



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2025-0243; FRL-12785-02-R2]

Air Plan Approval; New York; Athens Generating Plant

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 the Athens Generating Plant, located at 9300 US Route 9 West, Athens, NY 12015 (Athens or the Facility). In accordance with the requirements for implementation of the 2008 and 2015 ozone NAAQS, the EPA finds that the control options in New York's SSSIP revision implement Reasonably Available Control Technology (RACT) with respect to Oxides of Nitrogen (NO_x) emissions from the relevant Facility sources, which are identified as three combined-cycle Westinghouse model 501G combustion turbines with associated heat recovery steam generators and steam turbines (identified as Emission Units U-00001, U-00002, and U-00003 in the Facility's Title V permit and New York's submission). This action is being taken in accordance with the requirements of the Clean Air Act (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 No. EPA-R02-OAR-2025-0243. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., 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>.

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SUPPLEMENTARY INFORMATION: For additional information on regulatory background and the EPA's technical findings relating to RACT for the Facility, 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?

On November 20, 2025 (90 FR 52308), 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 April 22, 2024, for purposes of establishing RACT emission limits for applicable units at the Athens Generating Plant. The SIP revision establishes the lowest NO_x emission limits, with the application of existing control technologies for Athens's three combined-cycle combustion turbines (Emission Units U-00001, U-00002, and U-00003). The three emission units are subject to the requirements of 6 New York Code of Rules and Regulations (NYCRR) subpart 227-2, "Reasonably Available Control Technology (RACT) for Major Facilities for Oxides of Nitrogen (NO_x)."

Specifically, the emission units are subject to 6 NYCRR 227-2.4(e)(3),¹ which requires a source-specific RACT proposal for combustion

¹ 78 FR 41846 (July 12, 2013).

turbines operating after July 1, 2014, to be submitted to the New York State Department of Environmental Conservation (NYSDEC) and then to the EPA as a SSSIP.

The State's April 24, 2024 SIP submission includes a RACT determination confirming that the existing controls are consistent with the Best Available Control Technology (BACT) and Lowest Achievable Emission Rate (LAER) requirements for NO_x. Specifically, the Facility employs Dry Low-NO_x (DLN) combustion when firing natural gas and steam injection when firing distillate fuel oil, both in conjunction with a Selective Catalytic Reduction (SCR), to satisfy the BACT/LAER requirements. Because the NYSDEC considers BACT and LAER requirements to be generally more stringent than the applicable RACT requirements,² they determined that these emission units comply with the State's applicable NO_x RACT requirements under 6 NYCRR part 227-2.4(e). The EPA's November 20, 2025 (90 FR 52308) proposed action further outlines the EPA's review of the RACT determination in the SSSIP submittal for the emission units in a manner that is consistent with the CAA and the EPA's regulations, as interpreted through the EPA's actions and guidance.

With this final rulemaking, the EPA is approving conditions #38, 54, 62, 82, and 83 from Permit ID No. ID No. 4-1922-0055/00005 for incorporation by reference into New York's SIP. Additional details regarding New York's SIP submittal and the rationale for the EPA's approval are explained in the EPA's proposed rulemaking and the Technical Support Document (TSD) in the docket; therefore, they are not restated in this final action. For this detailed information, the reader is referred to the EPA's November 20, 2025, proposed rulemaking (90 FR 52308).

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

In response to the EPA's proposed rulemaking to revise New York's SIP, published on November 20, 2025 (90 FR 52308), the EPA received one comment during the 30-day public comment period, which ended on December 22, 2025. The commenter raised several unrelated

² See TSD, "Background on the Facility," page 3 for further explanation on BACT and LAER requirements, as well as why the existing controls at the facility are considered sufficient to satisfy RACT requirements.

issues with the EPA's proposed rulemaking, so the EPA has divided the comment into multiple elements for response. The specific comment may be viewed under Docket ID Number EPA-R02-OAR-2025-0243 on the <https://www.regulations.gov> web site.

Comment: The commenter asserts that the notice or docket should contain the complete NYSDEC permit or order language proposed for Federal enforceability, along with any associated monitoring, recordkeeping, or reporting provisions being incorporated, in accordance with 1 CFR part 51. The commenter further asserts that if any materials proposed for incorporation are not reasonably available, the EPA should supplement the docket and re-open the comment period or refrain from finalizing its rulemaking.

Response: In the EPA's proposed action, "Section III. Proposed Action" and "Section IV. Incorporation by Reference" identified that the EPA proposed to approve, and incorporate by reference into the New York SIP, the submitted permit conditions from the Title V Operating Permit for Athens (ID No. 4-1922-0055/00005): 38, 54, 62, 82, and 83. The EPA also provided the exact text of these aforementioned permit conditions in the TSD for the EPA's proposed action. The Title V permit and associated incorporation by reference permit conditions are in the docket for the action in file: NYSDEC Air Title V Permit for Athens Generating Plant, document EPA-R02-OAR-2025-0243-0004. The New York Title V permit conditions that are being incorporated by reference into the SIP with this final action are identical to those that were proposed for incorporation by reference within EPA's November 20, 2025 (90 FR 52308) proposed action.

