



40 CFR Part 52

[EPA-R03-OAR-2020-0597; FRL-8873-02-R3]

Approval and Promulgation of Air Quality Implementation Plans;

Pennsylvania; Reasonably Available Control Technology Determinations for Case-by-Case Sources under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving multiple state implementation plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for nine major sources of volatile organic compounds (VOC) and/or nitrogen oxides (NO_x) pursuant to the Commonwealth of Pennsylvania's conditionally approved RACT regulations. In this rulemaking action, EPA is only approving source-specific (also referred to as "case-by-case") RACT determinations or alternative NO_x emissions limits for sources at eight major NO_x and VOC emitting facilities within the Commonwealth submitted by PADEP. These RACT evaluations were submitted to meet RACT requirements for the 1997 and 2008 8-hour ozone national ambient air quality standards (NAAQS). EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA) and EPA's implementing regulations.

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-2020-0597. All documents in the docket are listed on the <https://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 <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ms. Emily Bertram, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5273. Ms. Bertram can also be reached via electronic mail at bertram.emily@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 11, 2021, EPA published a notice of proposed rulemaking (NPRM). 86 FR 9031. In the NPRM, EPA proposed approval of case-by-case RACT determinations or alternative NO_x emissions limits for eight sources included in the subject SIP submission for the 1997 and 2008 8-hour ozone NAAQS. The case-by-case RACT determinations and alternative NO_x emissions limits for these sources were included in a SIP revision submitted by PADEP on March 9, 2020.

Under certain circumstances, states are required to submit SIP revisions to address RACT requirements for major sources of NO_x and VOC, and any source covered by control technique guidelines (CTG), for each ozone NAAQS. Which NO_x and VOC sources in Pennsylvania are considered “major,” and therefore to be addressed for RACT revisions, is dependent on the location of each source within the Commonwealth. Sources located in nonattainment areas would be subject to the “major source” definitions established under the CAA based on the area’s current classification(s). In Pennsylvania, sources located outside of moderate or above ozone nonattainment areas are subject to the major source threshold of 50 tons per year (tpy)

because of the Ozone Transport Region (OTR) requirements in CAA section 184(b)(2).

On May 16, 2016, PADEP submitted a SIP revision addressing RACT for both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. PADEP's May 16, 2016 SIP revision intended to address certain outstanding VOC CTG RACT and major source VOC and NO_x RACT requirements for both standards. The SIP revision requested approval of Pennsylvania's 25 Pa. Code 129.96-100, Additional RACT Requirements for Major Sources of NO_x and VOCs (the "presumptive" RACT II rule). Prior to the adoption of the RACT II rule, Pennsylvania relied on the NO_x and VOC control measures in 25 Pa. Code 129.92-95, Stationary Sources of NO_x and VOCs, (the RACT I rule) to meet RACT for major sources of VOC and NO_x. The requirements of the RACT I rule remain approved into Pennsylvania's SIP and continue to be implemented.¹ On September 26, 2017, PADEP submitted a supplemental SIP revision, dated September 22, 2017, which committed to address various deficiencies identified by EPA in PADEP's May 16, 2016 "presumptive" RACT II rule SIP revision.

On May 9, 2019, EPA conditionally approved the RACT II rule based on the commitments PADEP made in its September 22, 2017 supplemental SIP revision.² 84 FR 20274. In EPA's final conditional approval, EPA noted that PADEP would be required to submit, for EPA's approval, SIP revisions to address any facility-wide or system-wide NO_x emissions averaging plans approved under 25 Pa. Code 129.98 and any case-by-case RACT determinations under 25 Pa. Code 129.99. PADEP committed to submitting these additional SIP revisions within 12 months of EPA's final conditional approval, specifically May 9, 2020. Through multiple submissions between 2017 and 2020, PADEP has submitted to EPA for approval various SIP submissions to implement its RACT II case-by-case determinations and

¹ The RACT I Rule was approved by EPA into the Pennsylvania SIP on March 23, 1998. 63 FR 13789. Through this rulemaking, certain source-specific RACT I requirements will be superseded by more stringent requirements. See Section II of the preamble to this Final Rule.

² On August 27, 2020, the Third Circuit Court of Appeals issued a decision vacating EPA's approval of three provisions of Pennsylvania's presumptive RACT II rule applicable to certain coal-fired power plants. *Sierra Club v. EPA*, 972 F.3d 290 (3d Cir. 2020). None of the sources in this rulemaking are subject to the three presumptive RACT II provisions at issue in that *Sierra Club* decision.

alternative NO_x emissions limits. This rulemaking is based on EPA's review of one of these SIP revisions.

