



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R02-OAR-2023-0242; FRL 12441-02-R2]**

**Approval of Source-Specific Air Quality Implementation Plan; New York; Lehigh Cement Company 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 Lehigh Cement Company LLC, located at 313 Warren Street, Glens Falls, New York (the Facility). The control options in this SSSIP revision implement Reasonably Available Control Technology (RACT) with respect to nitrogen oxide (NO<sub>x</sub>) emissions from the relevant Facility source, which is identified as one Portland cement kiln (the Kiln). 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 December 26, 2024, and received no comments. This final action will not interfere with ozone NAAQS requirements and meets all applicable requirements of the CAA.

**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-2023-0242. 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) (formerly 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:** 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](mailto:lin.stephanie@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. What is the background for this action?
- II. What comments were received in response to the EPA's proposed action?
- III. What action is the EPA taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

**I. What is the background for this action?**

On December 26, 2024, the EPA published a Notice of Proposed Rulemaking that proposed to approve a State Implementation Plan (SIP) revision submitted by the State of New York on July 1, 2022, for purposes of a Portland cement manufacturing and quarry facility operated by Lehigh Cement Company LLC, located in Glens Falls, New York. (See 89 FR 104946.) This Lehigh Cement SSSIP is intended to implement NO<sub>x</sub> RACT for the Kiln for purposes of the 2008 and 2015 ozone NAAQS. This Lehigh Cement SSSIP replaces and withdraws the Lehigh 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 State's July 1, 2022 SIP submittal consists of a cover letter, Title V permit application proof, the 2021 NO<sub>x</sub> RACT re-evaluation, consent decree, and the 2020 NO<sub>x</sub> RACT analysis.

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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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 operating a selective non-catalytic reduction (SNCR) system to meet NO<sub>x</sub> RACT as a result of their 2010 NO<sub>x</sub> RACT analysis.<sup>1</sup> In 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 continuous emissions monitoring system (CEMS) to monitor NO<sub>x</sub> emissions from the cement kiln in

---

<sup>1</sup> 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<sub>x</sub> 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<sub>x</sub> level consistent with application of BDT...SNCR performance has been shown to range from 20 to 80 percent NO<sub>x</sub> removal.” See 75 FR 54970.

accordance with the provisions of 40 CFR part 75, and to demonstrate compliance with the NO<sub>x</sub> RACT emission limit on a 30-day rolling average basis.

A nationwide Federal consent decree, 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 CD). The obligations of the CD were negotiated between Lehigh and the U.S. Department of Justice (on behalf of EPA and 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<sub>x</sub>/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<sub>x</sub> 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 concluding that an August 27, 2021 NO<sub>x</sub> 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<sub>x</sub>/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 approving 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<sub>x</sub> emissions from the Kiln to 2.5 lbs per ton of clinker produced with a 30-day rolling average; (2) install and commence continuous operation of a Selective Non-Catalytic Reduction (SNCR) NO<sub>x</sub> control technology; and (3) install and operate NO<sub>x</sub> 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<sub>x</sub> monitoring requirements and emission limitations as non-expiring obligations. A copy of the CD is located in the docket of this rule, 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<sub>x</sub> emission limit imposed by the CD and associated monitoring requirements into the Facility's source-specific SIP.

The EPA is approving through this SSSIP action that the NO<sub>x</sub> 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<sub>x</sub> 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 approving 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 approving that the proposed limit for Emission Unit 0-UKILN implements RACT because the Facility's more stringent BACT NO<sub>x</sub> emissions limit imposed by the consent decree of 2.5 lbs NO<sub>x</sub>/ton clinker (30-day rolling average) is

more stringent than the 2.9 lbs NO<sub>x</sub>/ton clinker (30-day rolling average) limit required to implement RACT for this source.

The specific details of New York's SIP submittals and the rationale for the EPA's approval action are explained in the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA's December 26, 2024, proposed rulemaking 89 FR 104946.

## **II. What comments were received in response to the EPA's proposed action?**

The EPA provided a 30-day review and comment period for the December 26, 2024 proposed rulemaking. The comment period ended on January 27, 2025. We received no comments on the EPA's action.

## **III. What action is the EPA taking?**

The EPA is approving New York State's SSSIP revision for Lehigh Cement Company LLC submittal dated July 1, 2022 for purposes of satisfying Lehigh Cement Company LLC's operation under the NO<sub>x</sub> emission limit approved by NYSDEC for the Facility's Kiln.

Specifically, the EPA is approving 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<sub>x</sub> emissions from the Kiln to 2.5 lbs per ton of clinker produced with a 30-day rolling average; (2) install and commence continuous operation of a Selective Non-Catalytic Reduction (SNCR) NO<sub>x</sub> control technology; and (3) install and operate NO<sub>x</sub> CEMS at each stack, which collects emissions from the applicable kiln in accordance with the requirements of 40 CFR part 60.

## **IV. 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 revisions to Lehigh Cement Company LLC Title V

operating permit conditions 85 and 86 as described in section I of this preamble. These documents are available in the docket of this rule 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 rule of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>2</sup>

## **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. 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);
- 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);

---

<sup>2</sup> 62 FR 27968 (May 22, 1997).

- 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 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).

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 in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

**Michael Martucci,**  
*Regional Administrator,*  
*Region 2.*

For the reasons stated in the preamble, [40 CFR](#) part 52 is amended 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. In § 52.1670(d), amend the the table by adding the entry “Lehigh Cement Company LLC” at the end of the table to read as follows:

**§ 52.1670 Identification of plan.**

\* \* \* \* \*

(d) \* \* \*

**EPA-APPROVED NEW YORK SOURCE-SPECIFIC PROVISIONS**

<b>Name of source</b>	<b>Identifier No.</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Comments</b>
**	*	*	*	**
Lehigh Cement Company LLC	5-5205-00013/00058	07/11/2010	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	RACT emission limit for conditions 85 and 86, emission unit 0-UKILN.

\* \* \* \* \*