6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2023-0188; FRL-11025-01-R1]

Air Plan Approval; New Hampshire; Reasonably Available Control Technology for the 2008 and 2015 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. These revisions provide certifications that the State has adopted regulations meeting the requirements for reasonably available control technology (RACT) for the 2008 and 2015 ozone national ambient air quality standards (NAAQS). We are also proposing approval of amendments to a related regulation that New Hampshire revised as part of its RACT certifications for these two NAAQS, a revision to the State's definition of emergency generator, and removal from the SIP of two previously issued RACT orders. This action is being taken under the Clean Air Act.

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 No. EPA-R01-OAR-2023-0188 at *https://www.regulations.gov*, or via email to: mcconnell.robert@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, 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, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*. 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 5-MD), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1046, e-mail: mcconnell.robert@epa.gov.

SUPPLEMENTARY INFORMATION:

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

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I. Background and Purpose

Sections 172(c)(1) and 182(b)(2) of the Clean Air Act (CAA) require States to implement RACT in areas classified as Moderate (and higher) non-attainment for ozone, while section 184(b)(1)(B) of the CAA requires RACT in States located in the Ozone Transport Region (OTR). Specifically, these areas are required to implement RACT for all major emission sources of volatile organic compounds (VOCs) and nitrogen oxides (NOx) and for all sources covered by a Control Techniques Guideline (CTG). A CTG is a document issued by EPA which provides guidance to States when determining RACT for specific VOC sources. A related set of documents, Alternative Control Techniques (ACT), exists primarily for NOx control requirements. States must submit RACT rules for sources covered by CTGs, or negative declarations when no such sources exist for a CTG, but negative declarations are not required for sources in ACT categories. However, RACT must be imposed on major sources of NOx, and some of those major sources may be within a category covered by an ACT document.

In 2008, EPA revised the health-based National Ambient Air Quality Standards (NAAQS, or standards) for ozone, setting it at 0.075 parts per million (ppm) averaged over an 8-hour time frame. EPA determined that the revised 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors and individuals with a pre-existing respiratory disease such as asthma.

On March 6, 2015 (80 FR 12264), EPA published a final rule that outlined the obligations that areas found to be in nonattainment of the 2008 ozone standard needed to address. This rule, herein referred to as the "2008 ozone implementation rule," contained, among other things, a description of EPA's expectations for States with RACT obligations. The 2008 ozone implementation rule indicated that States could meet RACT through the establishment of new or more stringent requirements that meet RACT control levels, through a certification that previously adopted RACT controls in their SIP approved by EPA under a prior ozone NAAQS represent adequate RACT control levels for the 2008 ozone NAAQS, or with a combination of these two approaches. In addition, a State must submit a negative declaration in instances where,

for a particular CTG, there are no sources within the State covered by that CTG. On February 3, 2017, EPA issued findings of failure to submit for a number of required SIP submittals for the 2008 ozone NAAQS, including RACT for States within the OTR. *See* 82 FR 9158. By that action, New Hampshire received a finding of failure to submit a RACT SIP for the 2008 ozone NAAQS, which it subsequently rectified with the submittal we are proposing approval of in this action.

In 2015, the EPA promulgated another revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 ppm. *See* 80 FR 65292; October 26, 2015. Subsequently, on December 6, 2018, EPA published a final rule that outlined the obligations that States in the OTR and areas found to be in nonattainment for the 2015 ozone NAAQS needed to address, including similar requirements for RACT as were contained in the 2008 ozone implementation rule. *See* 83 FR 62998. We herein refer to this rule as the 2015 ozone implementation rule.

In order to meet the RACT requirements for the 2008 and 2015 ozone NAAQS, the New Hampshire Air Resources Division submitted a RACT certification for the 2008 and 2015 ozone NAAQS on September 6, 2018. Under a separate cover letter, NH also submitted on September 6, 2018, a revision to the State's previously approved NOx RACT regulation, Env-A 1300, and a revision to the term "emergency generator" as contained within the State regulation Env-A 100, Purpose; Definitions. New Hampshire submitted an additional amendment to Env-A 1300 on March 28, 2023. On August 16, 2018, New Hampshire submitted a request to remove from their SIP two RACT orders containing requirements that were superseded by more stringent requirements contained within the State's September 6, 2018, submittal of revised Env-A 1300, NOx RACT.

