

States Court of Appeals for the appropriate circuit by December 17, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 approving source-specific RACT requirements to control VOC from IDL, OPI and USAir located in the Pittsburgh-Beaver Valley area of Pennsylvania 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: October 3, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(162) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(162) Revisions pertaining to VOC RACT for IDL, Incorporated; Oakmont Pharmaceutical, Inc.; and USAir, Inc. located in the Pittsburgh-Beaver Valley ozone nonattainment area, submitted by the Pennsylvania Department of Environmental Protection on July 1, 1997.

(i) Incorporation by reference.

(A) Letter submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC RACT determinations dated July 1, 1997.

(B) Plan Approval and Agreement Upon Consent Orders (COs) for the following sources:

(1) IDL, Incorporated, CO 225, effective July 18, 1996, except for condition 2.5.

(2) Oakmont Pharmaceutical, Inc., CO 252, effective December 19, 1996, except for condition 2.5.

(3) U.S. Air, Inc., CO 255, effective January 14, 1997, except for condition 2.5.

(ii) Additional materials. Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations submitted for the sources listed in paragraph (c)(162)(i)(B) of this section.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA101/178-4159; FRL-7083-2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_x RACT Determinations for Four Individual Sources in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for four major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on November 2, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT:

Marcia L. Spink, (215) 814-2104, or by e-mail at spink.marcia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 6, 1995, September 13, 1996, and July 1, 1997, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several major sources of VOC and/or NO_x. This final rulemaking pertains to four of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of Plan Approvals (PAs) issued by PADEP and Plan Approvals and Agreement Upon Consent Orders (COs) issued by the Allegheny County Health Department (ACHD). These PAs and COs impose VOC and/or NO_x RACT requirements for each source. These sources are all located in the Pittsburgh area and consist of: Duquesne Light Company-Brunot Island Power Station; Duquesne Light Company-Cheswick Power Station; Duquesne Light Company—Elrama Plant; and the Pennsylvania Electric Company—Keystone Generating Station.

On August 10, 2001, EPA published a direct final rule (66 FR 42128) and a companion notice of proposed rulemaking (66 FR 42186) to approve these SIP revisions. On September 7, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On September 20, 2001 (66 FR 48348), we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 10, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 42186). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 10, 2001 direct final rule and will not be restated here.

The direct final rule (66 FR 42128) and companion notice of proposed rulemaking (66 FR 42186) pertained five major sources. In addition to proposing to approve RACT for Duquesne Light Company—Brunot Island Power Station; Duquesne Light Company—Cheswick Power Station; Duquesne Light Company—Elrama Plant; and the Pennsylvania Electric Company—Keystone Generating Station; EPA also proposed to approve RACT for Duquesne Light Company—Phillips Power Station. Phillips Station has ceased operations, and thus EPA is not approving a source-specific RACT determination for this facility. On April 15, 1999, Duquesne Light Company Inc.

entered into a Consent Order and Agreement with the Commonwealth of Pennsylvania, Department of Environmental Protection regarding NO_x Allowances for its five power stations located in Pennsylvania. Paragraph 4 on page 5 of that Consent Order states that the emission reductions resulting from the curtailment of operations at the Phillips Station are not eligible to be used to generate ERCs and cannot be used as creditable emission reductions in any NSR applicability determination (a process referred to as netting). The Pennsylvania DEP has submitted this signed and dated Consent Order and Agreement to EPA and it has been placed in Administrative Record for this final rulemaking. This Consent Order and Agreement makes approval of any NO_x RACT determination for the installations and operations at Phillips Station moot. If Duquesne (or any subsequent owner/operator) were to apply to recommence operations at Phillips Station, that restart would be subject to the Pennsylvania's SIP's applicable approved NSR program as though it were a new source. Under Pennsylvania's SIP-approved NSR program, the controls required of any such new source would, at a minimum, have to meet Best Available Technology (BAT) which must be at least as stringent as RACT.

II. Public Comments and Responses

The Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on twenty proposed rules published by EPA in the **Federal Register** between August 6 and August 24, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_x and or VOC sources located in the Pittsburgh area. PennFuture's letter includes general comments and comments specific to EPA's RACT approvals for certain sources. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA responses are provided at II.A.-G. of this document.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_x and VOC controlled. In citing the definition of the term "RACT," and the Strelow Memorandum (Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan v.*

Thomas, 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)), PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_x and VOCs*, requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements*. Under subsection 129.92, that proposal is to include, among other information, (1) A list of each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures

for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that " * * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources."

