to the situation presented here, EPA’s interpretation of section 110(l) was upheld in *WildEarth Guardians v. EPA*, 759 F.3d 1064 (9th Cir. 2014). There, the court rejected a challenge to an EPA action approving a regional haze plan and concluded that *WildEarth Guardians* had identified “nothing in [the] SIP that weakens or removes any pollution controls. And even if the SIP merely maintained the status quo, that would not interfere with the attainment or maintenance of the NAAQS.”<sup>13</sup> For that reason, the court concluded that the petitioner in *WildEarth Guardians* failed to show that EPA’s approval of the SIP contravened section 110(l). The court’s holding demonstrates that a SIP approval that does not weaken or remove pollution controls would not violate section 110(l). Thus, a showing that the approved SIP measures preserve status quo emissions is generally sufficient to demonstrate noninterference.

Here, contrary to the comment’s characterization, PADEP and ACHD are not relaxing standards or eliminating a program; rather, PADEP and ACHD are reevaluating the technical and economic feasibility of air pollution controls for subject air pollution sources as required by implementation of the 2008 8-hour NAAQS. Based on that review, PADEP and ACHD, as explained in detail in Section II of this preamble, have made determinations that either retain or make more stringent existing NO<sub>x</sub> emissions limits. Under these circumstances, PADEP’s or ACHD’s demonstration to meet the requirements of section 110(l) for its source-specific RACT II determinations is not one of modeling or identifying equivalent emissions reductions to compensate for or offset an emissions increase because the revisions are not resulting in emissions increases, but rather to

establish that its new source-specific NO<sub>x</sub> RACT determinations are preserving the status quo emissions or achieving additional reductions beyond the status quo. As described in the preamble above, as well as the NPRM, associated TSD, and supporting record documents, EPA has approved for each of the facilities with CbC NO<sub>x</sub> RACT II determinations requirements that are at least as stringent as the prior CbC NO<sub>x</sub> RACT determinations.

*Comment 4:* CBD asserts that EPA’s section 110(l) analysis must determine whether NO<sub>x</sub> emissions from VOC RACT control devices that use combustion will cause or contribute to a violation of the 2010 1-hour NO<sub>x</sub> NAAQS.

*Response 4:* No VOC combustion control devices are approved as part of the VOC CbC RACT II determinations for any of these six facilities, therefore consideration of whether NO<sub>x</sub> emissions from VOC RACT control devices will cause or contribute to a violation of the NAAQS as measured by NO<sub>2</sub> is not relevant to our final action in this rule. Furthermore, no areas in Pennsylvania are designated as non-attainment areas for the 2010 1-hour NO<sub>x</sub> NAAQS under 40 CFR 81.339.

*Comment 5:* CBD states that the SIP submission is “incomplete” because it does not contain a “demonstration that the national ambient air quality standards, prevention of significant deterioration increments, reasonable further progress demonstration, and visibility, as applicable, are protected if the plan is approved and implemented,” per 40 CFR part 51, appendix V (Appendix V), 2.2(d), and therefore “does not contain ‘the information necessary to enable the Administrator to determine whether the plan submission complies with the provisions of [the Clean Air Act],’ as required by Section 110(k)(1)(A) of the Act.” This comment further asserts that because Pennsylvania has not submitted the demonstration referenced above, EPA cannot now supplement the record with the supposedly missing information as part of this final rule. Lastly, the comment states that because in the commenter’s experience it is “not possible for public commenters to carry out a complete analysis” the comment asserts is missing, that “the state and EPA . . . bear the responsibility of carrying out a full and complete assessment of whether the rule will interfere with the NAAQS.”

*Response 5:* This comment fundamentally misunderstands the purpose of Appendix V, CAA 110(k)(1)(A) and the concept of “completeness.” Under CAA section

<sup>12</sup> See December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, “Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas,” and 44 FR 53762 (September 17, 1979).

<sup>13</sup> 759 F.3d at 1074.