II. Summary of SIP Revision and EPA Analysis

A. Summary of SIP Revision

To satisfy a requirement from EPA's May 9, 2019 conditional approval, PADEP submitted to EPA SIP revisions addressing alternative NO_x emissions limits and/or case-by-case RACT requirements for major sources in Pennsylvania subject to 25 Pa. Code 129.98 or 129.99. In the Pennsylvania RACT SIP revisions, PADEP included a case-by-case RACT determination for the existing emissions units at each of the major sources of NO_x and/or VOC that required a source-specific RACT determination or alternative NO_x emissions limits for major sources seeking such limits.

In PADEP's case-by-case RACT determinations, an evaluation was completed to determine if previously SIP-approved, case-by-case RACT emission limits or operational controls (herein referred to as RACT I and contained in RACT I permits) were more stringent than the new RACT II presumptive or case-by-case requirements. If more stringent, the RACT I requirements will continue to apply to the applicable source. If the new case-by-case RACT II requirements are more stringent than the RACT I requirements, then the RACT II requirements will supersede the prior RACT I requirements.³

In PADEP's RACT determinations involving NO_x averaging, an evaluation was completed to determine that the aggregate NO_x emissions emitted by the air contamination sources included in the facility-wide or system-wide NO_x emissions averaging plan using a 30-day rolling average are not greater than the NO_x emissions that would be emitted by the group of included sources if each source complied with the applicable presumptive limitation in 25 Pa. Code 129.97 on a source-specific basis.

³ While the prior SIP-approved RACT I permit will remain part of the SIP, this RACT II rule will incorporate by reference the RACT II requirements through the RACT II permit and clarify the ongoing applicability of specific conditions in the RACT I permit.

Here, EPA is taking action on SIP revisions pertaining to case-by-case RACT requirements and alternative NO_x emissions limits for eight major sources of NO_x and/or VOC in Pennsylvania, as summarized in Table 1 in this document.⁴

TABLE 1—EIGHT MAJOR NO_x AND/OR VOC SOURCES IN PENNSYLVANIA SUBJECT TO CASE-BY-CASE RACT II DETERMINATIONS UNDER THE 1997 AND 2008 8-HOUR OZONE NAAQS

Major Source (County)	1-Hour Ozone RACT Source? (RACT I)	Major Source Pollutant (NO_x and/or VOC)	RACT II Permit (Effective Date)
Volvo Construction Equipment North America (Franklin)	No	VOC	28-05012 (6/1/2019)
National Fuel Gas Supply Corporation – Roystone Compressor Station (Warren)	Yes	NO _x and VOC	62-141H (1/16/2018)
E.I DuPont de Nemours and Co. (Bradford)	Yes	NO _x and VOC	08-00002 (9/28/2018)
Carmeuse Lime Inc. (Lebanon)	Yes	NO _x	38-05003 (3/6/2019)
Kovatch Mobile Equipment Corp. (Carbon)	No	VOC	13-00008 (10/27/2017)
Merck, Sharpe & Dohme Corp. (formerly Merck and Co., Inc. – West Point Facility) (Montgomery)	Yes	NO _x and VOC	46-00005 (1/5/2017)
Letterkenny Army Depot (formerly Department of the Army) (Franklin)	Yes	VOC	28-05002 (6/1/2018)
Fairless Energy, LLC (Bucks)	No	NO _x and VOC	09-00124 (12/6/2016)

The case-by-case RACT determinations submitted by PADEP consist of an evaluation of all reasonably available controls at the time of evaluation for each affected emissions unit, resulting in a PADEP determination of what specific emission limit or control measures satisfy

⁴ PADEP’s March 9, 2020 package of SIP revisions included source-specific RACT II determinations for sources at nine facilities. As indicated in the proposed rulemaking, EPA is only acting on eight of these facilities at this time. EPA will be acting on sources located at the Montour, LLC facility in a separate future rulemaking.

RACT for that particular unit. The adoption of new, additional, or revised emission limits or control measures to existing SIP-approved RACT I requirements were specified as requirements in new or revised Federally enforceable permits (hereafter RACT II permits) issued by PADEP to the source. Similarly, PADEP's determinations of alternative NO_x emissions limits are included in RACT II permits. These RACT II permits have been submitted as part of the Pennsylvania RACT SIP revisions for EPA's approval in the Pennsylvania SIP under 40 CFR 52.2020(d)(1). The RACT II permits submitted by PADEP are listed in the last column of Table 1, along with the permit effective date, and are part of the docket for this rule, which is available online at <https://www.regulations.gov>, Docket No. EPA-R03-OAR-2020-0597.⁵ EPA is incorporating by reference in the Pennsylvania SIP, via the RACT II permits, source-specific RACT emission limits and control measures and alternative NO_x emissions limits under the 1997 and 2008 8-hour ozone NAAQS for certain major sources of NO_x and VOC emissions.

