



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2023-0242; FRL 12441-01-R2]

Approval of Source-Specific Air Quality Implementation Plan; New York; Lehigh Cement Company LLC

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve 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 Lehigh Cement Company LLC, located at 313 Warren Street, Glens Falls, New York (the Facility). The EPA is proposing to find that the control options in this SSSIP revision implement Reasonably Available Control Technology (RACT) with respect to nitrogen oxide (NO_x) emissions from the relevant Facility source, which is identified as one Portland cement kiln (the Kiln). This SSSIP revision is intended to implement NO_x RACT for the relevant Facility source in accordance with the requirements for implementation of the 2008 and 2015 ozone NAAQS. This proposed action will not interfere with ozone NAAQS requirements and meets all applicable requirements of the Clean Air Act (CAA).

DATES: 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 Number EPA-R02-OAR-2023-0242, at <https://www.regulations.gov>. 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 electronically through <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be 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, such as 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>.

FOR FURTHER INFORMATION CONTACT: Stephanie Lin, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866, 212-637-3711, or by email at lin.stephanie@epa.gov.

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I. Background

Ground level ozone formation

Ground level ozone is predominantly a secondary air pollutant created by chemical reactions that occur when ozone precursors, including nitrogen oxides (NO_x)

and volatile organic compounds (VOC), chemically react in the presence of sunlight.¹ Emissions from industrial facilities are anthropogenic sources of ozone precursors. The potential for ground-level ozone formation tends to be highest during months with warmer temperatures and stagnant air masses. Ozone levels are thus generally higher during the summer months, which is often referred to as “the ozone season.” In New York, the ozone season is generally considered to be between April 15 and October 15, while the non-ozone season is generally considered to be between October 16 and April 14.

Ozone nonattainment

A geographic area of the United States that is not meeting the primary or secondary National Ambient Air Quality Standard (NAAQS) for ozone is described as a nonattainment area. Nonattainment areas are classified as either Marginal, Moderate, Serious, Severe, or Extreme. With respect to this proposed action, there are two relevant ozone NAAQS standards. First, on March 12, 2008, the EPA promulgated a revision to the ozone NAAQS, setting both the primary and secondary standards at 0.075 parts per million (ppm) averaged over an 8-hour time frame (2008 8-hour Ozone Standard). *See* 73 FR 16436 (March 27, 2008). Second, on October 1, 2015, the EPA lowered these standards to 0.070 ppm averaged over an 8-hour time frame (2015 8-hour Ozone Standard). *See* 80 FR 65292 (October 26, 2015).

The State of New York has two ozone nonattainment areas: (1) Jamestown, and (2) the New York Metro Area,² consisting of the Bronx County, Kings County, Nassau County, New York County, Queens County, Richmond County, Rockland County, Suffolk County, Westchester County. Under CAA section 184, the State of New York is

¹ *Primary standards* provide public health protection, including protecting the health of “sensitive” populations such as asthmatics, children, and the elderly. *Secondary standards* provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings.

² The New York Metro Area is part of the greater nonattainment area *New York-N. New Jersey-Long Island, NY-NJ-CT*.

located within the Ozone Transport Region (OTR), which means that it is subject to statewide RACT requirements. This Facility is not located in an ozone nonattainment area, but it is still required to implement RACT because it is located within the OTR.

Federal RACT Requirements

RACT is defined as the lowest emission limit that a source is capable of meeting through the application of control technology that is reasonably available considering technological and economic feasibility. The CAA section 182, Plan Submissions and Requirements, requires States with ozone nonattainment areas to include in their statewide SIPs, among other things, provisions to require the implementation of RACT. CAA section 184(b)(2)³ sets forth the requirement to establish control measures to implement RACT for major sources of VOC located in the OTR. For major sources of NO_x, the CAA section 182(f)(1) also applies, “The plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 7602 of this title and subsections (c), (d), and (e) of this section) of oxides of nitrogen.” The State of New York is located within the OTR, and thus the State is required to implement RACT for all major sources of NO_x within the State. RACT for a particular source is determined on a case-by-case basis, considering the technological and economic circumstances of the individual source.

