

and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

#### *Executive Order 13132—Federalism*

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

#### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects 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. The rule does not involve or affect Indian Tribes in any way.

#### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the

meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### *Regulatory Flexibility Act*

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

#### *Unfunded Mandates*

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal

regulation did not impose an unfunded mandate.

#### **List of Subjects in 30 CFR Part 926**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 6, 2008.

**Richard Holbrook,**

*Acting Regional Director, Western Region.*

[FR Doc. E8–19712 Filed 8–25–08; 8:45 am]

BILLING CODE 4310–05–P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[EPA–R03–OAR–2006–0379; FRL–8708–4]

### **Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Reasonably Available Control Technology Requirements for Volatile Organic Compounds and Nitrogen Oxides**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to remove the limited status of its approval of the Commonwealth of Pennsylvania’s State Implementation Plan (SIP) revision that requires all major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) to implement reasonably available control technology (RACT). EPA is proposing to convert its limited approval of Pennsylvania’s VOC and NO<sub>x</sub> RACT regulations to full approval because EPA has approved all of the case-by-case RACT determinations that had been submitted by Pennsylvania such that there are no longer any such submissions pending before EPA. In prior final rules, EPA has fully approved Pennsylvania’s VOC and NO<sub>x</sub> RACT regulations for the Pennsylvania portion of the Philadelphia-Wilmington-Trenton area, and for the Pittsburgh-Beaver Valley area. EPA previously proposed to convert its limited approval of Pennsylvania’s VOC and NO<sub>x</sub> RACT regulations as they apply in the remainder of the Commonwealth to full approval. EPA is withdrawing that proposal and is now repropose approval. This action is being taken under the Clean Air Act (CAA or the Act).

**DATES:** Written comments must be received on or before September 25, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–

R03-OAR-2006-0379 by one of the following methods:

A. *www.regulations.gov*. Follow the online instructions for submitting comments.

B. *E-mail*:  
*fernandez.cristina@epa.gov*.

C. *Mail*: EPA-R03-OAR-2006-0379, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery*: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions*: Direct your comments to Docket ID No. EPA-R03-OAR-2006-0379. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, providing any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:**

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

**I. Background**

Pursuant to sections 182(b) and 182(f) of the CAA, the Commonwealth of Pennsylvania (Pennsylvania) is required to establish and implement RACT for all major VOC and NO<sub>x</sub> sources. SIP revisions imposing RACT for three classes of VOC sources are required under section 182(b)(2). The categories are all sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of 1-hour ozone attainment; all sources covered by a CTG issued prior to November 15, 1990; and all other major non-CTG sources. Section 182(f) provides that the planning requirements applicable to major stationary sources of VOCs in other provisions in part D, subpart 2 (including section 182) apply to major stationary sources of NO<sub>x</sub>.

The Pennsylvania SIP already includes approved RACT regulations for sources and source categories of VOCs covered by the CTGs as required by section 182(b)(2)(A) and (B). Regulations requiring RACT for all major sources of VOC and NO<sub>x</sub> were to be submitted to EPA as SIP revisions by November 1992 and compliance required by May of 1995. On February 4, 1994, the Pennsylvania Department of Environmental Protection (DEP) submitted a revision to the Pennsylvania SIP, consisting of 25 PA Code Chapters 129.91 through 129.95, to require major sources of NO<sub>x</sub> and additional major sources of VOC emissions not covered by a CTG (non-CTG sources) to implement RACT. The February 4, 1994 submittal was amended on May 3, 1994 to correct and clarify certain presumptive NO<sub>x</sub> RACT requirements under Chapter 129.93. As described in more detail, below, EPA granted conditional limited approval of 25 PA Code Chapters 129.91 through 129.95 on March 23, 1998 (63 FR 13789), and removed the conditional

aspect of the approval on May 3, 2001 (66 FR 22123).

Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the Ozone Transport Region (OTR). The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The major source size generally is determined by the classification of the area in which the source is located. However, for areas located in the OTR, the major source size for stationary sources of VOCs is 50 tons per year (tpy) unless the area's classification prescribes a lower major source threshold. The RACT regulations contain technology-based or operational "presumptive RACT emission limitations" for certain major NO<sub>x</sub> sources. For other major NO<sub>x</sub> sources, and all major non-CTG VOC sources (not otherwise already subject to RACT pursuant to a source category regulation under the Pennsylvania SIP), the regulations contain a "generic" RACT provision. A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories, but instead allows for case-by-case RACT determinations. The generic provisions of Pennsylvania's regulations allow for DEP to make case-by-case RACT determinations that are then to be submitted to EPA as revisions to the Pennsylvania SIP.

On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of 25 PA Code Chapters 129.91 through 129.95, which require all major sources of NO<sub>x</sub> and non-CTG sources to implement RACT, as a revision to the Pennsylvania SIP. This approval was granted on the condition that Pennsylvania must, by no later than April 22, 1999 certify that (1) it had submitted case-by-case RACT proposals for all sources subject to the RACT requirements of 25 PA Code Chapters 129.91 through 129.95 currently known to DEP, or (2) demonstrate that the emissions from any remaining subject sources represented a *de minimis* level of emissions as defined in the rulemaking document.