B. EPA's Final Action

PADEP's SIP revisions incorporate its determinations of source-specific RACT II controls for individual emission units at major sources of NO_x and/or VOC in Pennsylvania, where those units are not covered by or cannot meet Pennsylvania's presumptive RACT regulation or where included in a NO_x emissions averaging plan. After thorough review and evaluation of the information provided by PADEP in its SIP revision submittals for sources at eight major NO_x and/or VOC emitting facilities in Pennsylvania, EPA found that: 1) PADEP's case-by-case RACT determinations and conclusions establish limits and/or controls on individual sources that are reasonable and appropriately considered technically and economically feasible controls 2) PADEP's determinations on alternative NO_x emission limits demonstrate that emissions under the averaging plan are equivalent to emissions if the individual sources were operating in accordance with the applicable presumptive limit, and 3) PADEP's determinations

⁵ The RACT II permits included in the docket for this rulemaking are redacted versions of the facilities' Federally enforceable permits. They reflect the specific RACT requirements being approved into the Pennsylvania SIP via this final action.

are consistent with the CAA, EPA regulations, and applicable EPA guidance.

PADEP, in its RACT II determinations, considered the prior source-specific RACT I requirements and, where more stringent, retained those RACT I requirements as part of its new RACT determinations. In the NPRM, EPA proposed to find that all the proposed revisions to previously SIP-approved RACT I requirements would result in equivalent or additional reductions of NO_x and/or VOC emissions. The proposed revisions should not interfere with any applicable requirements concerning attainment of the NAAQS, reasonable further progress, or other applicable requirements under section 110(l) of the CAA.

Other specific requirements of Pennsylvania's 1997 and 2008 8-hour ozone NAAQS case-by-case RACT determinations and alternative NO_x emissions limits and the rationale for EPA's proposed action were explained in the NPRM, and its associated technical support document (TSD), and will not be restated here.

III. Public Comments and EPA Responses

EPA received comments from four commenters on the February 11, 2021 NPRM. 86 FR 9031. A summary of the comments and EPA's response are discussed in this section. A copy of the comments can be found in the docket for this rule action.

Comment 1: The commenter claims that EPA cannot approve the proposed Pennsylvania RACT II case-by-case (CbC) determinations under the 1997 and 2008 8-hour ozone NAAQS because the CAA section 110(l) analysis is inadequate. In particular, the commenter focuses on the proposed NO_x limitations and whether they will cause or contribute to violations of the 2010 1-hour NO_x NAAQS. (The 2010 1-hour NAAQS is for oxides of nitrogen, as measured by nitrogen dioxide (NO₂)).) The commenter argues that under CAA section 110(k)(1)(a) and 40 CFR part 51, Appendix V, 2.2(d), a state must demonstrate that the NAAQSs are protected if a SIP is to be approved and that Pennsylvania has not made an adequate demonstration under section 110(l) related to the potential impact of these RACT determinations on the 2010 1-hour NO_x NAAQS. The commenter then suggests that EPA is unable to approve Pennsylvania's CbC

RACT II determinations unless such a demonstration has been made, even though the rules reduce NO_x emissions. The commenter highlights their concern by including results from air dispersion modeling of NO_x emissions from the Bighorn well pad in Colorado that they claim shows the potential impact of NO_x emissions on 1-hour NO_x NAAQS violations. The commenter states that EPA must undertake a modeling analysis to determine if the proposed CbC RACT II determinations will cause or contribute to 2010 1-hour NO_x NAAQS violations. The commenter indicates that EPA must repropose this action including any such modeling information or other information utilized in the demonstration that the NAAQS will be protected.

Response 1: As described in the proposed rulemaking, Pennsylvania was required through implementation of the 1997 and 2008 8-hour ozone NAAQS to determine RACT II requirements for major NO_x and VOC emitting sources within the Commonwealth. PADEP had previously established CbC RACT requirements under the 1979 1-hour ozone NAAQS.⁶ PADEP finalized its overall RACT II program, which included presumptive RACT for certain sources, and it was conditionally approved by EPA.⁷ As part of the EPA's conditional approval, PADEP was required to complete source-specific CbC RACT II determinations for subject NO_x or VOC sources that could not meet the presumptive requirements or for which a presumptive limit did not exist. As required by its regulations, PADEP then conducted a RACT II CbC analysis examining what air pollution controls are available for those individual sources to determine the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technologically and economic feasibility.⁸

Through its RACT II CbC determinations, PADEP has established NO_x and VOC limits and requirements for various sources that either reaffirm existing emission limits or makes the

⁶ 40 CFR 52.2020(d)(1).

⁷ 84 FR 20274 (May 9, 2019).