II. Description and Evaluation of New Hampshire's SIP Revisions

1. RACT Certifications for the 2008 and 2015 Ozone NAAQS

a. Description of RACT Certifications for the 2008 and 2015 Ozone Standards

On September 6, 2018, New Hampshire submitted a demonstration that its set of SIP approved VOC and NOx control regulations and single source RACT orders issued to major stationary sources meets the criteria for RACT for the 2008 and 2015 ozone NAAQS. This submittal rectified the finding of failure to submit that EPA issued on February 3, 2017, described above. New Hampshire's RACT submittal notes that its prior designation as a nonattainment area for the 1979 and 1997 ozone standards resulted in the adoption of stringent controls for major sources of VOC and NOx, including RACT level controls. Therefore, as allowed for within the 2008 and 2015 ozone implementation rules, much of New Hampshire's submittal consists of a review of RACT controls adopted under previous ozone standards and an indication of whether those previously adopted controls still represent RACT for the 2008 and 2015 ozone NAAQS. New Hampshire's RACT certification submittal also notes the substantial declines in NOx and VOC emissions from RACT sources that has occurred due to the implementation of RACT for the prior ozone standards. For additional context, New Hampshire's submittal notes that EPA designated all areas of the State as unclassifiable / attainment for the 2008 and 2015 ozone NAAQS, and that a RACT submittal is only required pursuant to the Ozone Transport Region (OTR) requirements of section 184(b) of the Clean Air Act. New Hampshire's submittal also notes that VOC and NOx emissions from sources subject to RACT have declined substantially in recent years. For example, between 2005 and 2017, NOx emissions from these sources declined 82%, and VOC emission declined 58%, due in part to New Hampshire's RACT requirements for these facilities. More recently, information contained within EPA's National Emissions Inventory (NEI) database for 2020 indicates only 1 stationary point source in New Hampshire emitted more than 50 tons of VOC that year, and only 8 stationary point sources emitted more than 50 tons of NOx.

The State's September 6, 2018 submittal identifies the specific control measures that it previously adopted to control emissions from major sources of VOC emissions, reaffirms negative declarations for some CTG categories, and describes updates New Hampshire made to

existing requirements to strengthen them so that they would continue to represent RACT. Table 5-1 of New Hampshire's submittal contains a detailed listing of the State regulations for each of the CTG and ACT categories for which sources exist in the State. The table identifies the specific State rule that is in place, the rule's effective date, and the date that EPA approved the rule into the New Hampshire SIP. New Hampshire notes that major sources of VOC and NOx are defined, for purposes of New Hampshire's RACT regulations, as sources with the potential to emit 50 tons per year or more of these pollutants. For some CTG categories such as surface coating sources, New Hampshire's rules include lower applicability thresholds consistent with the relevant CTGs. New Hampshire's submittal includes the State's response to EPA's issuance of new VOC RACT CTGs in 2006, 2007, and 2008, which included adoption of a number of new regulations. EPA approved the State's SIP revisions addressing the 2006, 2007, and 2008 CTGs on November 8, 2012. *See* 77 FR 66921. Additionally, on December 17, 2019, New Hampshire submitted a negative declaration for a CTG that EPA issued in 2016 regarding the oil and gas industry. EPA approved that negative declaration on July 13, 2020. *See* 85 FR 41920.