Comment: The commenter asserts that a CAA section 110(1) non-interference demonstration is typically conducted by the EPA when a source specific revision adjusts emission limits, averaging times, startup/shutdown provisions, monitoring/recordkeeping/reporting, or compliance methods. Given the size of Athens and its location in New York's Ozone Transport Region, the commenter requests that the EPA include a CAA section 110(1) demonstration comparing emissions before and after the SIP revision to

address cumulative and temporal effects to ensure the revision does not interfere with attainment, maintenance, FRP and other applicable requirements.

Response: The EPA recognizes the applicability of CAA section 110(l) to SIP revisions, but in this instance, disagrees that a CAA section 110(l) demonstration would be necessary for approval of New York's SIP revision pertaining to NO_x emissions from the RACT applicable units at Athens. Section 110(l) of the CAA prohibits the EPA from approving a revision to the SIP if the revision would interfere with any applicable requirement concerning attainment, reasonable further progress, or any other requirement of the CAA. The EPA does not interpret section 110(l) of the CAA to require a full attainment or maintenance demonstration before any changes to a SIP may be approved; rather, a SIP revision may be approved under CAA section 110(l) so long as the EPA finds it will preserve status quo air quality at a minimum.

The EPA's analysis has determined that the RACT emission limits for emission units U-00001, U-00002, and U-00003 will not increase emissions or adversely impact air quality because these emission limits have been in compliance with the SIP-approved emission limits requirements under 6 NYCRR 227-2.4(e)(3) that were applicable to combined-cycle combustion turbines in operation prior to July 1, 2014. Moreover, the NYSDEC determined that the existing controls of DLN combustion system when firing natural gas, and water or steam injection when firing distillate fuel oil, both in combination with SCR, are consistent with the BACT and LAER requirements for NO_x. BACT and LAER are generally the most stringent emission control standards that can be applied to new or modified major sources of air pollution. As a result, emission limits that satisfy BACT and LAER by their nature support attainment of the ozone NAAQS.

Lastly, it is the EPA's understanding that the State of New York will account for the air quality benefits achieved from controlling emissions at the Facility in any future applicable ozone attainment or reasonable further progress plans. Accordingly, the EPA has determined that this SIP revision does not interfere with any applicable New York ozone plan concerning

attainment and reasonable further progress of the NAAQS, or any applicable requirement of the CAA, negating the need for a CAA section 110(1) demonstration.

Comment: The commenter states that if the EPA certifies under 5 U.S.C. 605(b) that an action will not significantly impact a substantial number of small entities, it must provide a factual basis for this certification. In cases where the EPA's approval of a SIP makes terms federally enforceable and potentially alters obligations for a facility, as is the case with this proposed action, the commenter asserts a generic statement is insufficient. Therefore, the commenter requests that the EPA either: (1) provide a specific 5 U.S.C. 605(b) certification under the Regulatory Flexibility Act (RFA) explaining why no small entities are directly regulated by this proposed action and why indirect impacts on small entities are de minimus; or (2) prepare an Initial Regulatory Flexibility Analysis (IRFA) if small entities could be directly impacted by the conditions in this rulemaking.

Response: The RFA and IRFA requirements are inapplicable to this rule because the EPA has certified that this rule will not have a significant economic impact on a substantial number of small entities. This action merely approves State choices for a single facility as meeting requirements of the CAA and does not impose any additional requirements beyond those already required by State law. The EPA's proposed action on New York's submission did not establish any new regulatory requirement to purchase and install pollution control equipment on stationary sources at Athens. This rule is only expected to incorporate RACT emission limits for Emission Units U-00001, U-00002, and U-00003 at the Facility. The regulatory analysis provisions of the RFA and the IRFA are only triggered by a threshold determination when the Agency determines a rule will have a significant economic impact on a substantial number of small entities. Nonetheless, because the Agency has certified this rule will not have a significant economic impact, section 603 and 604 do not apply to this rule. 5 U.S.C. 605(b).

Comment: The EPA does not clearly state whether the action contains any information collection requirements as defined by the Paperwork Reduction Act (PRA); specifically, whether

the monitoring, recordkeeping and reporting obligations at the Facility constitute a “collection of information” (and other associated subsequent requirements such as identifying an Office of Management and Budget (OMB) Control Number) by the EPA or the NYSDEC. If the PRA is not applicable, the EPA should explicitly indicate accordingly via a PRA determination.