NYSDEC RACT Requirements

The New York State Department of Environmental Conservation (NYSDEC) RACT regulations require applicable facilities to meet certain requirements, referred to as “presumptive RACT requirements.” These presumptive requirements generally require

³ CAA 182(f)(1) also states:

The plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 7602 of this title and subsections (c), (d), and (e) of this section) of oxides of nitrogen.

sources to implement emission limits, control efficiency requirements, specific control technologies, averaging plans, and/or fuel/raw material switching practices. In some instances, the presumptive RACT requirements may not be technologically or economically feasible for a certain source, and the State can make a source-specific RACT determination, which is submitted to the EPA as a SSSIP. The SSSIP should include the facility's RACT plan that demonstrates how the facility will implement RACT. The SSSIP will also include the applicable CAA title V operating permit conditions that address RACT requirements. These permit conditions for the Facility will become part of the Federally enforceable SIP upon the EPA's final approval of this SSSIP.

Under existing NYSDEC RACT regulations, facilities are required to assess all technologically feasible control options that meet the State's cost threshold. The cost threshold for NYSDEC RACT requirements is found under NYSDEC 2013 policy, "DAR-20 Economic and Technical Analysis for Reasonably Available Control Technology (RACT)." Under this policy, facilities must consider in their RACT determinations control technologies that remove VOC or NO_x emissions up to a certain cost threshold, expressed in a dollar amount per ton of VOC or NO_x removed, which includes an inflation-adjusted economic threshold.⁴

II. The EPA's Evaluation of New York's revision and RACT analysis

This action relates to a SSSIP revision that concerns a Portland cement manufacturing and quarry facility operated by Lehigh Cement Company LLC, located in Glens Falls, New York. This Lehigh Cement SSSIP was submitted by NYSDEC on July 1, 2022, and is intended to implement NO_x RACT for the Kiln for purposes of the 2008 and 2015 ozone NAAQS. This Lehigh Cement SSSIP replaces and withdraws the Lehigh

⁴ The DAR-20 cost threshold is based on 1994 dollars. State of New York relies on the U.S. Department of Labor, Bureau of Labor Statistics inflationary calculator to adjust the RACT economic feasibility threshold over time for inflation. See https://www.bls.gov/data/inflation_calculator.htm.

Cement SSSIPs that were submitted by the State on September 16, 2008, and December 18, 2013. In this SSSIP submittal, the EPA has reviewed the RACT determination for the Kiln for consistency with the CAA and the EPA regulations, as interpreted through EPA actions and guidance.

The source at issue in this action is a short, dry preheater Kiln. NYSDEC RACT regulations establish RACT requirements for this source in 6 NYCRR Subpart 220-1, “Portland Cement Plants,” last approved in the New York SIP by the EPA on July 12, 2013. However, 6 NYCRR Subpart 220-1 does not establish presumptive NO_x RACT emission limits for cement kilns due to the uniqueness of cement manufacturing operations. Instead, under 6 NYCRR Subpart 220-1.6(b), the Facility must submit a RACT analysis along with the Air Title V Facility Permit application that proposes a RACT emission limit(s) and identifies the procedures and monitoring equipment to be used to demonstrate compliance with the proposed RACT emission limit(s). Here, NYSDEC determined that the Facility’s analysis adequately evaluated RACT. Such source-specific determinations must be submitted to the EPA as a SSSIP.

In November 2010, the Facility conducted a NO_x RACT analysis for the Kiln (Emission Unit 0-UKILN) specifically applicable under the Federally approved 6 NYCRR Subpart 220-1.6(b). The RACT analysis included the following: (1) An identification of available NO_x control technologies; (2) projected effectiveness of each control technology identified; (3) costs for installation and operation of each technology; and (4) determination of the control technology and emission limit selected as RACT.