110(k)(1), with a single exception known as parallel processing, which is not relevant in this action, a SIP submission must either be determined to be “complete” by EPA or become complete by operation of law before EPA can formally propose action on the submission. Appendix V was promulgated consistent with CAA 110(k)(1)(A), that directed EPA “to promulgate minimum criteria that any plan submission must meet before the Administrator is required to act on such submission under this subsection.” Thus, Appendix V provides EPA the criteria that it uses to affirmatively determine completeness of a SIP submission, which then allows EPA to move forward with formal action on the submission. However, a SIP submission that does not meet the Appendix V completeness criteria may become complete by operation of law pursuant to CAA 110(k)(1)(B) if EPA does not affirmatively determine that the SIP submission is complete by “the date 6 months after receipt of the submission” from the state. The submissions at issue in this rule became complete by operation of law in October 2020 for ArcelorMittal Plate LLC Coatesville, Boyertown Foundry Company, Texas Eastern Transmission LP Lilly Station, and ATI Flat Rolled Products Holdings, LLC, and in August 2021 for INDSPEC Chemical Corporation Petrolia and Grove US LLC Shady Grove Plant, six months after Pennsylvania made the submissions because EPA did not make an affirmative determination of completeness.<sup>14</sup> It is unclear from the comment precisely what the commenter believes are the repercussions of the alleged incompleteness; to the extent it implies that the alleged incompleteness is a barrier to EPA’s proposed or final rule in this action, that belief is incorrect, because these submissions are deemed complete by operation of law. To the extent the comment implies that Appendix V and CAA 110(k)(1)(A) impose substantive approval criteria to require a “demonstration that the national ambient air quality standards, prevention of significant deterioration increments, reasonable further progress demonstration, and visibility, as applicable, are protected if the plan is approved and implemented” in this approval, EPA’s responses to Comments

3 and 6, that the record supporting EPA’s approval of PADEP’s and ACHD’s source-specific RACT II SIP revisions is sufficient, and therefore EPA does not need to supplement the record. As such, the comment’s reference to EPA’s inability to supplement the record, and to *Ober v. U.S. EPA*, 84 F.3d 304, 312 (9th Cir. 1996), is inapplicable to this action. Similarly, because EPA has determined that the existing record supports this action, the comment’s discussion of the relative burden of providing any analysis beyond that already in the record is not relevant to our final action in this rule.

*Comment 6:* CBD’s final comment relates to the results from air dispersion modeling of NO<sub>x</sub> emissions from the JBS Swift Beef Company (JBS) facility in Colorado that they claim shows the potential impact of NO<sub>x</sub> emissions on 1-hour NO<sub>x</sub> NAAQS violations. The comment states that EPA or Pennsylvania must undertake a modeling analysis to determine if the proposed CbC RACT II determinations will cause or contribute to 2010 1-hour NO<sub>x</sub> NAAQS violations. CBD asserts that EPA and Pennsylvania have the responsibility for conducting the modeling to affirmatively demonstrate that the SIP revision does not interfere with the NAAQS. Relatedly, this comment indicates that EPA must repropose this action and allow for comment on any such modeling information or other information utilized in the demonstration that the NAAQS will be protected.

*Response 6:* With this rule action, EPA is only approving revisions that add specific NO<sub>x</sub> and VOC source-specific RACT II determinations to the Pennsylvania SIP. In the subject RACT II source-specific determinations, PADEP and ACHD have made an adequate showing that its source-specific determinations for individual sources at the six facilities at issue will preserve the status quo in NO<sub>x</sub> emissions. As described in the TSD and related documents, which are included in the docket for this rule, PADEP and ACHD evaluated both the technical and economic feasibility of various control equipment for these sources and used that evaluation to determine the RACT II requirements. PADEP and ACHD also considered the prior RACT I requirements to determine whether the RACT II requirements were as stringent as the previously established standards. In circumstances where the RACT I requirements were more stringent, they were retained and remain effective. EPA determined that PADEP and ACHD adequately justified their RACT II CbC NO<sub>x</sub> determinations and alternative

NO<sub>x</sub> emissions limits. EPA also concluded, under section 110(l), that the status quo in NO<sub>x</sub> emissions had been maintained, if not improved, and that there is no need to conduct the modeling suggested by the comment. The record supporting EPA’s approval of PADEP’s and ACHD’s source-specific RACT II SIP revisions is sufficient, there is no need to supplement the record, and the comment’s reference to EPA’s inability to supplement the record is inapplicable to this action.

The comment also included an air dispersion modeling analysis of NO<sub>x</sub> emissions from the JBS facility in Colorado to highlight an alleged potential of NO<sub>x</sub> emissions to cause or contribute to violations of the 2010 1-hour NO<sub>x</sub> NAAQS. The NAAQS for nitrogen oxides is a 1-hour standard at a level of 100 ppb based on the 3-year average of 98th percentile of the yearly distribution of 1-hour daily maximum NO<sub>2</sub> concentrations. In 2012, EPA designated areas within Pennsylvania as attainment/unclassifiable for the 2010 standard.<sup>15</sup> The modeling analysis provided by the comment indicated that NO<sub>x</sub> emissions from the JBS facility in Colorado could have significant NO<sub>2</sub> impacts—the maximum NO<sub>2</sub> concentration would occur within a 1-kilometer radius of the facility.