As required, New Hampshire's submittal addresses NO_X emissions as well as VOC emissions. Section 5.2 of the State's submittal identifies the control requirement or single source Order that sets forth RACT for major sources of NOx. Specifically, New Hampshire notes that major sources of NOx are subject to Env-A 1300, Nitrogen Oxides (NOx) RACT. This regulation includes a NOx RACT emission limit applicable to municipal waste combustors. New Hampshire reviewed Env-A 1300 and determined that certain aspects of that regulation needed to be updated in order to represent RACT for the 2008 and 2015 ozone NAAQS. This determination was informed by comments the State received from EPA within a letter dated April 18, 2014. That EPA comment letter was sent in response to a draft RACT certification SIP for the 2008 ozone NAAQS that New Hampshire had submitted to EPA for review. EPA's comment letter noted that New Hampshire's draft RACT certification lacked adequate justification as to how the State's NOx RACT regulations represented a RACT level of control,

and the correspondence also provided information indicating that strengthening some aspects of these regulations, in particular those limiting emissions from coal-fired electric utility boilers and municipal waste combustors, was likely needed in order to satisfy the State's RACT obligation. EPA's comment letter is included in the docket for this action. Accordingly, on September 6, 2018, New Hampshire submitted an updated version of Env-A 1300 as a SIP revision. The updated regulation includes a tightened NOx emission limit for incinerators which is applicable to municipal waste combustors in the State, lower NOx emission limits for older gas and older oil-fired engines, and lower NOx emission limits for coal fired utility boilers. Additionally, New Hampshire submitted updated single source Orders containing NOx RACT requirements for the Anheuser Busch Company and for the Schiller Station electrical generating station.

New Hampshire has adopted State regulations for the CTG categories for which sources exist in the State and has reviewed and strengthened portions of Env-A 1300, NOx RACT. In most cases New Hampshire determined that sources already addressed by RACT determinations for the 1-hour and/or 1997 ozone NAAQS do not need to implement additional controls to meet the 2008 or 2015 ozone NAAQS RACT requirement primarily because RACT for the more recent standards is the same control technology as required by the initial RACT determination made under the 1-hour or 1997 standard because the fundamental control techniques, as described in the CTGs and ACTs, are still what is reasonably available. New Hampshire did not receive any comments during the public hearing process disagreeing with the State's conclusion that it has adopted regulations governing major sources of VOC and NOx that constitute RACT.

New Hampshire's review of its control program for major sources of VOC and NOx thus concludes that upon completion of its intended updates to Env-A 1300 and submittal of the single source NOx RACT Orders mentioned above, all major sources in the State will be meeting the RACT requirements of the 2008 and 2015 ozone standards.

b. Evaluation of RACT Certifications for the 2008 and 2015 Ozone Standards

EPA has reviewed New Hampshire's determination that it has adopted VOC and NOx control regulations for stationary sources that constitute RACT and proposes to determine that the set of regulations cited by the State within its September 6, 2018, certification SIP submittals, along with the strengthening of the requirements contained in Env-A 1300, the State's NOx control regulation, constitute RACT for purposes of the 2008 and 2015 ozone standards. EPA's evaluation is explained in more detail below and is also explained within a Technical Support Document (TSD) that can be found in the docket for this action.

New Hampshire's RACT certification submittal documents the State's VOC and NO_X control regulations that have been adopted to ensure that RACT level controls are required in the State. These requirements include regulations within Env-A, Rules Governing the Control of Air Pollution. Specifically, within New Hampshire's VOC RACT regulation, Env-A 1200, the State has adopted regulations limiting VOC emissions from sectors represented by 23 of EPA's CTGs, including the CTGs EPA adopted in 2006, 2007, and 2008. These are the CTGs for which the State has covered sources. EPA's analysis for these CTGs is explained more below and also within the TSD. Further, New Hampshire's submittal includes Table 5-3 listing negative declarations for the other CTGs where the state determined that no covered sources are located within its borders. To evaluate these negative declarations, EPA reviewed facility location data by industry type using information from the North American Industry Classification System. Based on that review, EPA agrees with the State's conclusion regarding which CTGs negative declarations are appropriate for.

Next, New Hampshire's RACT certification notes that the State has adopted numerous single source RACT Orders for major sources of VOC and NOx, and that these Orders have been submitted to EPA and incorporated into the SIP. The sources covered by these orders must submit a detailed evaluation of the economic and technical feasibility of the VOC or NOx control options that were evaluated, the control option selected and the corresponding emissions limit, and the monitoring technique and/or test method that will be used to demonstrate

compliance for the State to review. Prior to issuing a RACT determination for the source, New Hampshire submits a draft RACT Order to the EPA's Region 1 office for review and comment, after which the draft order undergoes a 30-day public comment period. After considering any comments received during the public hearing process, the State issues a final RACT Order to the facility and subsequently submits it to EPA for incorporation into the New Hampshire SIP.

