



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2022-0714; FRL 11587-02-R2]

Approval of Source-Specific Air Quality Implementation Plan; New York; Finch Paper LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the State of New York's State Implementation Plan (SIP) for the ozone National Ambient Air Quality Standard (NAAQS) related to a Source-specific SIP (SSSIP) revision for Finch Paper LLC, located at 1 Glen Street, Glens Falls, New York. The control options in this SSSIP revision address nitrogen oxide (NO_x) Reasonably Available Control Technology (RACT) for the Facility sources identified as four power boilers, a wood waste boiler, and four recovery boilers. This action is being taken in accordance with the requirements of the Clean Air Act (CAA) for implementation of the 2008 and 2015 ozone NAAQS. The EPA proposed to approve this rule on January 19, 2024, and received three comments all of which were in favor of the rulemaking.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2022-0714. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Controlled Unclassified Information (CUI) (formally referred to as Confidential Business Information (CBI)) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on

the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Linda Longo, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3565, or by email at longo.linda@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information on regulatory background and the EPA's technical findings relating to the Facility RACT, the reader can refer to the Technical Support Document (TSD) that is contained in the EPA docket assigned to this *Federal Register* document.

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I. What is the background for this action?

A SSSIP revision was submitted to the EPA by the State of New York on May 24, 2022, for Finch Paper LLC, located at 1 Glen Street, Glens Falls, New York (the Facility), and it replaces and withdraws the SSSIP that was submitted by the State on September 16, 2008. On January 19, 2024, the EPA published a notice of proposed rulemaking that proposed to approve a SSSIP revision to addresses NOx RACT emission limits for the Facility's nine boilers. *See* 89 FR 3620. Specifically, the notice of proposed rulemaking addressed the following: 1) Source-specific emission limits and RACT control options for four large power boilers where the presumptive NOx limit is not technologically and economically feasible; 2) a case-by-case NOx emission limit for the wood waste boiler's biomass fuel; and 3) NOx emission limits for four recovery boilers

that are not covered by other New York RACT regulations, and therefore must follow 6 NYCRR part 212 as a process operation.

The EPA is determining through this final action that the NO_x RACT emission limits included in the May 24, 2022, SSSIP revision are demonstrated to be RACT for the power boilers, wood waste boiler and the recovery boilers. The boilers have the lowest emission limits with the application of control technology that are reasonably available given the technological and economic feasibility considerations. Furthermore, the NO_x RACT emission limits for the boilers comply with the New York State regulations, 6 NYCRR part 227, “Stationary Combustion Installations,” subpart 227-2, “Reasonably Available Control Technology for Major Facilities of Oxides of Nitrogen,” and 6 NYCRR part 212, “Process Operations,” subpart 212-3, “Reasonably Available Control Technology for Major Facilities”, and are contained in the Facility’s title V operating permit, 5-5205-00005/00059. The permit was issued by the State on December 20, 2021, modified on January 12, 2022, and expires on December 19, 2026.

The specific details for how the NO_x emission limits comprise RACT for the power boilers, wood waste boiler and the recovery boilers, and the rationale for the EPA’s approval action, are explained in the EPA’s notice of proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA’s notice of proposed rulemaking. 89 FR 3620 (January 19, 2024).

II. Environmental Justice Considerations

The CAA and applicable implementing regulations neither prohibit nor require an environmental justice evaluation and so the State of New York did not evaluate environmental justice considerations as part of its SSSIP submittal. The EPA performed an environmental justice analysis for the purpose of transparency about this rulemaking to the public and the analysis is not provided for the basis of this action.

The EPA created a Community Report (Report) using its EJ Screen, Version 2.2, representing a 1-mile ring centered at the Facility. We analyze both EJ Indexes and Supplemental Indexes because they offer different perspectives on community level vulnerability based on different factors. We also use the National percentile for the Report results and not the State percentile since this SSSIP action is a Federal action. Lastly, the EPA focused on any environmental index result that is 80 percentile or greater because environmental indexes at this level are relatively high compared to the United States population. The Report shows the Facility ranked greater than 80th percentile for National Supplemental Indexes, as follows: 83rd percentile for Superfund proximity; and 81st percentile for being located near a facility regulated under the Risk Management Program (extremely hazardous substances). The Report, *EJ Screen Community Report Aug 10 2023 – Finch Paper*, is contained in the EPA docket assigned to this *Federal Register* document.

III. What comments were received in response to the EPA’s proposed action?

The EPA received three public comments during the 60-day public comment period of the EPA’s proposed approval of New York’s SIP revision. All commenters are in support of the action. The specific comments may be viewed under Docket ID Number EPA-R02-OAR-2022-0714 on the <https://www.regulations.gov> web site.

Regarding one commenter, the EPA appreciates the commenter’s support of the proposed action. Regarding the commenter’s point about the EJ Index, the EPA notes that EJ Screen has two indexes, the EJ Index and the Supplemental Index. Although it is correct to say that Finch Paper shows no EJ Index above 80th percentile, the EPA notes that Finch Paper shows above 80th percentile for Supplemental Indexes. The Supplemental Index includes data on low-income, linguistically isolated, high school education, unemployment, and low life expectancy. Please refer to the EJ Screen Report that is contained in the EPA docket assigned to this *Federal Register* document. Also, the

Facility is regulated because of the RACT regulations, not because of EJ concerns.

Lastly, this action addresses NO_x RACT variance for the boilers – the SSSIP revision does not involve rerouting the smoke of boilers into separate smoke stacks.

Regarding another commenter, the EPA appreciates the commenter's support of the proposed action, and notes that the cap-and-trade program is beyond the scope of this action.

IV. What action is the EPA taking?

The EPA is approving the NO_x emission limits, for purposes of satisfying RACT, as contained in the Facility's title V operating permit, 5-5205-00005/00059, as follows:

1) Condition 1-1, emission unit 3-00000, four power boilers, at 0.225 NO_x lb/MMBtu during ozone season (April 15 through October 15) and at 0.275 NO_x lb/MMBtu during non-ozone season (October 16 through April 14) and at 0.378 NO_x lb/MMBtu when recovery boilers are not burning liquor or when the wood waste boiler is down during non-ozone season; 2) condition 47, emission unit 3-10000, No. 9 wood waste boiler, at 0.28 NO_x lb/MMBtu; and 3) condition 60, emission unit 3-20000, recovery boilers, at 464 parts per million (corrected to 7% oxygen) system wide.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Finch Paper LLC NO_x emission limits described in the amendments to 40 CFR part 52 as discussed in section I. of this preamble. These documents are available in the docket of this rulemaking through www.regulations.gov. Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective

date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;

¹ 62 FR 27968 (May 22, 1997).

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it 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).

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. The 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.” The 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.” resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The New York State Department of Environmental Conservation did not evaluate environmental justice considerations as part of its SSSIP submittal; the CAA and

applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Lisa Garcia,
Regional Administrator,
Region 2.

For the reasons stated in the preamble, 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 HH—New York

2. Amend § 52.1670(d) by adding an entry for “Finch Paper LLC” at the end of the table to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(d) * * *

EPA-Approved New York Source-Specific Provisions

Name of source	Identifier No.	State effective date	EPA approval date	Comments
* * * * *				
Finch Paper LLC	5-5205-00005/00059 Mod 1	1/12/2022	[Insert date of publication in the Federal Register]	RACT emission limits for condition 1-1, condition 47, and condition 60.

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