Response: The PRA does not apply to this action. The PRA generally provides that every Federal agency must obtain Office of Management and Budget approval before using identical questions to collect information from 10 or more persons. See 44 USC 3502(3); 3507. The EPA is not conducting nor sponsoring the collection of information from 10 or more persons. The EPA is approving New York’s SIP submission which merely approves State choices as meeting the CAA and does not impose any additional requirements beyond those required by State law.

Comment: In accordance with the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501-1571), the EPA should include a determination that explicitly addresses whether this action imposes enforceable duties of \$100 million or more in any year.

Response: The EPA has complied with the UMRA by making its own determination that this rule will not result in expenditures of \$100M or more a year, and therefore the Agency does not need to complete a statement under 2 U.S.C. 1532. In addition, as the commenter also claims, this SIP revision is source-specific and only applicable to a single facility; therefore, it does not create a mandate that imposes additional mandates beyond State law. As a result, a statement regarding the EPA’s UMRA determination is not necessary for this rule.

Comment: The EPA should state whether this action is a “significant regulatory action” under Executive Order (E.O.) 12866 and whether it was submitted to OMB for review; as well as a determination of whether E.O. 13211 is applicable to the energy generating units located at the Facility.

Response: The EPA has complied with E.O. 12866 by determining that this rulemaking is not a significant regulatory action as defined in E.O. 12866. This action will not: (1) have an annual effect on the economy of \$100 million or more; (2) create a serious inconsistency with, or

otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlements, grants, user fees or loan programs; (4) or raise novel legal or policy issues. This action instead applies existing standards to conclude that New York's SIP submission meets the requirements of the CAA.

Regarding E.O. 13211, the EPA has determined that this action is applicable to energy generating units located at Athens. To clarify, this action is not considered a "significant energy action" (as defined by E.O. 13211) because it does not impose any new applicable restrictions on energy production at Athens. This action will also not result in any unintended negative impacts on energy availability and costs; therefore, there are no significant energy implications that will result from this action and a comprehensive Statement of Energy Effects (as required under E.O. 13211) is not necessary. As previously stated, this action approves State choices as meeting the CAA and does not impose any additional requirements beyond those required by State law.

Comment: Given the size of the electricity generating unit (EGU) at Athens and its location within a region that has ozone challenges, the EPA should withdraw its direct final approval and proceed via the standard notice-and-comment process to ensure robust input on any change to emission limits, averaging times, or enforceability provisions.

Response: This claim relies on the commenter's mistaken belief that the EPA issued a final rule with the November 20, 2025 (90 FR 52308) proposed action. The EPA published a notice of proposed rulemaking on November 20, 2025, and not a final rule, which included a 30-day public comment period on the proposed rulemaking which closed on December 22, 2025. The agency did not engage in a direct final rule. Furthermore, the proposed rule was not a final action for the commenter to petition the EPA for a stay or delay of a yet-to-be-established effective date. Nonetheless, the EPA disagrees with the commenter, and as demonstrated by the responses to comments in this final rule, the EPA has considered all relevant comments received on its proposal.

III. What action is the EPA taking?

The EPA is approving New York's Source-specific SIP revision for Athens Generating Plant, as submitted on April 22, 2024, for the purposes of satisfying NO_x RACT requirements that are consistent with the CAA. Specifically, the EPA is approving the following requirements as implementing RACT for Emission Units U-00001, U-00002, and U-00003. The Facility must: (1) continue to implement the current combined-cycle combustion turbine NO_x emission controls of SCR and DLN burners for natural gas and SCR and water injection for distillate fuel oil (Condition #38); (2) control emission of NO_x to less than 23.4 lbs/hour when firing natural gas and 101.9 lbs/hour when firing fuel oil, as averaged over a 3-hour block via a continuous emission monitoring system (CEMS) and reported on a semi-annual basis (Conditions #54 and 62); and (3) limit NO_x emissions to 9.0 parts per million by volume (ppmv) corrected to 15% oxygen when firing fuel oil and 2.0 ppmv corrected to 15% oxygen when firing natural gas, as averaged over a 3-hour block via CEMS and reported on a semi-annual basis (Conditions #82 and 83).

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 conditions #38, 54, 62, 82, and 83 within the Athens Generating Plant's Title V operating permit, described in the amendments to 40 CFR part 52 as discussed in sections I and II of this preamble. These documents are available in the docket of this rule through <https://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.³

V. Statutory and Executive Order Reviews

³ 62 FR 27968 (May 22, 1997).

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant under Executive Order 12866;
- 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 CAA.

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).

This rule is exempt from the Congressional Review Act because it is a rule of particular applicability.

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

List of Subjects in 40 CFR Part 52

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

Michael Martucci,
Regional Administrator,
Region 2.

For the reasons set forth 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. In §52.1670, the table in paragraph (d) is amended by adding the entry “Athens Generating Plant” 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
* * * * *				
Athens Generating Plant	4-1922-0055/00005	07/01/2022	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]	RACT emission limits 38, 54, 62, 82, and 83

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