



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2015-0496; FRL-9967-53-Region 6]

#### Approval and Promulgation of Implementation Plans; Texas; Reasonably Available

#### Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is conditionally approving revisions to the Texas State Implementation Plan (SIP) addressing Oxides of Nitrogen (NO<sub>x</sub>) Reasonably Available Control Technology (RACT) for the Martin Marietta (formerly, Texas Industries, Inc., or TXI) cement manufacturing plant in Ellis County. We are fully approving revisions to the Texas SIP addressing NO<sub>x</sub> RACT for all other affected sources in the ten county Dallas Fort Worth (DFW) 2008 8-Hour ozone nonattainment area. We are also approving NO<sub>x</sub> RACT negative declarations (a finding that there are no major sources of NO<sub>x</sub> emissions in certain categories) for the DFW 2008 8-Hour ozone nonattainment area. The DFW 2008 8-Hour ozone nonattainment area consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise counties. The RACT requirements apply to major sources of NO<sub>x</sub> in these ten counties.

**DATES:** This rule will be effective on **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2015-0496. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, e.g., Confidential

Business Information 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 either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Planning Section (6MM-AA), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30am and 4:30pm weekdays except for legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alan Shar (6MM-AA), telephone (214) 665-2164, e-mail [shar.alan@epa.gov](mailto:shar.alan@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document “we,” “us,” and “our” refer to EPA.

**Outline**

- I. Background**
- II. Public Comments**
- III. Response to Comments**
- IV. Final Actions**
- V. Statutory and Executive Order Reviews**

**I. Background**

The background for this action is discussed in detail in the July 19, 2017 (82 FR 33026) proposal. In that document, the EPA proposed to conditionally approve revisions to the Texas SIP that the TCEQ submitted to EPA in its Appendix F (a component of the 2008 8-Hour DFW ozone nonattainment area plan) of the July 10, 2015 DFW SIP submittal. The July 19, 2017

Federal Register (FR) action proposed to conditionally approve revisions to the Texas SIP addressing NO<sub>x</sub> RACT for the Martin Marietta (MM) cement manufacturing plant in Ellis County. See section 110(k)(4) of the Clean Air Act (CAA, Act), and section II.F of the Proposal.

We proposed to fully approve revisions to the Texas SIP addressing NO<sub>x</sub> RACT for all other affected sources in the ten county DFW 2008 8-Hour ozone nonattainment area. See section II.B of the Proposal.

We also proposed to approve NO<sub>x</sub> RACT negative declarations for the nitric acid and adipic acid manufacturing operations within the ten County DFW 2008 8-Hour ozone nonattainment area. See section II.C of the Proposal.

The Proposal and the Technical Support Document (TSD) prepared in conjunction with that FR action provide detailed description and the rationale for the proposed decisions. Please see the docket ID No. EPA-R06-OAR-2015-0496 for the TSD and other documents regarding the Proposal.

## **II. Public Comments**

The public comment period for the July 19, 2017 (82 FR 33026) proposal expired on August 19, 2017, and we received relevant comments from Holcim, TCEQ, and Ash Grove on the proposed actions during this period. Our response to relevant comments received during public comment period is below.

## **III. Response to Comments**

*Comment # 1:* Holcim supported EPA's action on the Proposal.

*Response:* We appreciate the support.

*Comment # 2:* TCEQ requested clarification on its SIP revision process addressing conditional approval for the MM cement manufacturing plant through a voluntary Agreed Order (AO) or rulemaking action.

*Response:* State has the option of choosing what mechanism, for example; a voluntary AO or rulemaking action, to use when revising its SIP as long as a revision is made in conformance with section 110 of the Act and applicable State law. No change to our NOx RACT determination is made as a result of this comment.

*Comment # 3:* Ash Grove supported EPA's action, stating its NOx limit is driven by 40 CFR 60.62 (New Source Performance Standards - NSPS). The commenter contends that its air permit is not a part of a federally enforceable SIP submittal.

*Response:* We appreciate the support. The NOx RACT emission limitation of 1.5 lb/ton of clinker produced is required per 40 CFR 60.62(a) or NSPS subpart F that is consistent with limits established in Ash Grove's consent decree. We agree with the comment that its air permit was not a component of TCEQ SIP submittal; however, inclusion of air permit in record was intended to create a thorough and complete docket. No change to our NOx RACT determination for this plant is made as a result of this comment.

This concludes our response to comments received. Based on our evaluation and responses, no changes to the Proposed NOx RACT determinations have been made. Therefore, we are finalizing the 82 FR 33026 proposal as published on July 19, 2017.

#### **IV. Final Actions**

We are conditionally approving NOx RACT for the MM cement manufacturing plant in Ellis County, Texas. We are fully approving revisions to the Texas SIP addressing NOx RACT for all other affected sources in the ten county DFW 2008 8-Hour ozone nonattainment area. We

are also approving NO<sub>x</sub> RACT negative declarations for the nitric acid and adipic acid manufacturing operations within the ten County DFW 2008 8-Hour ozone nonattainment area.

The EPA had previously approved RACT for all affected NO<sub>x</sub> sources under the 1-Hour and the 1997 8-Hour ozone standards. Based on our approval of 30 TAC Chapter 117 rules for control of nitrogen compounds on April 13, 2016 (81 FR 21747), and the Proposed RACT action of July 19, 2017 (82 FR 33026), Texas is implementing RACT for all affected NO<sub>x</sub> sources in the ten County DFW area under the 2008 8-Hour ozone standard.

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

*A. Executive Order 12866: Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review and Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review. This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

### *B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may

disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population*

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

Under section 307(b)(1) of the Clean Air Act, 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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 12, 2017.

**Samuel Coleman,**  
*Acting Regional Administrator, Region 6.*

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 SS - Texas**

2. In § 52.2270(e) the table titled “EPA approved nonregulatory provisions and quasi-regulatory measures in the Texas SIP” is amended by adding three new entries at the end.

The additions read as follows:

**§ 52.2270 Identification of plan.**

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(e) \* \* \*

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE  
TEXAS SIP

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/effective date	EPA approval date	Comments
* * * * *				
Conditional approval of NOx RACT finding for the Martin Marietta (formerly Texas Industries, Inc., or TXI) cement manufacturing plant under the 2008 8-Hour ozone NAAQS.	Ellis County, TX	07/10/15	[Insert FR publication date] [Insert FR page number where document begins].	TCEQ commitment letter of July 29, 2016

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/effective date	EPA approval date	Comments
NOx RACT finding under the 2008 8-Hour ozone NAAQS.	Collin, Dallas, Denton, Tarrant, Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties, TX	07/10/15	[Insert FR publication date] [Insert FR page number where document begins].	DFW as Moderate and Serious
NOx RACT finding of negative declarations for nitric acid and adipic acid operations under the 2008 8-Hour ozone NAAQS.	Collin, Dallas, Denton, Tarrant, Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties, TX	07/10/15	[Insert FR publication date] [Insert FR page number where document begins].	DFW as Moderate and Serious

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[FR Doc. 2017-20131 Filed: 9/21/2017 8:45 am; Publication Date: 9/22/2017]