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_x RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_x RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_x RACT regulations retained a limited approval status. On August 24, 2001 (66 FR 44578), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Pittsburgh area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Pittsburgh-Beaver area or (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by-case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA

performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at <http://www.epa.gov/ttn/catc/dir1/ctg.txt>).

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for only three sources located in the Pittsburgh area, namely for Duquesne Light's Elrama, Phillips and Brunot Island stations. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour "are some of the largest NO_x emitting sources in the Commonwealth and in the Northeast United States" (63 FR 13789, 13791 (1998)) and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions

reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by-case RACT submissions, EPA has not demonstrated that these large boilers are subject to "numeric emission limitations" under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa. Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Pittsburgh area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Pittsburgh area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all

VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, "Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options" (September 1993) and "Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options" (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source categories for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for "major sources of VOC," located within those areas of a state where RACT applies under Part D of the Act (182(b)(2)(C)). This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for "any category of VOC sources" covered by a CTG issued prior to November 15, 1990 (182(b)(2)(A)). The other provides that states must adopt VOC RACT for all "VOC sources" covered by a CTG issued after November

15, 1990 (182(b)(2)(B)). EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of "source category" in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account.

As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. *Comment:* PennFuture cites EPA correspondence (letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993) to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the "automatic" selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_x RACT Guidance Document for

implementation of its NO_x RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish "bright line" or "cook-book" approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its "Guidance Document on Reasonably Available Control Technology for Sources of NO_x Emissions," March 11, 1994, and on pp. 8–9 states that the acceptable threshold is \$1500 per ton, and that this figure applies to "all source categories." PennFuture notes that EPA later objected to the \$1500 per ton methodology as "not generically acceptable to EPA" (letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997) and further stated in a **Federal Register** document that a "dollar per ton threshold" is "inconsistent with the definition of RACT" (62 FR 43134, 37–38 (1997)).

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this \$1500 per ton threshold. The commenter states that PennFuture's review of several of the current DEP evaluations indicate that the Commonwealth applied this standard and provides the examples of Duquesne Light—Elrama (auxiliary boiler); Allegheny Ludlum—Washington (formerly Jessop Steel). PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of \$1500 per ton, or any other "bright line" approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking (63 FR 13789) clearly indicates that the Commonwealth's document, "Guidance Document on Reasonably Available Control Technology for Sources of NO_x Emissions," March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking (63 FR

13789), in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA (letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997) stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's \$1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the \$1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_x emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of \$1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_x emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of \$1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of \$1500 per ton " * * * Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an "automatic" rejection of a control technology as RACT for a source."

In no instance, including that for Duquesne Light—Elrama (auxiliary boiler) and Allegheny Ludlum—Washington (formerly Jessop Steel), has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than \$1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's

proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_x-reducing rules, including the recent Chapter 145 rule, to reduce NO_x at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program

indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant (62 FR 43959 (1997); 63 FR 23668 (1998)) and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. (62 FR at 43961). Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_x emission requirements for utilities which must be met *in addition* to any RACT requirements (see NO_x Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_x RACT determination for PPNC (63 FR at 23669), that the discussion concerning average emission rates for

boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that "Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT." (62 FR at 43961). EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_x control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_x control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

G. Comment: PennFuture submitted comments specific to the case-by-case RACT determinations for three sources located in the Pittsburgh area, namely for Duquesne Light's Elrama, Phillips and Brunot Island Stations.

(1) Elrama Station—PennFuture comments that under Pennsylvania law, presumptive RACT for a coal-fired combustion unit with a rated heat input equal to or greater than 100 million Btu/hour is the installation and operation of low NO_x burners with separate overfire air (LNB-SOFA). 25 Pa.Code 129.93(b)(1), and that the Duquesne Light—Elrama Station has four boiler units subject to this standard. PennFuture cites intra-agency correspondence between EPA staff which states that the RACT proposal fails to demonstrate that the burner modification and the new design burners will result in emission reductions that are equivalent to conventional low NO_x burners. (Memo, Kelly Bunker, EPA, to David Campbell, EPA, November 25, 1997, p. 2) PennFuture's comment also acknowledges DEP correspondence which did provide its justification as to why the emission controls at Units 1–3 at Elrama are functionally equivalent to LNB-SOFA. (Letter Krishnan Ramamurthy, DEP, to David Campbell, EPA, May 13, 1998.) PennFuture asserts,

nonetheless, that DEP did not conduct a case-by-case RACT analysis and did not demonstrate that the emission rate for these burners would be equivalent to LNB-SOFA. Lastly, PennFuture cites current emissions data from EPA (see Table B1 of EPA's Emissions Scorecard 2000) suggesting that other large coal burners in Pennsylvania that have applied LNB-SOFA are achieving significantly lower emissions rates for NO_x than Elrama Station.

