



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2014-0206; FRL-9908-93-Region 5]

**Approval and Promulgation of Implementation Plans; Wisconsin;
Nitrogen Oxide Combustion Turbine Alternative Control
Requirements for the Milwaukee-Racine Former Nonattainment Area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On February 24, 2014, the Wisconsin Department of Natural Resources (WDNR) submitted revisions to its nitrogen oxide (NOx) combustion turbine rule for the Milwaukee-Racine former nonattainment area. This revision is contained in "2013 Wisconsin Act 91 - Senate Bill 371" which allows alternative NOx emission requirements for simple cycle combustion turbines that undergo a modification on or after February 1, 2001, if dry low NOx combustion is not technically or economically feasible. This revision is approvable because it provides for alternative NOx requirements subject to Environmental Protection Agency (EPA) approval on a case-by-case basis and therefore satisfies the reasonably available control technology (RACT) requirements of the Clean Air Act (CAA).

DATES: This direct final rule will be effective [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless EPA receives adverse comments by [INSERT DATE 30 DAYS FROM DATE

OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2014-0206, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: aburano.douglas@epa.gov.
3. Fax: (312) 408-2279.
4. Mail: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2014-0206. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886-6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning & Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6052, rosenthal.steven@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the Background for this Action?

II. What are Wisconsin's NOx Rule Revisions and What is EPA's Analysis of the Revisions?

III. What Action is EPA Taking?

IV. Statutory and Executive Order Reviews.

I. What is the Background for this Action?

The WDNR established a stationary source NOx control program in 2000 to meet rate-of-progress (ROP) requirements that are applicable to the Milwaukee-Racine former nonattainment area under the 1990 1-hr ozone national ambient air quality standard (NAAQS). The entire NOx control program consists of emission limits for new sources, existing sources, and existing sources that undergo a major modification. These NOx control requirements are set forth in chapter NR 428, Wisconsin Administrative Code (NR 428). EPA approved this NOx control program as part of Wisconsin's ozone State implementation plan (SIP) on November 13, 2001, 66 FR 56931. Also, EPA approved RACT requirements, set forth in NR 428.22(1)(g)1.a and b., on March 24, 2010, 75 FR 14116.

The Milwaukee-Racine former nonattainment area was designated attainment for the 1997 8-hr ozone NAAQS on February 9, 2012, 77 FR 6739. As part of the designation to attainment, a maintenance plan was required that showed daily NOx emissions will not exceed levels consistent with attainment. The NR 428

ROP and RACT requirements, among other requirements, are part of this maintenance plan.

Under the current SIP approved NR 428 NOx control program, existing simple cycle combustion turbines larger than 84 megawatts (MW) that undergo a major modification after February 2001 must meet the emission limitations set forth in s. NR 428.04(2)(g)1.a. and 2.a. This provision sets NOx emission limits of 12 or 25 parts per million dry volume (ppmdv) at 15% oxygen (O₂), on a 30-day rolling basis, when firing natural gas or distillate oil, respectively.

II. What are Wisconsin's NOx Rule Revisions and What is EPA's Analysis of the Revisions?

The WDNR originally set the NOx emission limitations for combustion turbines in NR 428.04(2)(g)1.a. and 2.a. based on the assumption that dry low NOx (DLN) combustion technology was both feasible and available for new and modified combustion turbines. As previously stated, the emission limitations in NR 428.04(2)(g)1.a. and 2.a. apply to simple cycle combustion turbines that are larger than 84 MW and undergo a major modification. There are only four existing combustion turbines in the Milwaukee-Racine former nonattainment area that may meet these criteria. These combustion turbines are the model 11N turbines that were manufactured by ASEA Brown-Boveri (ABB) and operated by We Energies at its Paris generating facility.

In 2008, the WDNR conducted a best available control technology (BACT) assessment for a set of ABB 11N combustion turbines operated by We Energies at its Concord facility. This BACT analysis is applicable to the NR 428 and alternative emission requirements as it applies to the same model combustion turbine. In performing this top-down BACT control analysis, selective catalytic reduction (SCR) was the most effective control technology considered. However, the WDNR determined that SCR was not cost-effective for BACT as the cost would likely exceed 8,236 dollars per ton of controlled NOx. The analysis also noted that the cost would likely be even higher due to intermittent operating profiles and high flue gas temperatures associated with simple cycle combustion turbines. After excluding SCR, the analysis showed that the next best available technology is DLN combustion technology. In this case, the WDNR determined that DLN was not commercially available for the ABB 11N simple cycle combustion turbines. After SCR and DLN, the Concord BACT analysis indicates that the next best technology for the 11N ABB combustion turbines is water injection. Therefore water injection was determined by the WDNR to be BACT for the Concord simple cycle combustion turbines. Thus, the best control technology available that is consistent with the intent of NR 428 in meeting ROP and RACT

requirements is water injection for those simple cycle combustion turbines for which DLN is not available.

The Wisconsin Legislature enacted Wisconsin statute s. 285.27 (3m) on December 13, 2013 to establish different emission requirements for simple cycle combustion turbines that are modified and that do not have the necessary DLN combustion control technology available. Under the proposed requirement, the affected combustion turbines must operate water injection and meet NOx emission limits of 25 or 65 ppm_{dv} at 15% O₂, on a 30-day rolling basis, when firing natural gas or distillate oil, respectively. The emission limitations originally applicable under NR 428 for modified combustion turbines and the alternative requirements enacted under s. 285.27 (3m), Wis. Stats., are compared in Table 1.