As part of the development of its RACT certifications, New Hampshire evaluated all previously issued VOC and NOx RACT Orders based on the State's review of available control options implemented at other facilities within the State and comparable RACT emissions limits required by other States. The results of this review are chronicled within Tables 5-2 and 5-5 of the State's submittal, and the tables include a column explaining the results of the State's review. Orders that the State determined did not satisfy the RACT requirement, such as the Orders previously issued to Anheuser Busch and Schiller Station, were revised and submitted to EPA for incorporation into the New Hampshire SIP, which EPA accomplished via a final rule published in the *Federal Register* on September 12, 2019 (84 FR 48068). EPA reviewed the States documentation of its review of RACT Orders, and also performed its own review of a number of orders that the State did not update, and agree with the State's determination that these orders represent a RACT level of control. For example, the VOC RACT orders for Teleflex Medical and the Textile Tapes Corporation indicate that both companies control VOC emissions to a minimum of 81% control efficiency by operation of a thermal oxidizer, which is the control level recommended in EPA's model VOC RACT rules for non-CTG sources that control emissions by an alternative to what is otherwise required by regulation. Other States, Delaware for example, require this same level of control in such situation.[1] EPA has reviewed and agrees with New Hampshire's assessment that its RACT Orders sufficiently demonstrate a RACT level of control.

[1] For example, Appendix A of Delaware's regulation 1124, Control of Volatile Organic Compound Emissions, at section 10.5, Control Devices.

Our most recent prior approval of a RACT certification SIP for New Hampshire occurred on November 5, 2012, (77 FR 66388) for the 1997 ozone standard. Since then, EPA has approved numerous revisions to New Hampshire's RACT requirements that further limited VOC and NOx emissions. These revisions include updates the State made to its VOC RACT regulation to address the CTGs issued by EPA in 2006, 2007, 2008, and 2016 (s*ee* 77 FR 66922, and 85 FR 41920), and minor updates to the State's NOx RACT requirements (*see* 79 FR 49458).[2] Additionally, New Hampshire submitted and EPA approved single source Orders for the following facilities subsequent to EPA's last RACT certification approval: Mectrol Corporation (*see* 77 FR 66388); Concord Litho, Sturm-Ruger, Gorham Paper, and Textile Tapes (*see* 79 FR 49458); Parker Hannifin Corporation, Watts Regulator, Textile Tapes, amended Order (*see* 81 FR 59139); Sturm-Ruger, amended Order (*see* 83 FR 13668), and; Diacom Corporation (*see* 83 FR 45356).

To further analyze whether New Hampshire's VOC control regulations for sources covered by CTGs meet the RACT obligation, EPA reviewed those regulations and compared them to other resources. Those resources include control strategies adopted by two similar neighboring States, Maine and Vermont, which are also attainment areas that implement RACT due to their inclusion in the OTR, measures described in the RACT/BACT/LAER Clearinghouse (RBLC), EPA's Menu of Control Measures, and federal regulations found in 40 CFR parts 60 and 63 (New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants). EPA's RBLC contains case-specific information on air pollution technologies that have been required by State and local permitting agencies to reduce air pollution from stationary sources and was designed to help with the air permitting process. The Menu of Control Measures provides State, local, and Tribal air agencies with information on existing emissions reduction measures, as well as relevant information concerning the efficiency and cost

[2] New Hampshire has made more significant revisions to its NOx RACT regulation that we are proposing to approve as discussed is section II.2 of this document.

effectiveness of the measures. The results of EPA's analysis are summarized within the TSD prepared for this action and included in the docket. Additionally, for informational purposes and context, a technical supplement New Hampshire provided to its RACT certifications that is included within the docket provides information regarding aspects of the State's VOC regulations that contain requirements more stringent than what is found within EPA's CTGs for wood furniture manufacturing, graphic arts, bulk gasoline plants, and cutback and emulsified asphalt application.[3] For example, New Hampshire requires a control efficiency of between 75 to 80% for control equipment used to reduce emissions from rotogravure printing operations, whereas the comparable requirement from EPA's CTG is 65 to 70%. Based on EPA's review, we are proposing to find that New Hampshire's VOC requirements for sources covered by CTGs, where such sources exist within the State, adequately establish RACT. Although there are some differences amongst the State regulations, for example, regarding applicability criteria, work practice standards inspection frequency and other matters, these differences did not impact EPA's conclusions regarding New Hampshire's regulations.