Response: Subsection 129.93, entitled *Presumptive RACT emission limitations*, states at 129.93(a) that the owner or operator of a major NO_x emitting facility, may *elect* to comply with the presumptive RACT limitations of 129.93 as an alternative to developing and implementing a RACT emission limitation on case-by-case basis. For Elrama Station, Duquesne Light opted to submit a RACT proposal pursuant to the Subsections 129.91 and 129.92 rather than comply with the presumptive RACT requirements of 129.93. There is no requirement that its RACT proposal or the DEP's analysis conducted under 129.91 and 129.92 demonstrate that 0.5lbs of NO_x per MMBtu emission rate is equivalent to LNB-SOFA. Nonetheless, and as noted by PennFuture, the SIP submission does include DEP correspondence which does provide its justification as to why the emission controls at Units 1–3 at Elrama are functionally equivalent to LNB-SOFA. (Letter Krishnan Ramamurthy, DEP, to David Campbell, EPA, May 13, 1998.) EPA has reviewed the RACT proposal done by Duquesne Light, the analysis of that proposal by DEP, and finds that given the age, configuration and design of the specific boilers; the required installation of low NO_x burning systems, the associated modifications and the emission rate of 0.5lbs of NO_x per MMBtu imposed as NO_x RACT for the Elrama Station is approvable.

In its comments, PennFuture compares the 0.5 lbs of NO_x per MMBtu NO_x allowable emission rate imposed by the Commonwealth as RACT on the Elrama station (to be complied with by May 1995) to the current actual emissions data from other large coal burners in Pennsylvania (found in EPA's Emissions Scorecard in 2000). This direct comparison of Elrama's allowable RACT emission rate imposed for compliance by May of 1995 to actual year 2000 emissions data of other large coal burning sources in Pennsylvania is not an appropriate criterion by which to judge the approvability of that RACT allowable emission rate. Such a comparison fails to recognize that as of May 1999, such large coal burning

sources in Pennsylvania have been subject to additional "post-RACT requirements" to reduce seasonal NO_x emissions under the NO_x cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the Ozone Transport Region (OTR). That rule's compliance date is May 1999. That regulation was approved as a SIP revision on June 6, 2000 (65 FR 35842). The current (and year 2000) actual emissions data from large coal burning sources in Pennsylvania reflect compliance with 25 Pa Code Chapters 121 and 123—not just RACT.

The Duquesne Light Company's Elrama Plant is also subject to additional requirements to reduce NO_x found at 25 PA Code Chapters 121, 123 and 145. Nothing in the approval of the case-by-case NO_x RACT determination for Elrama in any way relieves the facility from the applicable requirements of SIP-approved 25 PA Code Chapters 121, 123 and 145.

(2) Phillips Station—PennFuture comments that the DEP RACT evaluation for Duquesne Light—Phillips station takes the same approach as for Elrama, this time approving "low NO_x burning systems" with a high emission rate of .72 pounds per million Btu. PennFuture contends that although DEP reports that the four boilers are unusually configured, they are still large boilers subject to presumptive RACT of LNB-SOFA. PennFuture asserts that the source and DEP offer no demonstration that the approved emission rate is equivalent to that obtained by presumptive RACT. Finally PennFuture contends that EPA specifically rejected an emission rate of .72 pounds per million Btu for a coal-fired unit as "too high" and failing the RACT standard at the Penn Power—Newcastle plant. (62 FR 43959, 43961 (1997); 63 FR 23668 (1998)). For these reasons, PennFuture comments that EPA should disapprove the RACT proposal for Duquesne Light—Phillips station.