On April 22, 1999, the DEP submitted a letter certifying that it had met the terms and conditions imposed by EPA in its March 23, 1998 (63 FR 13789) conditional limited approval of its VOC and NO<sub>x</sub> RACT regulation by submitting the case-by-case VOC/NO<sub>x</sub> RACT determinations as SIP revisions in accordance with EPA's conditional limited approval. EPA concurred that Pennsylvania's April 22, 1999 certification satisfied the condition imposed in its conditional limited approval published on March 23, 1998

(63 FR 13789), and published a direct final rulemaking (May 3, 2001, 66 FR 22123) removing the conditional status of its approval of 25 PA Code Chapters 129.91 through 129.95 as a revision to the Commonwealth's SIP. That final rule became effective on June 18, 2001. The SIP revision consisting of 25 PA Code Chapters 129.91 through 129.95 retained a limited approval status on the basis that it strengthened the Pennsylvania SIP. Conversion from limited to full approval would occur when EPA had approved all of the case-by-case RACT determinations submitted by DEP as SIP revisions.

On October 16, 2001 (66 FR 52533), EPA published a final rulemaking for the Commonwealth removing the limited status of its approval of 25 PA Code Chapters 129.91 through 129.95 as it applied in the Pittsburgh-Beaver Valley ozone nonattainment area (Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland counties), because EPA had approved all of the case-by-case RACT determinations submitted by DEP for affected major sources of NO<sub>x</sub> and/or VOC sources located in the area. In so doing, EPA converted its limited approval of 25 PA Code Chapters 129.91 through 129.95 to full approval as it applied to that area. That rulemaking became effective on November 15, 2001. On October 30, 2001 (66 FR 54698), EPA published a final rulemaking for the Commonwealth removing the limited status of its approval of 25 PA Code Chapters 129.91 through 129.95 as it applied in the Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area (Bucks, Chester, Delaware, Montgomery, and Philadelphia counties) because EPA had approved all of the case-by-case RACT determinations submitted by DEP for affected major sources of NO<sub>x</sub> and/or VOC sources located in the area. In so doing, EPA converted its limited approval of 25 PA Code Chapters 129.91 through 129.95 to full approval as it applied to that area. That rulemaking became effective on November 29, 2001. On June 16, 2006 (71 FR 34864), EPA published a proposed rule to convert its limited approval of 25 PA Code Chapters 129.91 through 129.95 as they apply in the remainder of the Commonwealth to full approval. No public comments were submitted to EPA on the June 16, 2006 proposed action. Given the length of time that has passed since that proposed action, and to clarify that any future RACT determinations made by the DEP must still be submitted as SIP revisions once 25 PA Code Chapters 129.91 through

129.95 are fully approved, EPA is withdrawing that proposal and is now re-proposing to convert its limited approval of 25 PA Code Chapters 129.91 through 129.95 to full approval as those RACT regulations apply in the remainder of the Commonwealth.

## II. Future Submissions of Case-by-Case RACT Determinations

The DEP has submitted and EPA has approved as SIP revisions case-by-case RACT determinations for nearly 600 non-CTG and NO<sub>x</sub> sources in Pennsylvania pursuant to Pennsylvania regulations Chapters 129.91–129.95. (See 40 CFR 52.2020(d) for the list of sources.) As stated previously, there are no source-specific RACT determination submissions from DEP currently pending before EPA. In the future, should DEP find it necessary to issue any additional or revised source-specific RACT determinations in plan approvals and/or permits pursuant to the fully approved Pennsylvania regulations Chapters 129.91–95 of the Pennsylvania SIP, those RACT determinations must still be submitted to EPA for approval as source-specific SIP revisions. In order for EPA to consider such submissions for approval, the DEP must ensure that:

A. The sources are not subject to any CTGs or Alternative Control Techniques (ACTs) issued by EPA for which Pennsylvania has adopted or is due to adopt state-wide regulations for approval as SIP revisions. Such sources should be subject to any applicable CTG or ACT regulation. In addition to the CTG documents issued between November 15, 1990 and the date of 1-hour ozone attainment, and the CTG documents issued prior to November 15, 1990; EPA issued CTG and ACT documents in 2006 and 2007. EPA is also due to issue additional control technique documents by September 2008. Pennsylvania is required to adopt statewide RACT regulations pursuant to these control technique documents and is mandated a schedule for doing so. A source in the Commonwealth that has been considered a non-CTG source may no longer be so defined if their source category is covered by the 2006, 2007, or 2008 CTGs or ACTs. At the time DEP adopts statewide RACT regulations pursuant to the 2006, 2007, and 2008 CTGs and ACTs, it must address the applicability of those RACT regulations to sources previously considered non-CTG sources under regulations 129.91–129.95.