⁸ See December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, "Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas," and 44 FR 53762 (September 17, 1979).

limits more stringent. PADEP submitted those determinations to EPA as bundled packages of individual SIP revisions. EPA is now approving the RACT II CbC SIP revisions for individual NO_x and VOC sources at eight facilities. For the reasons explained below, EPA concludes that the arguments presented by the commenter do not prohibit approval of these SIP revisions.

CAA section 110(l) prohibits EPA from approving a SIP revision if the revision would “interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of this chapter.” 42 U.S.C. § 7410(l). While EPA interprets section 110(l) as applying to all NAAQS that are in effect, including those for which a relevant SIP submission may not have been made, the level of rigor needed for any CAA section 110(l) demonstration will vary depending on the nature and circumstances of the revision. For example, an in-depth section 110(l) analysis is more appropriate where there is a reasonable expectation that an existing SIP standard is being weakened or that there will be a net emissions increase because of approval of the SIP revision under consideration. However, here, the Pennsylvania CbC RACT II SIP revisions are either retaining an existing standard or establishing a more stringent one. EPA, for these reasons, did not include a detailed section 110(l) analysis at the proposal stage. Since the commenter raised the issue, EPA is responding in this final action by explaining why its approval is consistent with section 110(l).

In circumstances where an existing SIP standard is being weakened or a net emissions increase is expected, there are two generally recognized paths for satisfying CAA section 110(l). First, a state may demonstrate through an air quality modeling analysis that the revision will not interfere with the attainment of the NAAQS, reasonable further progress, or any other applicable requirement. This is the approach the commenter claims is required for the Pennsylvania CbC SIP revisions. Second, a state may substitute equivalent or greater emissions reductions to compensate for any change to a plan to ensure actual emissions to the air are not increased and thus preserve status quo air quality. A showing that the substitute measures preserve status quo air quality is generally sufficient to demonstrate noninterference through this alternative

approach. Courts have upheld EPA's approval of a SIP revision based on a state's use of substitute measures. *Kentucky Resources Council, Inc. v. EPA*, 467 F.3d 986 (6th Cir. 2006) and *Indiana v. EPA*, 796 F. 3d 803 (7th Cir. 2015).

Both the *Kentucky Resources* and *Indiana* cases involved circumstances where a state sought to revise provisions within its SIP related to its vehicle emissions testing program. In both situations, the petitioners were concerned with increased emissions that might occur due to the changes to the testing program. The state in each case justified its SIP revision, in part, by demonstrating that it had substitute emission reductions that would fully compensate for the expected emissions increase caused by the modifications to the testing program. The court in each case upheld EPA's interpretation of section 110(l), which allows states to substitute equivalent emissions reductions to compensate for any change to a plan to ensure actual emissions to the air are not increased and thus preserve status quo air quality. However, again, these two cases are most relevant in circumstances where an existing SIP standard is being weakened or a net emissions increase is expected, which are not the circumstances presented by the SIP revisions that EPA is approving here.

In a more analogous case to the situation presented here, EPA's interpretation of section 110(l) was upheld in *WildEarth Guardians v. EPA*, 759 F.3d 1064 (9th Cir. 2014). There, the court rejected a challenge to an EPA action approving a regional haze plan and concluded that WildEarth had identified "nothing in [the] SIP that weakens or removes any pollution controls. And even if the SIP merely maintained the status quo, that would not interfere with the attainment or maintenance of the NAAQS."⁹ For that reason, the court concluded that WildEarth had failed to show that EPA's approval of the SIP contravened section 110(l). The court's holding demonstrates that a SIP approval that does not weaken or remove pollution controls would not violate section 110(l).

The *WildEarth* decision informs the approach to section 110(l) EPA is taking to approve

⁹ Id. at 1074.

the Pennsylvania CbC RACT SIP revisions. Here, contrary to the commenter's characterization, Pennsylvania is not relaxing standards or eliminating a program, but rather, is only re-evaluating the technical and economic feasibility of air pollution controls for subject air pollution sources as required by implementation of the 1997 and 2008 8-hour NAAQS. Based on that review, the state, as explained in more detail below, has made determinations that either retain or make more stringent existing NO_x emission limits. Emissions are not expected to increase, and will likely decrease, as a result of PADEP's RACT II NO_x CbC determinations and EPA's approval hereof. Additionally, the supporting documents submitted by PADEP identify numerous NO_x sources that were subject to RACT I but that are no longer operating and have been permanently closed. Under these circumstances, Pennsylvania's demonstration to meet the requirements of section 110(l) for its CbC RACT II determinations is not one of modeling or identifying equivalent emissions reductions to compensate for or offset an emissions increase because the revisions are not resulting in emissions increases, but rather to establish that its new CbC NO_x RACT determinations are preserving the status quo air quality or achieving additional reductions beyond the status quo.