Response: Phillips Station has ceased operations, and thus EPA is not approving a source-specific RACT determination for this facility. On April 15, 1999, Duquesne Light Company Inc. entered into a Consent Order and Agreement with the Commonwealth of Pennsylvania, Department of Environmental Protection regarding NO_x Allowances for its five power stations located in Pennsylvania. Paragraph 4 on page 5 of that Consent Order states that the emission reductions resulting from the curtailment of operations at the Phillips Station are not eligible to be used to generate ERCs and cannot be used as

creditable emission reductions in any NSR applicability determination (a process referred to as netting). The Pennsylvania DEP has submitted this signed and dated Consent Order and Agreement to EPA as an alternative to the case-by-case RACT SIP submission for Phillips Station and it has been placed in Administrative Record for this final rulemaking. This Consent Order and Agreement makes approval of any NO_x RACT determination for the installations and operations at Phillips Station moot. If Duquesne (or any subsequent owner/operator) were to apply to recommence operations at Phillips Station, that restart would be subject to the Pennsylvania's SIP's applicable approved NSR program as though it were a new source. Under Pennsylvania's SIP-approved NSR program, the controls required of any such new source would, at a minimum, have to meet Best Available Technology (BAT) which must be at least as stringent as RACT.

(3) Brunot Island Station (now owned by Orion Power Midwest, L.P.)—PennFuture comments that in its RACT determination for the Brunot Island plant's six units subject to NO_x RACT requirements (Units 2A, 2B, and 3, which have a potential to emit NO_x of over 3,300 tons per year each), DEP chose to bifurcate the technology review, analyzing operation and controls separately for the combined cycle combustion (CCC) and simple cycle combustion (SCC) modes. PennFuture asserts that DEP's approach improperly assumes that Brunot Island would have to make separate capital investments to apply control technology (in this case, wet injection) to the CCC and SCC modes. Considering these technologies in isolation, DEP concluded that wet injection is cost effective for CCC mode (while concluding that wet injection plus selective catalytic reduction would be cost prohibitive) and that wet injection was cost prohibitive for SCC mode at a maximum annual capacity of 23%. However, in practice, only one capital expenditure for wet injection would be required for this technology to reduce emissions during operation in either mode. Therefore, DEP should have evaluated either one capital expenditure as producing emission benefits in both modes, or only the marginal operating costs associated with wet injection during the SCC mode. PennFuture contends, therefore, that EPA must not approve the NO_x RACT determination for the Brunot Island plant submitted by DEP. Instead, EPA should require that DEP submit a RACT determination that

properly considers the actual costs of applying wet injection to both operating modes.

Response: Pursuant to PennFuture's comment, EPA has re-reviewed the source-specific RACT determination for the Brunot Island Station and has conferred with both the Allegheny County Health Department (ACHD) and the Pennsylvania DEP. On March 5, 2001, the ACHD issued a Prevention of Significant Deterioration (PSD) Installation Permit to Orion Power Midwest, L.P. for its Major Modification of the Brunot Island Station (ACHD Permit 0056). The modification to Brunot Island consists of an increase in the capacity factor to 100% for the existing simple cycle combustion turbines, 2A, 2B, and 3 and the installation of three heat recovery steam generators (HRSGs). Under Permit 0056, only natural gas shall be combusted in the modified combustion turbines and their associated HRSGs, and these units will only operate in combined cycle mode. Fuel oil will no longer be used in these units. The required control device is water injection selective catalytic reduction (SCR). Each unit is limited to 11.8 lbs/hr of NO_x (based on a rolling 3-hr average) and to 51.7 tons per year. Total facility emissions from Units 2A, 2B and 3 shall not exceed 34.4 lbs of NO_x/hr (based on a rolling 3-hr average) and 156 tons per year. In all instances the permit defines a year as any 12 consecutive months.

Under Section V. 7 entitled, Additional Requirements, of Permit 0056 (pp 23 and 23), conditions related to the period of time prior to the modified units operating in the combined cycle mode are imposed. EPA believes that those requirements are RACT, and their requirements apply until the modified units are operating in combined cycle mode. Those requirements include a condition which states that Units 2A, 2B and 3 may combust natural gas in simple cycle mode during the time period commencing with first operation on natural gas and ending with first operation in combined cycle mode with a restriction that NO_x emissions not exceed 239.0 lbs/hr from each unit and 131.0 tons per year from all three units combined. A year is defined as any 12 consecutive months. The 239.0 lbs/hr restriction on each boiler represents a 70 percent reduction from its former 3,300 tons per year potential to emit. The 131.0 tons per year combined annual limit for all three boilers represents a 98.7 percent reduction from their combined former 9,900 tons per year potential to emit. Another condition states that Units 2A, 2B and 3 shall not

operate in simple cycle mode on natural gas without controls after January 1, 2003, unless a revised RACT plan is approved. Any such revised plan would have to be submitted to EPA for approval as a SIP revision. Another condition states that anytime after start-up of Unit 2A, 2B or 3 in combined cycle mode, that Unit shall not operate in simple cycle mode.

