



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0562; FRL-9961-17-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Maryland; 2016 Nitrogen Oxides Averaging Plan Consent Agreement with Raven Power**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Maryland. The revision pertains to a Consent Agreement between Maryland and Raven Power concerning an inter-facility averaging plan for emissions of nitrogen oxides (NO_x) at facilities located in Maryland and owned by Raven Power. The Consent Agreement allows Raven Power to use system-wide emissions averaging to comply with the applicable NO_x emission limits for six units located at two electric generating facilities, Brandon Shores and H. A. Wagner, owned by Raven Power. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2016-0562. All documents in the docket are listed on the [http:// 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 <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: Irene Shandruk, (215) 814-2166, or by e-mail at shandruk.irene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Maryland’s COMAR 26.11.09.08 – Control of NO_x Emissions for Major Stationary Sources – was approved into Maryland’s SIP pursuant to section 182 of the CAA. This regulation established NO_x emission limits for the 1-hour ozone national ambient air quality standard (NAAQS) for specific types of boilers and other fuel-burning equipment. Specifically, COMAR 26.11.09.08.C(2) established maximum NO_x emission rates as pounds (lbs) of NO_x per million British thermal units (MMBtu) per hour, ranging from 0.45 lbs/MMBtu to 0.80 lbs/MMBtu, depending on the type of combustion unit. COMAR 26.11.09.08 also contains a provision that allows an owner or operator of more than one unit to demonstrate compliance with system-wide emissions standards through the use of an averaging plan.

On July 28, 2016, the State of Maryland through the Maryland Department of the Environment (MDE) submitted to EPA a SIP revision submittal consisting of a Consent Agreement between MDE and Raven Power establishing an inter-facility averaging plan for NO_x emissions at two electric generating facilities, Brandon Shores and H. A. Wagner, collectively called Fort Smallwood. Both facilities are owned by Raven Power. MDE requested that this new Consent

Agreement and NOx averaging plan replace the Consent Order and NOx averaging plan previously approved into the Maryland SIP on February 27, 2002 (67 FR 8897). On December 27, 2016 (81 FR 95078), EPA published a notice of proposed rulemaking (NPR) proposing to approve Maryland’s SIP revision. No public comments were received on the NPR.

II. Summary of SIP Revision

The Consent Agreement between MDE and Raven Power allows Raven Power to use system-wide emissions averaging to comply with the applicable NOx limits for six boiler units (Brandon Shores units 1 and 2 and H. A. Wagner units 1 through 4) subject to COMAR 26.11.09.08.

Pursuant to the new Consent Agreement, Raven Power is required to calculate mass emissions from the affected units on a daily basis, determine compliance with the averaging plan using continuous emissions monitors (CEMs), and to submit quarterly reports to both MDE and EPA.

In the Consent Agreement, Raven Power agreed that if it fails to comply with the NOx averaging plan, all sources at Brandon Shores and Wagner remain subject to the unit-specific emission limits of COMAR 26.11.09.08.C (shown in Table 1) and must demonstrate compliance through the requirements found in COMAR 26.11.09.08.B(2). The aggregate mass emissions from all units at Brandon Shores and Wagner, under the NOx averaging plan, must be less than the mass emissions that would otherwise occur if each unit were subject to the applicable NOx emissions limit of COMAR 26.11.09.08.C.

Table 1: NOx Emission Limits for Fort Smallwood (as per COMAR 26.11.09.08.C)

Facility	Unit	Limit (lbs/MMBtu)
Brandon Shores	1	0.5
	2	0.5
H. A. Wagner	1	0.3
	2	0.5
	3	0.5
	4	0.3

Additionally, according to the Consent Agreement, Raven Power must submit a written report and certify annually that the annual NO_x mass emissions for all six affected units are at least twenty percent less than otherwise allowed from the affected units by the applicable NO_x emission limits of COMAR 26.11.09.08.

In addition, in the July 28, 2016 SIP submittal, Maryland seeks to remove from the Maryland SIP the April 2001 Consent Order between Maryland and Constellation Power Source Generation (Constellation) which functioned as a NO_x averaging plan for compliance with COMAR 26.11.09.08 for ten units at five facilities - Brandon Shores units 1 and 2; C.P. Crane units 1 and 2; H. A. Wagner units 1 through 4; Gould Street unit 3; and Riverside unit 4. EPA had approved the April 2001 Consent Order between Maryland and Constellation into the Maryland SIP on February 27, 2002 (67 FR 8897). The 2001 NO_x averaging plan is no longer effective for compliance with COMAR 26.11.09.08 as Constellation is not the owner of all of these units and COMAR 26.11.09.08 permitted system-wide averaging only when the same person owned or operated all affected units. COMAR 26.11.09.08.B(4)(a). A more detailed description of the NO_x averaging plan and the rationale for EPA's proposed action approving the plan for inclusion in the Maryland SIP can be found in the NPR and technical support document (TSD) on www.regulations.gov under Docket ID No. EPA-R03-OAR-2016-0562, and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA finds that Raven Power's NO_x emissions averaging plan meets all the applicable requirements of the SIP-approved COMAR 26.11.09.08, particularly subsection .08B(4), for emissions averaging by emissions sources. The Consent Agreement also includes appropriate

provisions for monitoring, recordkeeping, and reporting as well as assuring compliance and enforceability. As discussed in the TSD in more detail, EPA expects the Consent Agreement will strengthen the Maryland SIP and lead to additional NO_x emission reductions. Thus, EPA is approving for inclusion into the Maryland SIP Maryland's Consent Agreement with Raven Power concerning a NO_x emissions averaging plan pursuant to section 110 of the CAA.

IV. Incorporation by Reference

In this rule, 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 Maryland's Consent Agreement with Raven Power concerning a NO_x averaging plan discussed in section II of this document as well as in the TSD supporting this rulemaking action.

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 rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.¹ EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and/or at the EPA Region III Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

V. 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

¹ 62 FR 27968 (May 22, 1997).

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 (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 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 by **[Insert date 60 days after date of publication 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. This action concerning Maryland's Consent Agreement with Raven Power establishing a NOx averaging plan may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: March 21, 2017.

Cecil Rodrigues,
Acting Regional Administrator,
Region III.

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 V--Maryland

2. In § 52.1070, the table in paragraph (d) is amended by:

a. Removing the entry for “Constellation Power Source Generation, Inc. – Brandon Shores Units # 1 & 2; Gould Street Unit #3; H. A. Wagner Units # 1, 2, 3 & 4; C. P. Crane Units #1 & 3; and Riverside Unit #4”; and

b. Adding the entry for “Raven Power Fort Smallwood, LLC – Brandon Shores units 1 and 2; and H. A. Wagner units 1, 2, 3, and 4” at the end of the table.

The added text reads as follows:

§ 52.1070 Identification of plan.

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(d)* * *

Name of source	Permit number/type	State effective date	EPA approval date	Additional explanation
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Raven Power Fort Smallwood, LLC– Brandon Shores units 1 and 2; and H. A. Wagner units 1, 2, 3, and 4	Consent Agreement and NOx Averaging Plan	2/28/16	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

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[FR Doc. 2017-09176 Filed: 5/5/2017 8:45 am; Publication Date: 5/8/2017]