



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2019-0674; FRL-10007-94-Region 2]

Approval and Promulgation of Implementation Plans; New Jersey; Negative Declaration

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 New Jersey for purposes of making a negative declaration regarding the October 2016 Oil and Natural Gas Control Techniques Guidelines (2016 Oil and Gas CTG). This action is being taken in accordance with the requirements of the Clean Air Act.

DATES: This final rule is 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 Number EPA-R02-OAR-2019-0674. All documents in the docket are listed on the <http://www.regulations.gov> web site. 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

electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Omar Hammad, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007-1866, at (212) 637-3347, or by email at Hammad.Omar@epa.gov.

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

Table of Contents

- I. What is the background for the action?
- II. What comments were received in response to the EPA's proposed action?
- III. What action is the EPA taking?
- IV. Statutory and Executive Order Reviews

I. What is the background for this action?

On May 13, 2019, the New Jersey Department of Environmental Protection (NJDEP) submitted to the EPA, a State Implementation Plan (SIP) revision consisting of a negative declaration for the 2016 Oil and Gas CTG.

Per the 2016 Oil and Gas CTG, the oil and natural gas industry includes oil and natural gas operations involved in the extraction and production of crude oil and natural gas, as well as the processing, transmission, storage, and distribution of natural gas. For oil, the industry includes all

operations from the well to the point of custody transfer at a petroleum refinery. For natural gas, the industry includes all operations from the well to the customer.

The NJDEP cross referenced the source operations covered in the 2016 Oil and Gas CTG and its applicability to New Jersey. New Jersey asserts that there are no sources within its respective State that would be subject to the 2016 Oil and Gas CTG. New Jersey asserts that it is not anticipated that crude oil or natural gas extraction will be occurring in New Jersey for the foreseeable future.

On January 22, 2020 (85 FR 3556), the EPA published a notice of proposed rulemaking that proposed to approve the State of New Jersey's May 13, 2019 SIP submittal, for purposes of making a negative declaration that no sources exist in the State of New Jersey that would be subject to the 2016 Oil and Gas CTG. The reader is referred to EPA's January 22, 2020, proposed action for more detailed background and EPA's evaluation of New Jersey's SIP revision submittal.

II. What comments were received in response to the EPA's proposed action?

In response to the EPA's January 22, 2020, proposed rulemaking on New Jersey's SIP revision submittal, the EPA is providing responses to the comments that were received. The specific comments may be viewed under Docket ID Number EPA-R02-OAR-2019-0674 on the <http://www.regulations.gov> web site.

Comment: This negative declaration would leave New Jersey at least temporarily exempt from

the October 2016 Oil and Natural Gas Control Techniques Guidelines in a future scenario of discovering oil and/or natural gas within the confines of New Jersey.

Response: EPA has historically allowed states to submit a negative declaration for a particular CTG category if the state finds that no sources exist in the state which would be subject to that CTG. EPA has addressed the idea of negative declarations numerous times and for various NAAQS including in the General Preamble to the 1990 Amendments,¹ the 2006 RACT Q&A Memo,² and the 2008 Ozone Implementation Rule.³ In each of these documents, EPA asserted that if no sources exist in the nonattainment area for a particular CTG category, the state would be allowed to submit a negative declaration SIP revision.

Nothing in the Clean Air Act (CAA) or EPA's implementing rules or guidance suggests that states must have a SIP approved regulation for a category of CTG sources that does not exist in the state. Should a new source of the type covered by the existing CTG be constructed in a state after approval of a negative declaration, EPA expects the state to develop a regulation and submit it to EPA for approval into the SIP in accordance with the relevant timing provided for by the CAA. At this time, because New Jersey does not have any sources subject to the 2016 Oil and Gas CTG, no regulation is required to be developed and submitted to EPA for SIP approval.

Comment: If EPA has or is in the process of withdrawing the CTG then EPA shouldn't be

¹ "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," (57 FR 13498 at 13512 (April 16, 1992)).

² "RACT Qs & As – Reasonably Available Control Technology (RACT): Questions and Answers" Memorandum from William T. Harnett, May 18, 2006.

³ "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements," (80 FR 12263 at 12278 (March 6, 2015)).

requiring states to spend valuable time and resources on this non-applicable "requirement". EPA should remove this CTG and disapprove New Jersey's SIP as unnecessary as well as any other state's SIP attempting to address this 2016 CTG.

Response: This SIP submittal addresses a final document that EPA announced on October 27, 2016, in the *Federal Register* (81 FR 74798) "Release of Final Control Techniques Guidelines for the Oil and Natural Gas Industry." This CTG is still in place. There is no final action that withdraws this requirement. The State is addressing their obligations in response to the final CTG with this submittal.

Comment: "It does not make sense for the state of New Jersey... to be looking to get rid of more of the rules and regulations. This seems like we are going backwards, away from the goal of making New Jersey a cleaner state... I feel that the EPA should be taking a closer look into the regulations the state of New Jersey is trying to get around."

Response: This action does not remove any rules or regulations from the New Jersey SIP. The negative declaration simply asserts that no sources exist in the State of New Jersey that are subject to the 2016 Oil and Gas CTG. The EPA has reviewed New Jersey's submittal and agrees with the State's evaluation.

III. What action is the EPA taking?

On May 13, 2019, the New Jersey Department of Environmental Protection (NJDEP) submitted to the EPA a SIP revision consisting of a negative declaration for the 2016 Oil and Gas CTG.

The EPA is approving the revision to the SIP submitted by the State to address the 2016 Oil and Gas CTG for the Ozone Transport Region and nonattainment RACT requirements for both the 2008 and 2015 ozone National Ambient Air Quality Standards and is approving their negative declaration that no sources exist in the State of New Jersey that would be subject to the 2016 Oil and Gas CTG.

IV. Statutory and Executive Order Reviews

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 proposes to approve 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), and 13563 (76 FR 382, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempt under Executive Order 12866;
- 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 rulemaking action, pertaining to New Jersey's Negative Declaration SIP submission, would not be approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose any substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

April 21, 2020.

Dated:

Peter Lopez,
Regional Administrator,
Region 2.

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 FF—New Jersey

2. In §52.1582, add paragraph (q) to read as follows:

§52.1582 Control strategy and regulations: Ozone.

* * * * *

(q) *Negative declarations.* The State of New Jersey has certified to the satisfaction of the EPA that no sources are located in the State which are covered by the following Control Techniques Guidelines:

(1) Oil and Natural Gas Industry (October 2016).

(2) [Reserved]

[FR Doc. 2020-08862 Filed: 5/15/2020 8:45 am; Publication Date: 5/18/2020]