ACHD Permit 0056 has been submitted to EPA as part of the NO_x RACT SIP submittal for Brunot Island including the documentation that a public comment period and public hearing were conducted on the proposed PSD permit. The Major Modification Prevention of Significant Deterioration (PSD) Installation Permit issued to Orion Power Midwest, L.P. for its Major Modification of the Brunot Island Station, ACHD Permit 0056, on March 5, 2001 has been placed in the Administrative Record for this SIP revision and is being approved as part of the SIP. Therefore, the federally enforceable and applicable requirements governing emissions of NO_x from the Brunot Island Station are those imposed in permit 0056 issued on March 5, 2001 which EPA is approving as RACT for this source. As of the March 5, 2001 issuance of permit 0056 for Brunot Island, any ERCs generated would have to be surplus to the limits imposed in that permit.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and NO_x RACT for four major sources located in the Pittsburgh area. EPA is approving these RACT SIP submittals because the ACHD and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The ACHD and PADEP have also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves

state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply. This rule does not impose an information collection burden under the provisions

of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for four named sources.

C. Petitions for Judicial Review

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 December 17, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 approving the Commonwealth's source-specific RACT requirements to control VOC and NO_x from four power plants in the Pittsburgh area 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 3, 2001.

Thomas C. Votaggio,
Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(161) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(161) Revisions pertaining to NO_x and/or VOC RACT for major sources, located in the Pittsburgh-Beaver Valley ozone nonattainment area, submitted by the Pennsylvania Department of Environmental Protection on January 6, 1995, September 13, 1996, and July 1, 1997.

(i) *Incorporation by reference.*

(A) Letters from the Pennsylvania Department of Environmental Protection dated January 6, 1995, September 13, 1996, and July 1, 1997, transmitting source-specific VOC and/or NO_x RACT determinations.

(B) The following companies' Plan Approvals (PA), or Consent Orders (CO):

(1) Duquesne Light Company's Cheswick Power Station, CO 217, effective March 8, 1996, except for condition 2.5.

(2) Duquesne Light Company's Elrama Plant, PA 63-000-014, effective December 29, 1994.

(3) Pennsylvania Electric Company's Keystone Generating Station, PA 03-000-027, effective December 29, 1994.

(ii) *Additional materials.*

(A) The federally enforceable Major Modification PSD Permit, ACHD Permit #0056, issued on March 5, 2001 to Orion Power Midwest L.P. for its Brunot Island Power Station (formerly owned by Duquesne Light Company).

(B) The Consent Order and Agreement, dated April 15, 1999, between the Commonwealth of Pennsylvania, Department of Environmental Protection and Duquesne Light Company, INC., regarding NO_x Allowances, which states that the emission reductions resulting from the curtailment of operations at the Phillips Station prior to April 15, 1999 are not eligible to be used to generate emission reduction credits (ERCs) and cannot be used as creditable emission reductions in any New Source Review (NSR) applicability determination.

(C) Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(161)(i)(B) of this section.

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[FR Doc. 01-26263 Filed 10-17-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[ME-063-7012a; A-1-FRL-7085-5]

Clean Air Act Final Approval of Operating Permits Program; State of Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to fully approve the Operating Permits Program of the State of Maine (program). Maine submitted its program for the purpose of complying with Clean Air Act (the Act) requirements for a state to develop a program to issue operating permits to all major stationary and certain other sources. EPA granted source category-limited interim approval to Maine's operating permit program on February 21, 1997. On September 28, 2001, EPA received Maine's revisions to its program that address the issues described in EPA's interim approval.

DATES: This direct final rule is effective on December 17, 2001 without further notice, unless EPA receives adverse comment by November 19, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Steve Rapp, Unit Manager, Air Permits Program Unit, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA—New England, One Congress Street, Suite 1100, Boston, MA 02114-2023. Copies of the state submittal and other supporting documentation relevant to this action, are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA—New England, One Congress Street, 11th floor, Boston, MA Region I.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, (617) 918-1657.

SUPPLEMENTARY INFORMATION:

I. Why Was Maine Required To Develop an Operating Permit Program?

Title V of the Clean Air Act (the Act), as amended (42 U.S.C. 7401 and 7661 *et seq.*), requires all states to develop an operating permit program and submit it to EPA for approval. EPA has promulgated rules that define the minimum elements of an approvable