This modeling data analysis from Colorado does not trigger a need for EPA, Pennsylvania, or ACHD to conduct modeling on the impact of NO<sub>x</sub> emissions from each individual source at issue in this rule in order for EPA to approve these SIP revisions. First, as discussed previously, modeling is not the sole method available to satisfy section 110(l) requirements. Second, the differences in the meteorology, terrain, and facility configurations between the JBS facility and the Pennsylvania RACT II sources are too significant to rely on the JBS facility modeling results to serve as surrogate modeling indicating that the Pennsylvania RACT II sources have the potential to cause exceedances of the 2010 1-hour NO<sub>x</sub> NAAQS in Pennsylvania. The comment does not provide any comparison or information to show why the JBS facility modeling results would inform our analysis of the specific RACT II sources in Pennsylvania at issue in this rule. Furthermore, the comment has not presented any specific information suggesting the RACT II CbC NO<sub>x</sub> determinations or alternative NO<sub>x</sub> emissions limits for these specific sources could somehow lead to violations of the 2010 1-hour NO<sub>x</sub> NAAQS. Without a more specific

<sup>14</sup> PADEP submitted the last of the original SIP revisions by letters dated February 9, 2021. Therefore, all proposed SIP revisions were complete by operation of law well before the March 17, 2022 (87 FR 15161) NPRM (although, PADEP submitted supplemental materials for several facilities, these supplemental submittals did not re-start the six-month completeness by-operation-of-law clock set forth at CAA 110(k)(1)(B), 42 U.S.C. 7410(k)(1)(B)).

<sup>15</sup> 77 FR 9532 (February 17, 2012).

allegation from the comment about the sources in question, the comment's allegations are too speculative in nature to prevent EPA from approving PADEP's and ACHD's RACT II CbC NO<sub>x</sub> determinations or alternative NO<sub>x</sub> emissions limits for sources at the subject facilities.

#### IV. Final Action

EPA is approving case-by-case RACT determinations and/or alternative NO<sub>x</sub> emissions limits for sources at six facilities in Pennsylvania, as required to meet obligations pursuant to the 1997 and/or 2008 8-hour ozone NAAQS, as revisions to the Pennsylvania SIP.

#### V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of source-specific RACT II permits listed in table 1 of this preamble. These permits establish and require reasonably available control technology (RACT) for certain sources at four major volatile organic compound (VOC) and nitrogen oxide (NO<sub>x</sub>) emitting facilities and two major volatile organic compound (VOC) emitting facilities. Entries for two facilities with requirements incorporated by reference previously under the RACT I rule are also revised to add new citations. 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). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>16</sup>

#### VI. Statutory and Executive Order Reviews

##### A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 the 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- 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 the 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.

##### B. Submission to Congress and the Comptroller General

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. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

##### C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit October 18, 2022. 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. This action approving Pennsylvania's NO<sub>x</sub> and VOC RACT requirements for six facilities for the 1997 and 2008 8-hour ozone NAAQS 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, Volatile organic compounds.

**Adam Ortiz,**

*Regional Administrator, Region III.*

For the reasons set out in the preamble, 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.*

##### Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (d)(1) is amended by:

■ a. Revising the entries "Lukens Steel Co.—Coatesville"; and "Allegheny Ludlum Corporation—Brackenridge"; and

■ b. Adding entries at the end of the table for "ArcelorMittal Plate LLC Coatesville (formerly referenced as

<sup>16</sup> 62 FR 27968 (May 22, 1997).