Pursuant to Env-A 1222, Miscellaneous and Multicategory Stationary VOC Sources, facilities with the potential to emit 50 tons or more from activities that don't fit into a CTG category but are able to meet the default control options within that regulation are governed by the control options within it, such as, for example, achievement of an 81% overall control efficiency for add-on equipment as recommended within EPA's model VOC RACT rules for non-CTG sources. EPA reviewed the control options within Env-A 1222 and agree that they continue to represent RACT.

Next, New Hampshire recently re-evaluated its NOx RACT regulation and determined that a number of NOx requirements, as described below, should be updated to be consistent with requirements in other States. The updates New Hampshire made to its NOx RACT regulation resulted in the development of tighter NOx limits for municipal waste combustors (MWCs),

[3] See RACT Certification: Follow-up to NH's Submission on September 6, 2018

lower NOx emissions limits for oil and gas fired engines, and lower NOx limits for coal fired boilers. New Hampshire's SIP submittal further indicates some portions of Env-A 1300 were not revised, and the State provided its rationale for not revising these sections in the technical supplement to the original submittal mentioned above. New Hampshire determined that portions of Env-A 1300 pertaining to asphalt plant rotary dryers, wallboard manufacturing facilities, auxiliary boilers, and miscellaneous sources did not need revision based on its review of various factors as noted within the supplement. For example, there are no longer any asphalt plant rotary dryers or industrial boilers sized 100 mmBTU/hr or greater in the State, and so requirements for such equipment were not changed. New Hampshire also notes that there are minimal emissions from wallboard manufacturing facilities and auxiliary boilers, with only 34 tons of annual NOx emitted from these two sectors collectively. New Hampshire's conclusion that their current regulations for these facilities constitutes RACT is reasonable when considering their current emissions, the existing requirement for controls, and the anticipated costs of achieving additional reductions. For example, New Hampshire's existing RACT requirements contain a requirement for the use of low-NOx burners by both types of facilities, and EPA's "Menu of Control Measures" indicates that low-NOx burners typically achieve a 50 percent NOx emission reduction. Adding additional combustion controls such as flue gas recirculation or overfire air can nominally increase the control efficiency to 60 to 70%, but those controls can be costly and the added cost to achieve this incremental emission reduction is likely to be economically infeasible. Therefore, we agree with the State's conclusion that additional NOx controls are not needed for RACT for wallboard manufacturing and auxiliary boilers. The State's technical supplement to the RACT certification submittal contains additional information regarding the portions of the State's NOx RACT requirements that were not revised.

We note that New Hampshire's certification also mentions the State's adoption of regulations recommended by the Ozone Transport Commissions OTC that limit VOC emissions from consumer products and architectural and industrial maintenance coatings regulations.

Although these rules will assist New Hampshire in its efforts to remain in attainment of the ozone standard by lowering VOC emissions in the State, they are not required for EPA's approval of the RACT certification as they do not apply to major stationary sources or to sources covered by a CTG. The OTC periodically makes recommendations to its member States regarding ozone control strategies that the States should consider adopting. The OTC's Stationary Source committee has focused mostly on VOC area source and NOx point source categories, but they did identify a VOC control strategy that is applicable to both the VOC point and area source sectors, and New Hampshire adopted this requirement. The specific provision is found within New Hampshire's VOC RACT regulation at section Env-A 1221.02, Compliance Standards for Cold Cleaning. It precludes use of solvents with a vapor pressure of 1.0 millimeters of mercury or greater within a cold cleaning machine, which is a restrictive requirement not found within EPA's CTG for this sector.[4]

We have reviewed the State's submittals and propose to agree that the VOC and NOx stationary source control regulations which New Hampshire has cited as meeting RACT satisfy the RACT obligation for purposes of the 2008 and 2015 ozone standards and we are therefore proposing to approve the State's September 6, 2018, RACT certification SIPs.