B. The RACT Plan approvals and/or RACT permits do not relax any previously SIP approved source-specific RACT approved for the source(s). Any request by such sources to modify

(relax) their emission rates, equipments standards, work practice standards, or conditions on the type or amount of materials/fuels combusted or processed; or to seek relief from their daily, monthly and/or annual emission caps would not be approvable as RACT in 2008 or beyond. When such sources seek relief with the operating conditions imposed in their SIP approved RACT plan approvals or RACT permits because they have modified to add additional emission units, or need to increase operation in light of market-based demand for their products; RACT needs to be re-assessed, re-determined and potentially made more stringent not less stringent.

C. The RACT determination is not to be simply based upon an arbitrary dollar per ton figure in a state guidance document that is neither SIP-approved nor approvable by EPA. The very nature of a non-CTG and/or source-specific alternative RACT makes any "one size fits all" dollar per ton figure inappropriate when determining and imposing RACT.

D. The RACT plan approval or RACT permit has no expiration date. No regulation, plan approval or permit submitted for approval as a SIP revision to be incorporated by reference and made part of a SIP may have an expiration or sunset provision. By federal statute, a state is responsible to implement and enforce all provisions of its approved SIP at all times.

E. Any RACT plan approvals' or RACT permits' redactions must be done in such a way as to be able to read the redacted text. When a plan approval or permit is issued by DEP to a source, it may impose additional requirements or conditions completely unrelated to the RACT requirements for NO<sub>x</sub> and/or VOCs. In those instances, DEP may submit the plan approval or permit as a SIP revision with those portions of the plan approval or permit redacted. Those redactions must be done in such a way as to be able to read the redacted text. This is necessary to ensure that the redacted language is not contrary to the portions being submitted for approval as RACT, does not render the RACT portions less stringent, does not remove or make less stringent any conditions related to enforcement of RACT, or make the RACT requirements subject to change without a SIP revision.

F. When requesting that a RACT plan approval or RACT permit be approved as SIP revision, the DEP's formal SIP revision submission must include a signed/dated technical support document or memorandum prepared by DEP in support of its RACT determination and the SIP revision

request. Sources in Pennsylvania subject to PA Code Chapters 129.91 through 129.95 are not to send their RACT plan proposals directly to EPA. Under the CAA, SIP revision submissions in their entirety must be submitted by the State requesting that the SIP be revised. EPA will consider only the materials formally submitted by DEP in its SIP revision request and any comments submitted during the public comment period provided by EPA on its proposed rule when determining its final action to approve or disapprove a source-specific SIP revision submitted by DEP pursuant to PA Code Chapters 129.91 through 129.95.

G. The SIP submission by DEP must not include any materials that are considered "confidential business information" in nature or entitled to any proprietary treatment. Moreover, the DEP plan approvals and permits cannot include conditions that cite to the source's RACT Plan proposal where that proposal includes materials which the company has requested be treated as confidential and proprietary. No materials that are considered "confidential business information" in nature or entitled to any proprietary treatment are to be included in a SIP revision submittal because the materials that constitute SIP revisions are required to be made available to the public by both the State and EPA.

### III. EPA's Proposed Action

EPA has previously removed the limited status of its approval of Pennsylvania's SIP revisions that requires all major sources of VOC and NO<sub>x</sub> to implement RACT as it applies in the Pittsburgh and Philadelphia areas because EPA has approved all of the case-by-case RACT determinations for these areas. In this action, EPA is proposing to convert its limited approval of Pennsylvania's RACT regulation to full approval as it applies in the remainder of the Commonwealth because EPA has approved all of the case-by-case RACT determinations submitted by DEP such that there are no longer any such submissions pending before EPA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### IV. 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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);
- 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule regarding Pennsylvania's VOC and NO<sub>x</sub> RACT regulations Chapters 129.91-129.95 as they apply in the remainder of the Commonwealth of Pennsylvania does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the Pennsylvania SIP is not approved to apply in Indian country, and EPA, therefore, notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide,

Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 14, 2008.

**William T. Wisniewski,**  
Acting Regional Administrator, Region III.  
[FR Doc. E8-19756 Filed 8-25-08; 8:45 am]  
**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2008-0603; FRL-8708-5]

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Philadelphia County Reasonably Available Control Technology Under the 8-Hour Ozone National Ambient Air Quality Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This SIP revision pertains to the requirements in meeting the reasonably available control technology (RACT) under the 8-hour ozone national ambient air quality standard (NAAQS). These requirements are based on the certification that previously adopted RACT controls in Pennsylvania's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for the 8-hour implementation purposes; the adoption of new or more stringent regulations that represent RACT control levels; and a negative declaration that certain categories of sources do not exist in Philadelphia County, Pennsylvania. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before September 25, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2008-0603 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail:* fernandez.cristina@epa.gov.

C. *Mail:* EPA-R03-OAR-2008-0603, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency,