



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2020-0324, FRL-10018-42-Region 2]

Approval and Promulgation of Implementation Plans; New York; Ozone Season NO_x Controls for Simple Cycle and Regenerative Combustion Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan (SIP) for ozone concerning the control of oxides of nitrogen (NO_x). The EPA is proposing to approve a SIP revision of a New York regulation that lowers allowable NO_x emissions from simple cycle and regenerative combustion turbines during the ozone season. The lower emissions from these sources will help to address Clean Air Act (CAA) requirements, ozone nonattainment, and protect the health of New York State residents.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R02-OAR-2020-0324** at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

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I. What action is the EPA proposing?

The EPA is proposing to approve a revision to the New York SIP submitted by the State of New York on May 18, 2020. The SIP revision includes a newly-adopted regulation, Title 6 of the New York Code of Rules and Regulations (NYCRR), Subpart 227-3, "Ozone Season Oxides of Nitrogen (NO_x) Emission Limits for Simple Cycle and Regenerative Combustion Turbines", that reduces NO_x emissions from simple cycle and regenerative combustion turbines during the ozone season. The EPA is proposing to approve New York's May 2020 SIP submittal, which applies to major sources of NO_x, as a SIP-strengthening measure for New York's ozone SIP.

The EPA is also proposing to approve into the SIP the new version of 6 NYCRR Subpart 227-3, "Pre-2003 Nitrogen Oxides Emissions Budget and Allowance Program" (New York's 227-3 Trading Program Regulation). New York's 227-3 Trading Program Regulation contained a NO_x emissions budget and allowance trading system that is no longer in effect and that New York repealed from the New York Code of Rules and Regulations on September 5, 2014.

II. What is the background for this proposed rulemaking?

2008 and 2015 Ozone NAAQS Revisions

In March 2008, EPA revised the health-based National Ambient Air Quality Standard (NAAQS) for ozone to 0.075 parts per million (ppm) averaged over an 8-hour time frame (2008 8-hour ozone standard). In October 2015, the EPA revised this standard to 0.070 ppm averaged over an 8-hour time frame (2015 8-hour ozone standard).

On May 21, 2012, the EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 2008 8-hour ozone standard and, on July 20, 2012, the designations became effective. *See* 77 FR 30160 (May 21, 2012). The New York-Northern New Jersey-Long Island Connecticut metropolitan area (NYMA) was designated by the EPA as a “marginal” nonattainment area for the 2008 ozone NAAQS.¹ In 2016, the EPA determined that the NYMA did not attain the 2008 ozone standard by the July 20, 2015 attainment date and was reclassified from a “marginal” to a “moderate” nonattainment area. *See* 81 FR 26697 (May 4, 2016). State attainment plans for “moderate” nonattainment areas were due by January 1, 2017. *See id.* On April 30, 2018, the EPA finalized its attainment/nonattainment designations for most areas across the country as to the 2015 8-hour ozone standard, in which the NYMA was designated by the EPA as a “moderate” nonattainment area. *See* 83 FR 25776 (June 4, 2018). On September 23, 2019, the EPA reclassified the NYMA to “serious” nonattainment as to the 2008 8-hour ozone standard. *See* 84 FR 44238 (August 23, 2019). The serious area attainment date and the deadline for RACT measures not tied to attainment is July 20, 2021. *See id.*

New York’s NO_x Trading Programs

On April 19, 2000, the EPA approved New York’s 227-3 Trading Program Regulation into New York’s SIP for ozone. *See* 65 FR 20905 (April 19, 2000). New York’s 227-3 Trading Program Regulation implemented New York’s NO_x budget and allowance trading program for large electricity and industrial sources. The regulation addressed New York’s portion of the Ozone Transportation Commission (OTC) regional nitrogen oxides budget and allowance (NO_x Budget) trading program that reduced NO_x emissions generated within the Ozone Transport Region, which included New York State. The OTC had adopted a Memorandum of Understanding (MOU) on September 27, 1994, which obligated signatory states to nationwide

¹ The New York portion of the NYMA, is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester, Rockland and the Shinnecock Indian Nation. *See* 40 CFR 81.333.

ozone season reductions in NO_x emissions, with one phase of reductions occurring by 1999, and further NO_x emission reductions beginning in 2003 to help achieve attainment of the 1997 ozone NAAQS. New York's 227-3 Trading Program Regulation addressed the emission reductions required by 1999, and included NO_x emission caps for the 1999, 2001, and 2002 ozone seasons.

New York's 6 NYCRR Subpart 204, NO_x Budget Trading Program, approved into the SIP on May 22, 2001 (*see* 66 FR 28059 (May 22, 2001)), superseded New York's 227-3 Trading Program, and addressed the additional NO_x emissions reductions required by the MOU beginning in 2003. Subpart 204 also addressed New York's transport obligations under the NO_x SIP call,² which was promulgated by EPA to address NO_x emissions that traveled across state boundaries that interfered with downwind attainment and maintenance of the 1979 ozone NAAQS.

In October 2005, the EPA promulgated the Clean Air Interstate Rule (CAIR) to address transported emissions that significantly contributed to downwind states' nonattainment and interfered with maintenance of the 1997 ozone (as well as 1997 PM_{2.5} NAAQS).³ CAIR included additional ozone season NO_x emission reductions beginning in 2009 under a Federal Implementation Plan (FIP). On January 24, 2008, the EPA approved a New York SIP revision, which established a CAIR state trading program for New York for ozone season NO_x emissions (as well as annual sulfur dioxide (SO₂) and annual NO_x emissions). *See* 73 FR 4109 (January 24, 2008). The EPA determined that New York's CAIR trading program rules, which replaced the existing CAIR FIP for New York, met the CAIR requirements. New York's CAIR Ozone Season Trading Program was implemented under NYCRR Subpart 243, "CAIR NO_x Ozone Season

² The NO_x SIP call (63 FR 57356, October 27, 1998) required 22 eastern states, including New York, to submit SIPs to address the regional transport of ozone through reductions in NO_x to help achieve the 1979 ozone NAAQS.

³ CAIR (70 FR 25162, May 12, 2005) required 28 states, including New York, to reduce emissions of NO_x and SO₂.

Trading Program.” New York’s CAIR NO_x Ozone Season Trading Program superseded NYCRR Subpart 204.

CAIR was followed by the Cross-State Air Pollution Rule (CSAPR)⁴ in August 2011. CSAPR addressed the same NAAQS as CAIR, as well as the 2006 PM_{2.5} NAAQS.⁵ CSAPR promulgated FIPs requiring affected States, including New York, to participate in federal trading programs to reduce ozone season NO_x emissions (as well annual SO₂ and annual NO_x emissions). CSAPR was updated in 2016 to address eastern states transport obligations with regard to the 2008 ozone NAAQS. Among other things, the CSAPR update further lowered New York’s ozone season NO_x budget to address the more stringent ozone NAAQS. CSAPR required additional NO_x emission reductions under a FIP, which EPA began implementing on January 1, 2015.⁶ Under CSAPR, states could submit an “abbreviated” SIP revision that, upon approval, replaced the default allocations and/or applicability provisions of CSAPR federal trading programs.

On August 8, 2019, the EPA approved a New York “abbreviated” SIP revision, which established New York’s CSAPR state trading program for ozone season NO_x emissions (as well as annual SO₂ and annual NO_x emissions). *See* 84 FR 38878 (August 8, 2019). The EPA determined that New York’s CSAPR trading program rules, which replaced provisions of the CSAPR FIP for New York, met the requirements of the CSAPR federal trading program. New York’s CSAPR Ozone Season Trading Program was implemented under NYCRR Subpart 243, “CSAPR NO_x Ozone Season Group 2 Trading Program.” In the August 8, 2019 final rule approving New York’s CSAPR trading program, EPA also approved a request by New York to

⁴ The EPA promulgated CSAPR (76 FR 48208, August 8, 2011) to replace CAIR, which was remanded to EPA in 2008 by the United States Court of Appeals for the District of Columbia.

⁵ CSAPR Update rule (81 FR 74504, October 26, 2016) required 22 eastern states to limit emissions of NO_x.

⁶ CSAPR implementation was stayed during the course of litigation in the D.C. Circuit and the Supreme Court until the D.C. Circuit lifted the stay on October 23, 2014

rescind from the SIP NYCRR Subpart 243, “CAIR NO_x Ozone Season Trading Program,” which implemented New York’s discontinued CAIR trading program for ozone season NO_x emissions. On November 12, 2015, New York adopted amendments to 6 NYCRR Subpart 243 that repealed and replaced CAIR trading program rules with CSAPR trading program rules. Subsequently, on November 11, 2018, New York adopted amendments to NYCRR Subpart 243 that repealed and replaced the November 12, 2015 adopted rules with new versions of New York’s CSAPR trading program rules to conform with the EPA’s 2016 CSAPR update. In a Direct Final Rule approving New York’s CSAPR rules,⁷ the EPA determined that, consistent with CAA section 110(l), the removal of New York’s CAIR trading program rules, would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the NAAQS.

III. What did New York submit?

On May 18, 2020, the New York State Department of Environmental Conservation (NYSDEC or New York) submitted to the EPA a formal revision to its SIP. The proposed SIP revision consists of 6 NYCRR Subpart 227-3, “Ozone Season Oxides of Nitrogen (NO_x) Emission Limits for Simple Cycle and Regenerative Combustion Turbines”. On December 11, 2019, New York adopted 6 NYCRR Subpart 227-3, “Ozone Season Oxides of Nitrogen (NO_x) Emission Limits for Simple Cycle and Regenerative Combustion Turbines”.⁸ Simple cycle combustion turbines (SCCTs), also known as peaking units (peakers), run to meet electric load during periods of peak electricity demand. These peakers generally have either no or low-level NO_x emission controls

⁷ On May 21, 2019 (84 FR 22995 and 84 FR 22972), EPA simultaneously published a proposed rule and a direct final rule to approve new York’s CSAPR trading program rules. The EPA received a public comment on the proposed rule and intended to withdraw the direct final rule prior to the effective date of June 20, 2019. However, the EPA inadvertently did not withdraw the direct final rule prior to that date and the rule prematurely became effective on June 20, 2019. In the August 8, 2019 final rule (84 FR 38878, August 8, 2019), the EPA responded to the public comment, approved the revised versions of New York’s rules, and amended the effective date of the regulations’ inclusion into the SIP.

⁸ New York proposed the rule on February 27, 2019 and the public comment period ended on May 20, 2019. New York then re-proposed the rule on August 21, 2019 and the public comment period ended on October 7, 2019.

and typically operate during periods of elevated temperature when electric demand increases. Many of the peakers impacted by New York's rule are located in the New York portion of the NYMA. Due to peakers' low-level NO_x emission controls, peakers within the NYMA demonstrate very high NO_x emissions which contribute to the formation of ground-level ozone within the area. During these periods of elevated temperature, ozone levels tend to rise to unhealthy levels in ozone nonattainment areas. Inclusion in the SIP of more stringent NO_x emission limits for SCCTs located throughout the State, and particularly in the New York portion of the NYMA, would provide additional NO_x reductions to help attain the 2008 and 2015 ozone NAAQS and protect the health of New York residents. New York has elected to phase in the NO_x emission limits during the ozone season for SCCTs with a nameplate capacity of 15 megawatts (MWs) or greater that inject power into the transmission or distribution system. New York believes the phase-in approach for the NO_x emission limit would enable owners or operators with affected sources to plan over a longer term.

The rule requires, in pertinent part, all impacted SCCTs owners or operators to submit, by March 2, 2020, a compliance plan that, for each affected source, must contain identifying numbers (such as facility number, source number, and name) and a schedule that outlines how the owner or operator will comply with the rule's requirements. The compliance plan must also include a list of the emission sources in which the owner or operator will install controls, what those controls will be, and which sources will be replaced or repowered. NYSDEC has informed the EPA that the required compliance plans were received from the impacted SCCTs owners or operators.

As of May 1, 2023, the first phase of the NO_x emission limits will become effective, at which time the facility-level weighted average of each affected SCCT must comply with a daily NO_x emission limit of 100 ppmvd during the ozone season.⁹ As of May 1, 2025, the second and final

⁹ The NO_x emission limits are on a parts per million dry volume basis (ppmvd), corrected to 15% oxygen.

phase of NO_x emission limits will become effective, at which time the facility-level weighted average of each affected SCCTs must comply with a daily NO_x emission limit of 25 ppmvd for gaseous fuels and 42 ppmvd for distillate oil or other liquid fuel. The owner or operator of each affected SCCT must measure and monitor NO_x emissions by conducting a stack test, consistent with 6 NYCRR Section 227-2.6(c), at least once per permit term. Owners or operators may also choose to monitor with a Continuous Emissions Monitoring System (CEMS), consistent with 6 NYCRR Section 227-2.6(b), or with an equivalent monitoring system acceptable to New York. The owner or operator of each SCCT must also report operational data to New York as part of their annual compliance report.

Under Section 227-3.5, New York's rule provides two additional compliance options to offer flexibility for owners and operators to meet the emission limits. The first option would allow owners and operators of affected SCCTs to elect an "ozone season stop", by which the operating permit would include an enforceable condition that the affected source may not operate during the ozone season. The second option, the utilization of "electric and renewable energy resources", would allow owners and operators to employ alternative resources while adhering to a facility-level average NO_x daily emission limit on a pounds of NO_x per megawatt hour (lb/MWh) basis for all applicable SCCTs, electric storage resources, and/or renewable generation resources within the facility. Under the second option, as of May 1, 2023, all affected SCCTs that utilize electric storage and renewable resources must achieve an emission limit of 3.0 lb NO_x/MWh. Effective on May 1, 2025, affected gaseous fuels SCCTs must achieve a limit of 1.5 lb NO_x/MWh, while affected distilled oil or other liquid fuel SCCTs must achieve a limit of 2.0 lb NO_x/MWh.

In the May 18, 2020 SIP revision submittal, New York also requested that the EPA remove from the SIP its previous version of 6 NYCRR Subpart 227-3, "Pre-2003 Nitrogen Oxides Emissions

Budget and Allowance Program”, which New York repealed from the New York Code of Rules and Regulations on September 5, 2014.¹⁰ New York’s 227-3 Trading Program Regulation contained a NOx emission and allowance trading program for large electricity and industrial sources that is no longer in effect. The EPA approved New York’s 227-3 Trading Program Regulation on April 19, 2000. *See* 65 FR 20905 (April 19, 2000). The EPA approved administrative changes to the New York budget and allowance regulation on May 22, 2001. *See* 66 FR 28060 (May 22, 2001).

IV. What is the EPA’s evaluation of New York’s SIP submittal?

For the following reasons, the EPA is proposing to approve New York’s SIP revisions.

Addition of New York’s Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines

The EPA agrees with New York’s evaluation that the newly-adopted regulation will lead to an estimated reduction of 18 tons of NOx per high ozone day. An 18-ton NOx reduction on a high ozone day would represent a reduction of over 10 percent of NYMA NOx emissions from electricity sector and an overall reduction of 3.5 percent from all sources. This reduction will result in NOx reduction throughout the NYMA, strengthen New York’s ozone SIP, and help the State reach attainment for the 2008 and 2015 ozone NAAQS.

EPA has also reviewed New Jersey and Connecticut’s NOx emission limits for SCCTs with similar nameplate capacities and compared those limits with the limits adopted by NYSDEC in this rule. The EPA has observed that by the rule’s second and final phase, the peaker NOx emission limits will be as stringent as New Jersey’s for any SCCT that is a High Electric

¹⁰ NEW YORK STATE REGISTER, VOLUME XXXVI, ISSUE 38, 9/24/14.

Demand Day (HEDD) unit.¹¹ Connecticut adopted a similar phase-in approach as to NO_x emission limits for peakers and the EPA observed that New York’s rule is more stringent than Connecticut’s.¹²

As to the two additional compliance options mentioned in Section III, EPA proposes to approve (a) the “ozone season stop” compliance option because it would reduce the amount of peakers with low-level NO_x emission controls that are active during the ozone season and (b) the utilization of “electric storage and renewable energy resources” compliance option because it would enable owners and operators to comply with a weighted average out-put based daily emission limit while also reducing the reliance on SCCTs during high electrical demand days by encouraging owners and operators to utilize alternative, non-NO_x emitting resources.

The EPA has reviewed New York’s SIP submittal, which seeks to incorporate 6 NYCRR Subpart 227-3, “Ozone Season Oxides of Nitrogen (NO_x) Emission Limits for Simple Cycle and Regenerative Combustion Turbines”. After evaluating Subpart 227-3 for consistency with the CAA, EPA regulations, and EPA policy, the EPA proposes to find that the submission fully addresses the ozone nonattainment requirements found in CAA Section 172, 42 U.S.C. Section 7502, and proposes to approve this revision.

Removal of New York’s Nitrogen Oxides Emissions Budget and Allowance Program (Ozone Control Periods 1999-2002)

The EPA agrees with New York’s evaluation that the previous version of 6 NYCRR Subpart

¹¹ Table 7 of New Jersey’s NO_x RACT regulation, Subchapter 19, provides Maximum Allowable NO_x Emission Rate for any Stationary Combustion Turbine that is a HEDD Unit. *See* <https://www.state.nj.us/dep/aqm/currentrules/Sub19.pdf>.

¹² Section 22a-174-22e of Connecticut’s NO_x Emissions from Fuel-Burning Emission Units provides emission limitations for SCCTs being phased-in for June 2018 and June 2023. *See* <https://eregulations.ct.gov/eRegsPortal/Search/getDocument?guid=%7B8DB8E520-C8D2-4798-94E2-8740D90BA8B5%7D>

227-3, “Pre-2003 Nitrogen Oxides Emissions Budget and Allowance Program”, should be removed from the New York SIP. The EPA has determined that, as discussed in section II, both New York’s 227-3 Trading Program Regulation and Subpart 204 have been superseded by other state and federal regulations that required additional NOx ozone season emission reductions. As the EPA determined regarding New York’s CAIR trading program rule, *see* section II, the EPA does not believe that the removal of New York’s 227-3 Trading Program Regulation from New York’s SIP will interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the NAAQS. And as discussed in section II, New York’s 227-3 Trading Program Regulation predates more stringent rules and tighter NOx ozone season budgets under the NOx SIP call, CAIR, and CSAPR trading programs, as well as New York NOx RACT rules; it is not applicable to the current federal or state regulatory framework. New York does not rely on emission reductions from New York’s 227-3 Trading Program Regulation to attain any NAAQS and the EPA no longer operates the NOx Budget Trading Program allowing for the allocation and trading of allowances. Therefore, New York’s 227-3 Trading Program Regulation should be removed from the NY SIP.

The removal of New York’s 227-3 Trading Program Regulation from New York’s SIP will have no consequences for the attainment and maintenance of the NAAQS in any area, now or in the future. Consistent with CAA section 110(i), the EPA has determined that the removal of New York’s 227-3 Trading Program Regulation will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the NAAQS. Accordingly, the EPA finds that it is appropriate to approve the removal of 6 NYCRR Subpart 227-3, “Pre-2003 Nitrogen Oxides Emissions Budget and Allowance Program”, from the New York SIP.

The EPA is soliciting public comments on the issues discussed in this proposal. These comments

will be considered before the EPA takes final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments as discussed in the ADDRESSES section of this rulemaking.

V. Incorporation by Reference

In this document, the EPA is also proposing to incorporate by reference NYSDEC rule discussed in section III of this preamble in accordance with the requirements of 1 CFR 51.5. The EPA has made, and will continue to make, these materials available through the docket for this action, EPA-R02-OAR-2020-0324, at <http://regulations.gov>, and at the EPA Region II Office (please contact the person identified in the FOR FUTURE INFORMATION CONTACT section of this preamble for more information).

VI. 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. *See* 42 U.S.C. 7410(k); *see also* 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided 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 proposed 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 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 (2 U.S.C. §1501);
- 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 proposed rulemaking action, addressing New York's adopted regulation that reduces NOx emissions from simple cycle and regenerative combustion turbines during the ozone season, 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 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, Nitrogen Dioxide,

Intergovernmental Relations, Ozone, Reporting and recordkeeping requirements, Volatile Organic Compounds.

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

Dated: February 18, 2021.

Walter Mugdan,
Acting Regional Administrator,
Region 2.

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