2. Update to NOx RACT Regulation

As mentioned above, New Hampshire performed an initial review of its VOC and NOx RACT regulations in 2014 and concluded that its VOC RACT regulation, Env-A 1200, and NOx RACT regulation, Env-A 1300, contained sufficient requirements to satisfy RACT and submitted its draft RACT analysis to EPA for comment. EPA's review of New Hampshire's 2014 draft RACT submittal identified portions of the State's NOx RACT requirements which were not likely to meet RACT for purposes of the 2008 ozone NAAQS and transmitted these findings via a letter dated April 18, 2014. Specifically, EPA found that the State's NOx emissions limits for electric utility boilers and municipal waste combustors should be strengthened in order to

[4] Control Techniques Guidelines: Industrial Cleaning Solvents; September, 2006

represent a RACT level of control. Accordingly, on September 6, 2018, New Hampshire submitted a SIP revision that requested that an updated version of the State's NOx RACT regulation, entitled Env-A 1300, Nitrogen Oxides (NOx) Reasonably Available Control Technology (RACT), be approved into the SIP. Env-A 1300 contains New Hampshire's NOx emissions limits and other requirements for the various types of combustion equipment found in the State as identified within section 1301.02 of the rule. The primary changes New Hampshire made to the NOx RACT rule consist of adoption of stricter NOx emission limits for MWCs and coal fired utility boilers as EPA recommended in its 2014 comment letter, and also additional, strengthened NOx requirements applicable to peak shaving oil and gas fired engines.

On March 28, 2023, New Hampshire submitted amendments to Env-A 1300 to revise a requirement applicable to coal-fired electric utility boilers operating under "low-load" conditions to restrain such operation to testing required under 40 CFR part 75. The revision also included additional recordkeeping requirements for coal-fired electric utility boilers that are applicable during periods of startup and shutdown.

Regarding MWCs, New Hampshire lowered the existing NOx emission limit for incinerators (MWCs are a type of incinerator) to 150 ppm within Env-A 1309.03. The State's one remaining MWC facility, the Wheelabrator-Concord Company located in Concord, NH, meets this emissions limit by operating a selective non-catalytic reduction (SNCR) system to control NOx emissions. Appendix D of a report produced in February of 2017 by the Ozone Transport Commission[5] (OTC) indicates that this NOx emissions limit is amongst the lowest of all of the limits for MWC units in the OTR. For example, the 150 ppm NOx emissions limit is equivalent to or more stringent than similar restrictions adopted by the three other New England States with mass-burn waterwall MWC units similar to the type operated in New Hampshire[6]. An

[5] White Paper on Control Technologies and OTC State Regulations for Nitrogen Oxides Emissions from Eight Stationary Source Categories; Ozone Transport Commissions; Final Draft, 02/10/2017.
[6] For MWC NOx emissions limits for Massachusetts, see 310 of the Code of Massachusetts Regulations, section 7.08: U Incinerators, at 7.08(f), Table 3; for Connecticut, see the Regulations of Connecticut State Agencies at Section 22a-174-38, Municipal Waste Combustors, paragraph (c), Table 38-2; for Maine, see Chapter 138, NOx RACT, of Maine's Air Rules at 138(G).

alternative emission limit of 205 ppm is allowed during periods of startup or shutdown, which are limited in time to no more than 3 hours per event.[7]

Regarding peak shaving engines, New Hampshire lowered the NOx emission limit for gas-fired rich burn engines from 2.0 to 1.5 grams per brake-horsepower hour (bhp-hr), and lowered the emission limit for lean burn gas-fired engines from 3.0 to 2.5 grams bhp-hr. New Hampshire also lowered the emission limit for oil-fired engines from 9.0 grams per bhp-hr to a range of between 4.0 grams and 6.4 grams per bhp-hr depending on engine size. As can be seen by information within Appendix C of the OTC White Paper, these limits are consistent with limits adopted by other States within the OTR[8]. For example, the State's limit for gas-fired rich burn engines is equal to the most stringent limit of other States, and the limits for gas-fired lean burn and for oil-fired engines are within the range of rates adopted by the other OTC States.