With this rulemaking action, EPA is only approving revisions that add specific NO_x and VOC CbC RACT II determinations to the Pennsylvania SIP. In the subject RACT II CbC determinations, PADEP has made an adequate showing that its CbC determinations for individual sources at the eight facilities at issue not only preserve the status quo air quality, but likely reduce the cumulative NO_x emissions from the subject sources. As described in its technical review memorandums and related documents, which are included in the docket for this rulemaking, PADEP evaluated both the technical and economic feasibility of various control equipment for these sources and used that evaluation to determine the RACT II requirements. PADEP also considered the prior RACT I requirements to determine whether the RACT II requirements were as stringent as the previously established standards. In circumstances where the RACT I requirements were more stringent, they were retained and remain effective.

Contrary to the commenter's assertion, this demonstration included in the documents in the docket satisfies the requirements of Part 51, Appendix V. The record supporting EPA's approval of Pennsylvania's CbC RACT II SIP revisions is sufficient, so there is no need to supplement the record. As such, commenter's reference to EPA's inability to supplement the record, and to *Ober v. U.S. EPA*, 84 F.3d 304,312 (9th Cir. 1996), is not applicable to EPA's current action.

The facilities addressed in this final rule breakdown into the categories listed below.¹⁰ As explained in the proposed rulemaking notice, EPA views each facility as a separable SIP revision, and that should it receive comment on one facility but not others, EPA may take separate, final action on the remaining facilities.

Facilities with only VOC sources – The following facilities are major source VOC emitting facilities that are minor sources of NO_x. As such, individual VOC sources at these facilities must comply with RACT II requirements. EPA's approval in this rulemaking for these facilities only relates to specific CbC VOC RACT II determinations. EPA's approval of the Pennsylvania CbC VOC RACT II SIP revisions for sources at these facilities does not involve NO_x emissions, maintains the status quo, and does not result in an increase in VOC or NO_x emissions. Therefore, as explained previously, EPA has determined these SIP revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA, pursuant to section 110(l).

- Kovatch Mobile Equipment Corp
- Letterkenny Army Depot
- Volvo Construction Equipment North America

Facilities with VOC and NO_x Sources (Only VOC CbC) – The following facilities are major NO_x and VOC emitting facilities, and individual NO_x and VOC sources at these facilities must comply with RACT II requirements. However, EPA's approval in this rulemaking for

¹⁰ While the commenter also references a ninth facility, Montour, LLC, EPA is not acting on PADEP's CbC RACT II determination for this facility at this time. As indicated in the proposed rulemaking, EPA will be acting on sources located at this facility in a separate future rulemaking.

these facilities only relates to specific CbC VOC RACT II determinations. EPA's approval of the Pennsylvania CbC VOC RACT II SIP revisions for sources at these facilities does not involve any NO_x emissions, maintains the status quo, and does not result in an increase in VOC or NO_x emissions. Therefore, as explained previously, EPA has determined these SIP revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA, pursuant to section 110(l).

- E.I DuPont de Nemours and Co.
- National Fuel Gas Supply Corporation—Roystone Compressor Station

Facilities with CbC NO_x Sources – The following are major NO_x emitting sources and contain individual sources subject to CbC NO_x requirements that EPA is taking final action on here. More specific information on those individual facilities follows:

Carmeuse Lime Inc. – EPA proposed to approve PADEP's RACT II CbC NO_x determination for one source at this facility. The other NO_x sources that were subject to RACT I are now shut down. In its RACT II determination for Source 107 (No. 5 Kiln), PADEP concluded that the use of a low NO_x burner with good combustion and burner optimization were technically and economically feasible as RACT and were incorporated as part of the burner management plan.¹¹ Based on an analysis of historical performance testing data from 2000 to 2017, the existing short-term emissions limit of 6.0 lbs NO_x/ton of lime produced was reduced to 4.6 lbs NO_x/ton of lime produced as a RACT II case-by-case requirement. A burner management plan, testing once every five years, and daily monitoring and recordkeeping of fuel used hourly were also required. Through imposition of this more stringent emission limit along with related monitoring, testing, and recordkeeping requirements, Pennsylvania has demonstrated that the status quo in NO_x emissions has been maintained, if not improved. As such EPA's approval of Pennsylvania's SIP revision is adequately justified under section 110(l).

¹¹ See PADEP's Technical Review Memo, dated November 19, 2018, which is part of the docket for this rulemaking.