Lehigh installed and is currently operating a selective non-catalytic reduction (SNCR) system to meet NO_x RACT as a result of their 2010 NO_x RACT analysis.⁵ In

⁵ On September 9, 2010, the EPA published the New Source Performance Standards for Portland Cement Plants (NSPS Subpart F). In that proposal, the EPA determined that SNCR was deemed to be the Best Demonstrated Technology (BDT) for NO_x in cement plants.” ... *we [the EPA] determined SNCR to be BDT and applied a control efficiency for the SNCR to the baseline uncontrolled level to determine the appropriate NO_x level consistent with application of BDT...SNCR performance has been shown to range from 20 to 80 percent NO_x removal.*” See 75 FR 54970.

addition, the Federally approved version of 6 NYCRR Subpart 220-1.7(d) requires owners or operators of a Portland cement kiln to install and operate a CEMS to monitor NO_x emissions from the cement kiln in accordance with the provisions of 40 CFR part 75, and to demonstrate compliance with the NO_x RACT emission limit on a 30-day rolling average basis.

A nationwide Federal consent decree (CD), Civil Action # 5:19-cv-05688, was executed on November 18, 2020, due to violations that occurred, in pertinent part, at one or more of Lehigh Cement Company LLC's (Lehigh) Portland cement plants. The obligations of the CD were negotiated between Lehigh and the U.S. Department of Justice (on behalf of EPA as well as non-federal jurisdictions, including the State of New York), and are binding.

The terms of the CD imposed a lower emission limit (2.5 lbs NO_x/ton clinker (30-day rolling average)) upon the Kiln that meets Best Available Control Technology (BACT), which is based on the maximum degree of control that can be achieved. The NO_x emission controls and associated cost analysis from the November 2010 RACT analysis for the Kiln were determined to be acceptable as RACT by the NYSDEC. EPA is proposing to conclude that an August 27, 2021, NO_x RACT evaluation to support Lehigh's Title V permit renewal application has successfully demonstrated that the emissions limit continues to be acceptable as RACT, with the RACT emission limit for the Kiln calculated as 2.9 lbs NO_x/ton clinker (30-day rolling average). Since BACT is the maximum degree of control that can be achieved, BACT generally imposes more stringent requirements than RACT. Given that the BACT emission limit imposed by the CD is lower than the previously calculated RACT limit, the EPA is proposing to find that the BACT limit now represents RACT for this source. Here, the CD requires the Facility, beginning on or before May 18, 2021, to: (1) limit NO_x emissions from the Kiln to 2.5 lbs per ton of clinker produced with an 30-day rolling average; (2) install and commence

continuous operation of an Selective Non-Catalytic Reduction (SNCR) NO_x control technology; and (3) install and operate a NO_x Continuous Emissions Monitoring System (CEMS) at each stack, which collects emissions from the applicable kiln in accordance with the requirements of 40 CFR part 60.

To comply with the requirements outlined in the CD, Lehigh revised its Air Title V Facility Permit to contain two permit conditions (permit conditions 85 and 86) that include the NO_x monitoring requirements and emission limitations as non-expiring obligations. A copy of the CD is located in the docket of this rulemaking, Docket Number EPA-R02-OAR-2023-0242, at <https://www.regulations.gov>.

The intended effect of this source-specific SIP revision is to: establish the source-specific emission limit by incorporating the NO_x emission limit imposed by the CD and associated monitoring requirements into the Facility's source-specific SIP.

The EPA is proposing to determine through this SSSIP action that the NO_x emission limit submitted by the State in this SSSIP for the Kiln is the lowest emission limit with the application of control technology that is reasonably available given technological and economic feasibility considerations. The respective NO_x RACT emission limit is contained in the Facility's Title V operating permit, 5-5205-00013/00058, under Conditions 85 and 86. This renewal permit was issued by the State on February 28, 2022, and expires on February 27, 2027.