Regarding coal-fired electrical generating units (EGUs), New Hampshire significantly lowered the NOx emission limits for the State's two remaining operating coal-fired EGUs, those being units MK1 and MK2 operated by Granite Shore Power at its facility located in Bow, New Hampshire. New Hampshire's revised NOx RACT regulation lowers the NOx emission rate for unit MK1 from 0.92 lbs per million british thermal units (mmBTU) of heat input to 0.22 lbs per mmBTU, based on a 24-hour averaging time. For MK2, New Hampshire's revised NOx RACT regulation also lowers the NOx emission limit to 0.22 lbs per mmBTU, down from a previous limit of 1.4 lbs per mmBTU, and this limit is also based on a 24-hour averaging time. The emission units subject to these requirements are cyclone boilers, and boilers of this configuration have the highest uncontrolled emission rates of all coal-fired boiler types listed within EPA's

[7] EPA evaluated New Hampshire's alternative emission limit of 205 ppm using the seven recommended approvability criteria outlined in EPA's guidance for establishing alternative emission limitations during periods of startup and shutdown and determined the emission limit meets CAA requirements for SIP provisions. *See* Section VII.B of 80 FR 33840 (June 12, 2015). EPA's evaluation of the alternative emission limit is included in the docket for this action.

[8] We note that the emissions limits shown within Appendix C for diesel and for dual-fuel units for NH of 8.0 grams/hp-hr were subsequently lowered by the oil-fired limits noted within this paragraph.

emission factor reference document referred to as "AP-42".[9] Table 1.1-3 of AP-42 provides an uncontrolled emission rate for cyclone boilers of 33 pounds of NOx per ton of coal burned, which is more than six times higher than the lowest uncontrolled rate shown in the table. To reduce NOx emissions from these high-emitting boilers, each unit is equipped with selective catalytic reduction (SCR) control systems which is a highly effective means of controlling NOx emissions from combustion equipment.

Over the past decade, the two emissions units subject to these requirements have been called upon less frequently to produce electricity. For example, in 2010 unit 1 operated on 286 days and emitted 1,071 tons of NOx for the year. The unit recorded 7 start-up events during that year. Unit 2 operated 290 days in calendar year 2010 and emitted 2,342 tons of NOx for the year. The unit recorded 6 startup events that year. By 2020, the facilities' utilization had fallen considerably. In 2020, unit 1 operated on only 25 days, emitting 52 tons for the year, but experienced 10 start-up events, more than it had in 2010. Unit 2 operated on only 21 days, emitting 112 tons. Unit 2 experienced 8 start-up events in 2020, also more start-up events than it had 10 years earlier. Given that operations during start-up and shut-down modes now represent a larger part of the facilities' overall operations, and recognizing that the units cannot effectively run SCR controls to reduce NOx emissions during these period, New Hampshire's revised regulation provides, in addition to an emissions rate of 0.22 lbs per million BTU that must be met on a 24-hour calendar day basis under normal operating conditions, daily NOx mass-based emissions caps which are applicable on days when startup, shutdown, and periodic testing[10] occurs. The daily mass emission limits were derived to ensure the daily mass emissions on startup, shutdown, or testing days are no more than 25% higher than the maximum mass emissions otherwise permitted. New Hampshire developed these daily mass emission limits by

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[9] See Volume 1, Section 1.1, Bituminous and Subbituminous Coal Combustion, of AP-42, available at: https://www.epa.gov/sites/default/files/2020-09/documents/1.1_bituminous_and_subbituminous_coal_combustion.pdf

[10] Testing performed in accordance with 40 CFR part 75 that require operation at low load levels that do not allow the requisite SCR operational temperature to be met.