Table 1. NOx Emission Requirements for Simple Cycle Combustion Turbine > 84 MW that Undergo a Major Modification.

	NR 428 Emission Limits	s. 285.27 (3m) Wis. Stats. Alternative Requirements
<u>Emission Limitations</u> ¹		
Natural Gas:	12	25
Distillate Oil:	25	65
Technology Requirement:	None Specified	Operation of Water Injection

1) Emission limitations in parts per million dry volume @ 15% O₂ on a 30-day rolling basis.

In order to be subject to the alternative requirements under s. 285.27 (3m), Wis. Stats., the owner/operator of the combustion turbine must satisfactorily demonstrate that equipping the turbine with a DLN combustion system is not technologically or economically feasible or that a DLN combustion system is not commercially available from the manufacturer of the combustion turbine and the owner/operator must obtain a written confirmation of this demonstration from EPA.

Based on the use of water injection NOx control technology, s. 285.27 (3m), Wis. Stats. sets forth emission limitations of 25 or 65 ppm_{dv} at 15% O₂, on a 30-day rolling basis, when firing natural gas or distillate oil, respectively. These emissions limitations are appropriate for two reasons. First, these emission limits are consistent with the Concord combustion turbines BACT emission limits. Second, these are the same emission limitations for using water injection in meeting RACT requirements under the NR 428 control program. These RACT requirements are set forth in NR 428.22(1)(g)1.a. and b., Wis. Adm. Code, and were approved by the WDNR and EPA on March 24, 2010, 75 FR 14116.

The alternative emission requirements established in

s. 285.27 (3m), Wis. Stats., will not increase allowable NOx emission rates above current levels for the affected combustion turbines. This determination is based on looking at the ROP and RACT emission limitations for simple cycle combustion turbines under the NR 428 NOx control program. As shown in Table 2, the alternative emission limits in s. 285.27 (3m), Wis. Stats. are significantly more stringent than the ROP emission limitations and are equivalent to the applicable NOx RACT emission limitations. The combustion turbines in question at the Paris facility have been subject to the NOx RACT emission limitations since May 2009. Therefore, as shown in Table 2, the alternative emission limitations do not relax current allowable emission requirements.

Table 2. Comparison of Existing Combustion Turbine and Alternative NOx Emission Limits.

	Emission Limitations @ 15% O ₂ on a 30-Day Rolling Basis		
	Effective 2001 NR 428 <u>ROP Limits¹</u>	Effective 2009 NR 428 <u>RACT Limits²</u>	s. 285.27 (3m) Wis. Stats. <u>Alternative Limits</u>
Natural Gas:	75	25	25
Distillate Oil:	110	65	65

1) ROP emission limitations for existing simple cycle combustion turbines larger than 85 MW are set forth in NR 428.05(3)(d)1. and 2., Wis. Adm. Code.

2) RACT emission limitations for existing simple cycle combustion turbines larger than 85 MW are set forth in NR 428.22(1)(g)1.a. and b., Wis. Adm. Code.

In conclusion, the WDNR established more stringent NOx emission limits for simple cycle combustion turbines in the Milwaukee-Racine former nonattainment area that undergo a major modification than for other existing simple cycle combustion turbines, but subsequently determined that these more stringent limits are not feasible for the four existing combustion turbines to which these limits will likely apply. The Wisconsin legislature adopted s. 285.27 (3m), which became effective on December 15, 2013, to allow these units to meet the existing RACT limits instead of the more stringent limits, if EPA agrees in writing that equipping these turbines with a DLN combustion system is not technologically or that economically feasible or a DLN combustion system is not commercially available from the manufacturer of the combustion turbine.

III. What Action is EPA Taking?

For the reasons stated above, EPA is approving Section 1.285.27(3m), into Wisconsin's NOx SIP.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing

a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice unless we receive relevant adverse written comments by [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision is severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

IV. Statutory and Executive Order Reviews.

Under CAA, the Administrator is required to approve a SIP submission that complies with the provisions of 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 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Public Law 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 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.

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. EPA will

submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Intergovernmental relations,
Nitrogen oxides, Reporting and recordkeeping requirements.

Dated: March 20, 2014.

Susan Hedman
Regional Administrator, Region 5.

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.

2. Section 52.2570 is amended by adding paragraph (c) (131) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(131) On February 24, 2014, the Wisconsin Department of Natural Resources submitted revisions to its nitrogen oxide (NOx) combustion turbine rule for the Milwaukee-Racine former nonattainment area. This revision is contained in "2013 Wisconsin Act 91 - Senate Bill 371" which allows alternative NOx emission requirements for simple cycle combustion turbines, that undergo a modification on or after February 1, 2001, if dry low NOx combustion is not technically or economically feasible. This revision is approvable because it provides for alternative NOx requirements subject to EPA approval on a case-by-case basis and therefore satisfies the reasonably available control technology (RACT) requirements of the Clean Air Act (Act).

(i) Incorporation by reference. Wisconsin statute, Section 285.27 (3m), Exemption from Standards for Certain Combustion Turbines, as revised by 2013 Wisconsin Act 91 enacted December 13, 2013. (A copy of 2013 Wisconsin Act 91 is attached to Section 285.27(3m) to verify the enactment date.)

[FR Doc. 2014-09724 Filed 04/29/2014 at 8:45 am;
Publication Date: 04/30/2014]