The Facility submitted a RACT plan for the emission limit requirements and NYSDEC reviewed and approved the emission limit as adequately implementing RACT for the source. NYSDEC then submitted the source-specific SIP revision package at issue in this action for EPA approval, and the EPA is proposing to approve the respective emission limit as implementing RACT for this source. The emission limit for the Facility will become part of the Federally enforceable SIP upon the EPA's final approval of this SSSIP.

The EPA is proposing to determine that the proposed limit for Emission Unit 0-UKILN implements RACT because the Facility's more stringent BACT NO_x emissions limit imposed by the consent decree of 2.5 lbs NO_x/ton clinker (30-day rolling average) is more stringent than the 2.9 lbs NO_x/ton clinker (30-day rolling average) limit required to implement RACT for this source.

III. Environmental Justice Considerations

The CAA and applicable implementing regulations neither prohibit nor require an evaluation of environmental justice (EJ) considerations and/or concerns, and so the State of New York did not evaluate EJ concerns as part of its SSSIP submittal. The EPA evaluated EJ concerns for informational purposes only and is providing the following details for transparency about this rulemaking to the public. The EPA did not rely on this information to reach any decisions described in this action. The EPA created a Community Report (Report) using its EJ Screen, Version 2.3. The Report is contained in the EPA docket assigned to this *Federal Register* document.

The Report addresses a 1-mile ring centered at the Facility. All thirteen EJ Screen environmental indexes were considered for the Report: 1) Particulate matter; 2) ozone; 3) nitrogen dioxide; 4) diesel particulate matter; 5) toxic releases to air; 6) traffic proximity; 7) lead paint; 8) superfund proximity; 9) risk management plan (RMP) facility proximity; 10) hazardous waste proximity; 11) underground storage tanks; 12) wastewater discharge; and 13) drinking water noncompliance. Both the EJ Indexes and the Supplemental Indexes were verified using the thirteen environmental indexes. The difference between the EJ and Supplemental indexes is that the EJ Indexes combine data on low income and people of color populations, whereas the Supplemental Indexes combine data on percent low-income, percent persons with disabilities, percent limited English speaking, and low life expectancy. We analyze both EJ Indexes and Supplemental Indexes because they offer different perspectives on community level vulnerability based on different factors.

The EPA uses the National percentile for the Report results and not the State percentile since this SSSIP action is a Federal action. The EPA notes that any environmental index result that is 80 percentile or greater is relatively high compared to the United States population. The “percentile” is what EJ Screen uses to compare the area of study to national figures.

The results of the EPA’s environmental justice analysis indicated that the following National Supplemental Indexes were above the 80th percentile: Superfund Proximity and RMP Facility Proximity.

In addition, via EJScreen, the Facility was determined to be in a Justice40 area. In January 2021, President Joe Biden issued Executive Order (EO) 14008, Tackling the Climate Crisis at Home and Abroad. Section 223 of the EO established the Justice40 Initiative which directs 40 percent of certain Federal investments to flow to disadvantaged communities.

To understand the indexes that are at or higher than 80th percentile, and the Justice40 categories that represent Glens Falls, NY, refer to *Lehigh Cement Environmental Justice Considerations* and *Lehigh Cement EJ Screen Community Report June 4, 2024* in docket assigned to this *Federal Register* document.

IV. Proposed Action

The EPA is proposing to approve this current source-specific revision because the limit included in the SSSIP is demonstrated to implement RACT for the Kiln. Based on an analysis of this source-specific SIP revision, the EPA proposes to approve Lehigh Cement Company LLC’s operation under the NO_x emission limit approved by NYSDEC for the Facility’s Kiln.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is

proposing to incorporate by reference revisions to Lehigh Cement Company LLC Title V operating permit conditions 85 and 86 as described in section II of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 2 Office (please contact the person identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 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 (Pub. L. 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;
- 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 EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements EO 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

The New York State Department of Environmental Conservation did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an EJ

analysis, as is described earlier the section titled, “EJ 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. 12898/14096 of achieving EJ for communities with EJ concerns.

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements.

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

Lisa Garcia,
Regional Administrator,
Region 2.

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