Lukens Steel Co.—Coatesville); “ATI Flat Rolled Products Holdings, LLC (formerly referenced as Allegheny Ludlum Corporation—Brackenridge); “Boyertown Foundry Company”; “Grove US LLC Shady Grove Plant”; “INDSPEC Chemical Corporation Petrolia”; and “Texas Eastern Transmission LP Lilly Station”. The revisions and additions read as follows:

**§ 52.2020 Identification of plan.**  
 \* \* \* \* \*  
 (d) \* \* \*  
 (1) \* \* \*

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/ §§ 52.2063 and 52.2064 citations <sup>1</sup>
Lukens Steel Co.—Coatesville	OP-15-0010	Chester	5/6/99	12/15/00, 65 FR 78418	See also 52.2064(j)(1).
Allegheny Ludlum Corporation—Brackenridge.	CO-260	Allegheny	12/19/96	10/18/01, 66 FR 52851	See also 52.2064(j)(2).
ArcelorMittal Plate LLC Coatesville (formerly referenced as Lukens Steel Co.—Coatesville).	15-00010	Chester	3/18/20	8/19/2022, [insert citation].	52.2064(j)(1).
ATI Flat Rolled Products Holdings, LLC (formerly referenced as Allegheny Ludlum Corporation—Brackenridge).	0059-I009a 0059-I008d	Allegheny	12/3/20 4/21/21	8/19/2022, [insert citation].	52.2064(j)(2).
Boyertown Foundry Company	06-05063	Berks	8/1/20	8/19/2022, [insert citation].	52.2064(j)(3).
Grove US LLC Shady Grove Plant	28-05004	Franklin	1/1/21	8/19/2022, [insert citation].	52.2064(j)(4).
INDSPEC Chemical Corporation Petrolia.	10-00021	Butler	12/17/20	8/19/2022, [insert citation].	52.2064(j)(5).
Texas Eastern Transmission LP Lilly Station.	11-00258	Cambria	12/10/21	8/19/2022, [insert citation].	52.2064(j)(6).

<sup>1</sup> The cross-references that are not § 52.2064 are to material that pre-date the notebook format. For more information, see § 52.2063.

\* \* \* \* \*

■ 3. Amend § 52.2064 by adding paragraph (j) to read as follows:

**§ 52.2064 EPA-approved Source-Specific Reasonably Available Control Technology (RACT) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO<sub>x</sub>).**

\* \* \* \* \*

(j) Approval of source-specific RACT requirements for 1997 and/or 2008 8-hour ozone national ambient air quality standards for the facilities listed in this paragraph are incorporated as specified. (Rulemaking Docket No. EPA-OAR-2022-0165).

(1) ArcelorMittal Plate LLC Coatesville—Incorporating by reference Permit No. 15-00010, effective March 18, 2020, as redacted by Pennsylvania, which supersedes the prior RACT Permit No. 15-0010, effective May 6, 1999, except for Conditions 18, 19, and 23-31 which remain as RACT requirements. See also § 52.2063(c)(143)(i)(B)(11), for prior RACT approval.

(2) ATI Flat Rolled Products Holdings, LLC—Installation Permit No. 0059-I009a effective December 3, 2020 and Installation Permit No. 0059-I008d effective April 21, 2021, as redacted by ACHD, which supersede RACT Order 260, issued December 19, 1996 to Allegheny Ludlum Corporation, except

for conditions 1.1, 1.2, 1.3, 1.4, 1.9, and 1.10.

(3) Boyertown Foundry Company—Incorporating by reference Permit No. 06-05063, effective on August 1, 2020, as redacted by PADEP.

(4) Grove US LLC Shade Grove Plant—Incorporating by reference Permit No. 28-05004, effective January 1, 2020, as redacted by Pennsylvania.

(5) INDSPEC Chemical Corporation Petrolia—Incorporating by reference Permit No. 10-00021, effective December 17, 2020, as redacted by Pennsylvania. All permit conditions in the prior RACT Permit No. #10-021, effective October 10, 1998, remain as RACT requirements. See also § 52.2063(c)(186)(i)(B)(2), for prior RACT approval.

(6) Texas Eastern Transmission LP Lilly Station—Incorporating by reference Permit No. 11-00258, effective December 10, 2021 as redacted by Pennsylvania.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

[EPA-R04-OAR-2022-0408; FRL-9560-01-R4]

**South Carolina; New Stationary Sources; Supplemental Delegation of Authority**

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

**ACTION:** Notification.

**SUMMARY:** On September 23, 2021, the South Carolina Department of Health and Environmental Control (SCDHEC or State agency) requested to change its delegation mechanism from “adopt-by-reference” to “automatic” for delegation of New Source Performance Standards (NSPS) under our regulations. The purpose of the State agency request for approval of the “automatic” delegation mechanism is to facilitate consistency with the State agency’s “automatic” delegation mechanism for implementation and enforcement of National Emission Standards for Hazardous Air Pollutants rules. With this NSPS delegation mechanism in place, once a new or revised rule is promulgated by EPA, delegation of authority from EPA to the State agency