Merck, Sharpe & Dohme Corp. - EPA proposed to approve PADEP's RACT II CbC NO_x determination for two sources at this facility. Numerous NO_x sources that were subject to RACT I have been shut down. In its determinations for the remaining two sources, PADEP has determined that the RACT II CbC NO_x is continued use of low NO_x burners and good operating practices and continued compliance with the existing NO_x emission limits.¹² Through retention of the existing emission limits and continued use of the low NO_x burners, Pennsylvania has demonstrated that the status quo in NO_x emissions has been maintained. As such, EPA's approval of Pennsylvania's SIP revision is adequately justified under section 110(l)

Fairless Energy, LLC – EPA proposed to approve PADEP's RACT II determination related to a NO_x averaging plan for four sources at this facility pursuant to 25 Pa. Code § 129.98(a). The averaging plan provision authorized in section 129.98 allows a facility to establish an alternative facility-wide or system-wide RACT NO_x emissions limit as long as it demonstrates that the resulting NO_x emissions using a 30-day rolling average would not be greater than NO_x emissions from the group of included sources if they each complied with the applicable presumptive NO_x RACT emissions limit as individual sources. Fairless will be averaging the NO_x emissions for four sources to meet the RACT II requirements, an alternative emission limit, that will be at least as stringent as the presumptive emission limit, which was conditionally approved by EPA in a prior rulemaking.¹³ PADEP's approval of the NO_x averaging plan ensures that total NO_x emissions from these sources will be no greater than the total individual emissions from each source if each were to comply with the existing presumptive emission limit. The NO_x averaging plan also does not eliminate any other existing non-RACT emission restrictions applicable to these sources. Through these measures, Pennsylvania has demonstrated that the status quo in NO_x emissions has been maintained. As such, EPA's

¹² See PADEP Revised Technical Review Memo, dated October 9, 2019, which is part of the docket for this rulemaking action.

¹³ See 84 FR 20274 (May 9, 2019) as to EPA's conditional approval of the presumptive limit and PADEP's Technical Review Memo, dated November 29, 2016, as to PADEP's analysis of the NO_x averaging plan.

approval of PADEP's SIP revision is adequately justified under section 110(l).

As described above, EPA determined that Pennsylvania had adequately justified its RACT II CbC NO_x determinations. EPA also concluded, under section 110(l), that the status quo in NO_x emissions had been maintained, if not improved and that there is no need to conduct the modeling suggested by the commenter. As noted previously, the commenter included an air dispersion modeling analysis of NO_x emissions from a well pad at the Bighorn Pad Facility in Colorado to highlight an alleged potential of NO_x emissions to cause or contribute to violations of the 2010 1-hour NO_x NAAQS. The NAAQS for nitrogen oxides is a 1-hour standard at a level of 100 ppb based on the 3-year average of 98th percentile of the yearly distribution of 1-hour daily maximum NO₂ concentrations. In 2012, EPA designated areas within Pennsylvania as attainment/unclassifiable for the 2010 standard.¹⁴ The modeling analysis provided by the commenter indicated that NO_x emissions from the well pad area in Colorado could have NO₂ impacts within 50 kilometers of the source.

This modeling analysis from Colorado does not trigger a need for EPA or Pennsylvania to conduct modeling on the impact of NO_x emissions from each individual PA CbC RACT source at issue in this rulemaking in order for EPA to approve these SIP revisions. First, as discussed previously, modeling is not the sole method available to satisfy section 110(l) requirements. Second, the differences in the meteorology, terrain, and facility configurations between the Bighorn well pad and the Pennsylvania CbC RACT II sources are too significant to rely on the Bighorn facility modeling results to serve as surrogate modeling indicating that the Pennsylvania RACT II sources have the potential to cause exceedances of the 2010 1-hour NO_x NAAQS in Pennsylvania. The commenter has not provided any comparison or information to show why the Bighorn Pad Facility modeling results should apply to these specific RACT II sources in Pennsylvania. Further, the commenter has not presented any specific information suggesting the RACT II CbC NO_x determinations for these specific sources could somehow lead

¹⁴ 77 FR 9532 (February 17, 2012).

to violations of the 2010 1-hour NO_x NAAQS. Without a more specific allegation from the commenter about the sources in question, the commenter's allegations are too speculative in nature to prevent EPA from approving PADEP's RACT II CbC NO_x determinations for sources at the eight subject facilities.

Comment 2: The commenter is supportive of EPA's proposed rulemaking, stating that it will positively affect citizens in the Commonwealth of Pennsylvania for multiple reasons and has suggested some editorial improvements for future rulemakings that could aid citizen comprehension.

Response 2: EPA recognizes the commenter's support and suggestions. EPA will consider such suggestions for future rulemakings.

Comment 3: The commenter states that the RACT limit for Carmeuse Lime, Inc of 4.6 lb/NO_x per ton of lime is too lenient. Additionally, the commenter asserts the testing requirement to verify the emissions limit by stack test once every five years is insufficient and should have required a Continuous Emission Monitoring System (CEMS) unit to monitor instantaneous emissions from the kiln or established an emissions profile dependent on a number of factors that might impact NO_x emissions.