reviewing unit-specific data on the average time each unit spent in start-up and shut-down modes, as well as NOx emitted in each mode, and set the daily mass-based limits to ensure that the units could not spend inordinate amounts of time starting up or shutting down. This approach avoids the potential of a unit spending excessive amounts of time in SCR-off mode. The units cannot "hover" in start-up or shut-down mode to avoid utilizing their SCR to reduce NOx because they would violate the daily mass limit if they remain in those modes for longer than is truly necessary to transition the unit to normal operations or to shut it down. New Hampshire chose this approach as the preferred alternative to providing a higher emissions rate that would have been needed if emissions during start-up and shut-down were included within one overarching emissions rate covering all modes of operation. Pursuant to Env-A 1303.04(c), the facility must keep a log of each start-up and shut-down event that records the date of each event and time spent in these modes, and the emissions that occur during them.[11]

We have reviewed the revisions to Env-A 1300 described above, and other less substantive revisions that New Hampshire made to the regulation and determined that the tightening of emissions limits for coal-fired EGUs, gas and oil-fired engines, and municipal waste combustors will significantly reduce NOx emissions from the equipment subject to these requirements and is consistent with RACT limits adopted by other States for similar equipment.

3. Update to Definition of Emergency Generator

New Hampshire's September 6, 2018, submittal of its updated NOx RACT regulation, Env-A 1300, also included a revision to a term within the State's definitions regulation found at Env-A 101, Purpose; Definitions. In that revision, New Hampshire modified the existing definition of "emergency generator" to make it consistent with a 2015 decision by the U.S. Court of Appeals for the District of Columbia[12] that vacated provisions for emergency engines to operate

[11] EPA evaluated New Hampshire's alternative emission limits during periods of startup, shutdown, malfunction for cyclone boilers using the seven recommended approvability criteria outlined in EPA's guidance for establishing alternative emission limitations, and determined the emission limit meets CAA requirements for SIP provisions. *See* Section VII.B of 80 FR 33840 (June 12, 2015). EPA's evaluation of the alternative emission limits is included in the docket for this action.

[12] *Delaware Department of Natural Resources & Environmental Control v. EPA*, 785 F.3d 1 (D.C. Circuit; 2015).

for demand-response purposes. Because of the Court's decision, engines used for such purposes are subject to Federal requirements regarding emission controls and other requirements for non-emergency engines. Therefore, New Hampshire modified its definition of "emergency generator" to make it consistent with the Court's decision.

4. Withdrawal of RACT orders issued to Public Service of New Hampshire

On August 16, 2018, New Hampshire submitted a request that NOx RACT Order ARD-97-001, issued in 1997, and NOx RACT Order ARD-98-001, issued in 1998, both of which had been issued to the Public Service Corporation of New Hampshire, be withdrawn from the SIP. The State made this request because the NOx emissions limits contained within the orders had been superseded by more stringent limits within the State's revised Env-A 1300, NOx RACT, which the State subsequently submitted to EPA as a SIP revision request on September 6, 2018. We agree that the emissions units covered by these orders are now subject to the more restrictive limits within the revised version of Env-A 1300 that we are proposing approval of elsewhere in this action, and therefore for regulatory clarity we are proposing to grant the State's request to remove Orders ARD-97-001 and ARD-98-001 from the New Hampshire SIP if EPA finalizes its proposed approval of the associated revision of Env-A 1300.

III. Proposed Action

EPA is proposing to approve the following items into the New Hampshire SIP: a RACT certification for the 2008 and 2015 ozone standards, revisions to New Hampshire's NOx RACT regulation, Env-A 1300, a revision to the term "emergency generator" as used within the State's air pollution control regulations, and withdrawal from the New Hampshire SIP of NOx RACT Orders ARD-97-001 and ARD-98-001. EPA is soliciting public comments on the issues discussed in this proposed rule. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this document.

IV. Incorporation by Reference

In this rulemaking, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. The proposed changes are described in sections I. and III. of this preamble. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference New Hampshire regulation Env-A 1300, NOx RACT, and the term "emergency generator" as defined within Env-A 100 of the New Hampshire Code of Administrative Rules. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office. Please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information.

V. 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. *See* 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 proposed 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 proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders12866 (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 (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.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies." The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action

being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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 proposed 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).

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: July 5, 2023.

David Cash,
Regional Administrator,
EPA Region 1.

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