



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### [EPA-R01-OAR-2020-0150; FRL-10011-22-Region 1]

#### **Air Plan Approval; New Hampshire; Negative Declaration for the Oil and Gas Industry**

**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 Hampshire. The revision provides the State's determination, via a negative declaration, that there are no facilities within its borders subject to EPA's 2016 Control Technique Guideline (CTG) for the oil and gas industry. The intended effect of this action is to approve this item into the New Hampshire SIP. This action is being taken under the Clean Air Act.

**DATES:** This 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 Identification No. EPA-R01-OAR-2020-0150. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., 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 at <https://www.regulations.gov>, or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your

inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Bob McConnell, Environmental Engineer, Air and Radiation Division (Mail Code 05-2), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1046.

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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**I. Background and Purpose**

On April 6, 2020, EPA published a Notice of Proposed Rulemaking (NPRM; see 85 FR 19116) with an associated Direct Final Rule (DFR; see 85 FR 19087) for the State of New Hampshire. The DFR approved a negative declaration for New Hampshire for EPA's 2016 Control Technique Guideline (CTG) for the oil and gas industry. We received one, relevant adverse comment on the NPRM, and so withdrew the DFR via a Withdrawal Notice published on June 5, 2020. See 85 FR 34524. Other specific requirements of the State's submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. Our response to the adverse comment on the NPRM is summarized and responded to in section II below.

**II. Response to Comment**

We received one, relevant adverse comment on the NPRM. A summary of the comment, and our response, follows.

*Comment: Did EPA even do any independent review to see if sources exist within New Hampshire? EPA seems to make a categorical conclusion about New Hampshire's SIP based simply on where EPA "believes" sources are located. EPA should withdraw this illogical conclusion and affirmatively determine whether the state has sources subject to the CTG based on a review of the State's SIP and an independent review of EPA's databases.*

Response: First, we note that the commenter does not provide any information to contradict New Hampshire's finding that no sources subject to EPA's 2016 CTG for the oil and gas industry exist within the State. EPA is not aware of any information indicating that a facility subject to the 2016 oil and gas CTG exists within the State of New Hampshire. Additionally, we note that 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,<sup>1</sup> the 2006 RACT Q&A Memo,<sup>2</sup> and the 2008 Ozone Implementation Rule.<sup>3</sup> 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. This principle also applies to states in the ozone transport region.

Second, we note that New Hampshire's finding is consistent with information contained within EPA data resources of industrial activity within the United States, such as the National Emissions Inventory (NEI) database of sources of air pollution, which is available at:

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<sup>1</sup> "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)).

<sup>2</sup> "RACT Q's and A's – Reasonably Available Control Technology RACT: Questions and Answers" Memorandum from William T. Harnett, May 18, 2006.

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

<https://www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei>. And last, we note that EPA Region 1 worked with New Hampshire, and EPA headquarters' technical experts on the CTG, to review the applicability criteria of EPA's 2016 oil and gas CTG to assist the State with its determination.

### **III. Final Action**

We are approving a negative declaration for EPA's 2016 CTG entitled "Control Techniques Guidelines for the Oil and Natural Gas Industry" into the New Hampshire SIP.

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

Under the Clean Air Act, 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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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);
- Is not an Executive Order 13771 regulatory action because this action is not significant 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 Clean Air Act; 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, the SIP is not 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 substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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.

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).)

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

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: June 18, 2020.

Dennis Deziel,  
Regional Administrator,  
EPA Region 1.

For the reasons stated in the preamble, EPA amends Part 52 of chapter I, title 40 of the Code of Federal Regulations 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 EE – New Hampshire**

2. In § 52.1520, amend paragraph (e) by adding an entry in the table for “Negative declaration for the 2016 Control Techniques Guideline for the Oil and Natural Gas Industry” at the end of the table, to read as follows:

**§ 52.1520 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

**New Hampshire NonRegulatory**

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date <sup>3</sup>	Explanations
**	*	*	*	**
Negative declaration for the 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry	Statewide	12/20/2019	[Insert date of publication in the <u>Federal Register</u> ]  [Insert <u>Federal Register</u> citation]	Negative declaration

<sup>3</sup> In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.