Response 3: As detailed in the facility files for Carmeuse Lime contained in the docket for this action, the existing short-term NO_x limit for the No. 5 Kiln established under RACT I was 6.0 lbs NO_x/ton of lime produced. The RACT II NO_x limit of 4.6 lb/ton approved here represents a reduction of emissions from RACT I and was established through a statistical analysis using 17 years of historical performance testing data. PADEP also reviewed the RACT/BACT/LAER Clearinghouse to determine emission limits for similar kilns and found that such limits ranged from 3.59 to 9.98 lb/ton. Based on this information included in the docket, EPA determined that the NO_x limit of 4.6 lb/ton comports with the CAA requirements for RACT.

The requirement for stack testing every five years is consistent with Pennsylvania's

RACT II compliance demonstration requirements in 25 Pa. Code 129.100, which is a part of Pennsylvania's SIP-approved RACT regulations. Under those regulations, a five-year stack testing period for sources without a CEMS is authorized. In addition to the stack testing, PADEP's RACT II determination includes requirements for a burner management plan to ensure good combustion and burner optimization. It also requires daily recordkeeping on limestone used, lime produced, and fuel consumed to provide a current picture of source operations.¹⁵ The sufficiency of the stack testing requirement is further justified in light of a long history of stack testing on this kiln, which produced the data that enabled the lowering of the NO_x limit. The RACT II requirements for Kiln No. 5 are also consistent with the current National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants, 40 CFR 63, Subpart AAAAA, of which the source is also subject. Given the basis of the emissions limit and the stack testing requirement, plus the establishment of other burner and daily recordkeeping requirements, EPA continues to find PADEP's analysis reasonable and is finalizing the RACT determination for Carmeuse Lime.

Comment 4: The comment requests that EPA clarify which company is subject to Permit No. 46-0005, included as part of EPA's proposed rulemaking docket EPA-R03-OAR-2020-0597.

Response 4: Permit No. 46-0005 is the title V operating permit number for Merck, Sharp, & Dohme Corp.'s facility located in West Point, Upper Gwynedd Township, Montgomery County, Pennsylvania. The cover page (page 1) of Permit No. 46-0005 contains additional owner, plant, owner, and responsible official contact information for this facility. Merck, Sharpe, and Dohme is the company name referred to in the provisions to be incorporated into the SIP.

IV. Final Action

EPA is approving case-by-case RACT determinations and/or alternative NO_x emissions

¹⁵ See PADEP Technical Review Memo, dated November 19, 2018, which is part of the docket for this rulemaking action.

limits for eight sources in Pennsylvania, as required to meet obligations pursuant to the 1997 and 2008 8-hour ozone NAAQS, as revisions to the Pennsylvania SIP.

V. Incorporation by Reference

In this document, 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 source-specific RACT determinations and alternative NO_x emissions limits under the 1997 and 2008 8-hour ozone NAAQS for certain major sources of VOC and NO_x in Pennsylvania. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). 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 rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹⁶

VI. 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 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);

¹⁶ 62 FR 27968 (May 22, 1997).

- 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 approving Pennsylvania's NO_x and VOC RACT requirements for eight facilities for the 1997 and 2008 8-hour ozone NAAQS 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, Volatile organic compounds.

Dated: August 17, 2021

Diana Esher,
Acting Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 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 NN—Pennsylvania

2. In § 52.2020, the table in paragraph (d)(1) is amended by:

a. Revising the entries “Merck and Co., Inc. – West Point Facility;” “National Fuel Gas Supply Corp. – Roystone Compressor Station;” and “Department of the Army;” and

b. Adding the following entries at the end of the table: “Volvo Construction Equipment North America;” “National Fuel Gas Supply Corporation – Roystone Compressor Station;” “E.I. DuPont de Nemours and Co.,” “Carmeuse Lime Inc.,” “Kovatch Mobile Equipment Corp.,” “Merck, Sharpe & Dohme Corp. (formerly referenced as Merck and Co., Inc. – West Point Facility);” “Letterkenny Army Depot (formerly referenced as Department of the Army);” “Fairless Energy, LLC.”

The revisions and additions read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) ***

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanations/§ 52.2063 and 52.2064 citations ¹
* * * * *					
Merck and Co., Inc. – West Point Facility	OP-46-0005	Montgomery	1/13/97 6/23/00	4/18/01, 66 FR 19858	See also 52.2064(d)(6)
* * * * *					
National Fuel Gas Supply Corp. – Roystone Compressor Station	OP-62-141F	Warren	4/1/03	10/27/04, 69 FR 62583	See also 52.2064(d)(2)
* * * * *					
Department of the Army	28-02002	Franklin	2/3/00	3/31/05, 70 FR 16416	See also 52.2064(d)(7)
* * * * *					
Volvo Construction Equipment North America	28-05012	Franklin	6/1/19	[insert date of publication in the Federal Register], [insert Federal Register citation]	52.2064(d)(1)
National Fuel Gas Supply Corporation – Roystone Compressor Station	62-141H	Warren	1/16/18	[insert date of publication in the Federal Register], [insert Federal Register citation]	52.2064(d)(2)
E.I. DuPont de Nemours and Co.	08-00002	Bradford	9/28/18	[insert date of publication in the Federal Register], [insert Federal Register citation]	52.2064(d)(3)

Carmeuse Lime Inc.	38-05003	Lebanon	3/6/19	[insert date of publication in the Federal Register], [insert Federal Register citation]	52.2064(d)(4)
Kovatch Mobile Equipment Corp.	13-00008	Carbon	10/27/17	[insert date of publication in the Federal Register], [insert Federal Register citation]	52.2064(d)(5)
Merck, Sharpe & Dohme Corp. (formerly referenced as Merck and Co., Inc. – West Point Facility)	46-00005	Montgomery	1/5/17	[insert date of publication in the Federal Register], [insert Federal Register citation]	52.2064(d)(6)
Letterkenny Army Depot (formerly referenced as Department of the Army)	28-05002	Franklin	6/1/18	[insert date of publication in the Federal Register], [insert Federal Register citation]	52.2064(d)(7)
Fairless Energy, LLC	09-00124	Bucks	12/6/16	[insert date of publication in the Federal Register], [insert Federal Register citation]	52.2064(d)(8)

* * * * *

3. Amend § 52.2064 by adding paragraph (d) to read as follows:

§ 52.2064 EPA-Approved Source Specific Reasonably Available Control Technology (RACT) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_x).

* * * * *

(d) Approval of source-specific RACT requirements for 1997 and 2008 8-hour ozone national ambient air quality standards for the facilities listed below are incorporated as specified below. (Rulemaking Docket No. EPA-OAR-2020-0597).

(1) Volvo Construction Equipment North America, LLC. – Incorporating by reference Permit No. 28-05012, effective June 1, 2019, as redacted by Pennsylvania.

(2) National Fuel Gas Supply Corporation Roystone Compressor Station - Incorporating by reference Permit No. 62-141H, effective January 16, 2018, as redacted by Pennsylvania. All permit conditions in the prior RACT Permit No. OP-62-141F, effective April 1, 2003, remain as RACT requirements except for the Penneco boiler (1.5 MMBtu/hr) and Struthers boiler (2.5 MMBtu/hr), which are no longer in operation. See also § 52.2063(c)(213)(i)(B)(1) for prior RACT approval.

(3) E.I. DuPont de Nemours and Company – Incorporating by reference Permit No. 08-00002, effective September 28, 2018, as redacted by Pennsylvania.

(4) Carmeuse Lime, Inc – Incorporating by reference Permit No. 38-05003, effective March 6, 2019, as redacted by Pennsylvania.

(5) Kovatch Mobile Equipment Corporation – Incorporating by reference Permit No. 13-00008, effective October 27, 2017, as redacted by Pennsylvania.

(6) Merck, Sharp & Dohme Corporation – Incorporating by reference Permit No. 46-00005, issued January 5, 2017, as redacted by Pennsylvania, which supersedes the prior RACT Permit No. OP-46-0005, issued January 13, 1997 and revised June 23, 2000, except for the following conditions, which remain as a RACT requirements applicable to the following sources: conditions #4A, #9C, and #13D for boiler 3 (Source ID 033); conditions #4A, #9C, and #13D for

boiler 5 (Source ID 035); conditions #4B and #9 for the gas turbine (Source ID 039); conditions #6A, #6B, and #6D for any remaining shell freezers (Source ID 105); conditions #6A and #6D for air emissions (disinfection; Source IDs 105, 107, 108, and 111); conditions #4C and #9 for any remaining generators (various Source IDs); condition #8 for research and development (Section C); and condition #11 for any remaining de minimus sources (Section C). See also §52.2063(c)(154)(i)(D) for prior RACT approval.

(7) Letterkenny Army Depot – Incorporating by reference Permit No. 28-05002, effective June 1, 2018, as redacted by Pennsylvania, which supersedes the prior RACT Permit No. 28-02002, effective February 3, 2000 except for conditions 5, 6, 7, 8, 9, 10, 11, 12, and 14 which also remain as RACT requirements. See also §52.2063(d)(1)(g) for prior RACT approval.

(8) Fairless Energy, LLC – Incorporating by reference Permit No. 09-00124, effective December 6, 2016 as redacted by Pennsylvania.

[FR Doc. 2021-18752 Filed: 8/31/2021 8:45 am; Publication Date: 9/1/2021]