

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2024-0302; FRL-12064-01-R3]

Air Plan Approval; Pennsylvania; Adoption of Federal Implementation Plan Reasonably Available Control Technology Requirements for Keystone, Conemaugh, Homer City and Montour Generating Facilities for the 1997 and 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve part of State implementation plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The revisions being proposed for approval adopt nitrogen oxides (NO_x) emission limits and requirements for the coal-fired electric generating units (EGUs) equipped with selective catalytic reduction (SCR) at the Keystone, Conemaugh, Homer City, and Montour facilities. The NO_x limits address reasonably available control technology (RACT) requirements for these EGUs for the 1997 and 2008 ozone national ambient air quality standards (NAAQS) and are intended to address the deficiencies identified in EPA's August 16, 2022 disapproval of an earlier SIP submission. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 9, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2024-0302 at www.regulations.gov, or via email to gould.megan@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*,

on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT:

Sean Silverman, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5511. Mr. Silverman can also be reached via electronic mail at silverman.sean@epa.gov.

SUPPLEMENTARY INFORMATION: On April 10, 2024, the Pennsylvania Department of Environmental Protection (PADEP) submitted two new revisions to its SIP, and simultaneously withdrew its prior SIP submissions of May 26 and June 11, 2022. The new SIP revisions consisted of title V permits which adopted the NO_x RACT limits and other requirements promulgated by EPA in the Federal Implementation Plan (FIP) published August 31, 2022 (87 FR53381), and codified at 40 CFR 52.2065. One SIP revision contained, among other things, title V permits setting RACT requirements for the large EGUs at Keystone, Conemaugh and Homer City, while the other SIP revision contained a title V permit adopting RACT limits and other requirements for the EGUs at the Montour facility.

Elsewhere in this **Federal Register**, EPA is issuing an interim final determination (IFD) which proposes to find that Pennsylvania's April 10, 2024 SIP revisions address the deficiencies cited by EPA as the basis of EPA's August 16, 2022 final disapproval of certain portions of Pennsylvania's RACT regulations. The effect of that IFD is to stay emission offset sanctions and defer the imposition of highway funding sanctions triggered by EPA's August 16, 2022 partial disapproval of a prior Pennsylvania SIP addressing RACT for these EGUs. Comments on the IFD should be submitted in accordance with the instructions in that action.

EPA is not taking action at this time on the RACT limits for certain auxiliary boilers at the Keystone and Conemaugh facilities found in the title V permits for these sources which were included as part of the April 10, 2024 SIP submittal. Approval into the SIP of the RACT limits for these auxiliary boilers is not

required to address the deficiencies cited in EPA's August 16, 2022 disapproval action. EPA is not proposing to withdraw the FIP in this action.

I. Background

The RACT requirements in CAA section 182(b)(2) apply to all ozone nonattainment areas classified as Moderate or higher (*i.e.*, Serious, Severe, or Extreme). Section 184(b)(1)(B) of the CAA also applies RACT to all areas located within ozone transport regions. The entire Commonwealth of Pennsylvania is part of the Ozone Transport Region (OTR) established by section 184 of the CAA and therefore subject statewide to RACT requirements.

On May 16, 2016, Pennsylvania submitted a SIP revision intended to satisfy certain CAA RACT requirements for sections 182(b)(2)(C), 182(f), and 184 for the 1997 and 2008 ozone NAAQS. The SIP addressed RACT for all major sources of NO_x and volatile organic compounds (VOCs) in Pennsylvania that were not subject to control techniques guidelines (CTGs), with a few exceptions not relevant to this action (hereafter the "RACT II rule"). On May 9, 2019, EPA published a final action fully approving certain provisions and conditionally approving other portions of Pennsylvania's RACT II rule. 84 FR 20274 (May 9, 2019). Specifically, EPA's action fully approved sections 121.1, 129.96, 129.97, and 129.100 of Title 25 of the Pennsylvania Code (25 Pa. Code), and conditionally approved 25 Pa. Code sections 129.98 and 129.99 based upon Pennsylvania's commitment to submit additional SIP revisions addressing the deficiencies in the RACT II rule identified by EPA. Id. at 20290.

Following EPA's approval, the Sierra Club filed a challenge to certain parts of EPA's approval of Pennsylvania's RACT II SIP in the U.S. Court of Appeals for the Third Circuit. *Sierra Club v. EPA*, 972 F.3d 290 (3rd Cir. 2020) ("Sierra Club"). The appeal challenged EPA's approval of only that portion of the RACT II rule applicable to coal-fired EGUs equipped with SCR for control of NO_x. Specifically, the appeal challenged EPA's approval of the presumptive RACT NO_x limit for these EGUs of 0.12 pounds of NO_x per Million British Thermal Units (MMBtu) of heat input (lbs/MMBtu) when the inlet temperature to the SCR was 600 degrees Fahrenheit or above, found at 25 Pa. Code 129.97(g)(1)(viii); the application of the less stringent NO_x limits of 25 Pa. Code 129.97(g)(1)(vi) to EGUs with SCR when the inlet temperature to the SCR was below 600

degrees Fahrenheit; and the failure of the RACT II rule at 25 Pa. Code 129.100(d) to specifically require these EGUs to keep temperature data for the inlet temperature to the SCR and report that data to PADEP.

On August 27, 2020, the Third Circuit held unlawful and vacated EPA's approval as challenged by the Sierra Club. First, the Court found that EPA's record did not sufficiently explain why the EGUs equipped with SCR could not achieve a lower NO_x emission standard than the presumptive limits EPA approved into the SIP. *Sierra Club*, 972 F.3d at 299–303. Second, the Court held that Pennsylvania's standard acted as a loophole because it permitted unlimited operations without the use of SCR controls if exhaust gas temperature was kept below what the Court considered an arbitrary temperature threshold of 600 degrees Fahrenheit. *Id.* at 303–07. Third, the Court held that Pennsylvania's reporting requirements were not enforceable. *Id.* at 307–09. As a result, the Court vacated EPA's approval of this portion of the 2016 SIP and ordered EPA either to approve a revised, compliant SIP or promulgate a FIP within two years (*i.e.*, by August 27, 2022). *Id.* at 309.

Following the Court's decision, PADEP worked to develop a SIP to address the deficiencies identified by the court within the specified time frame. EPA simultaneously worked on a FIP so that EPA could meet the Court's deadline to issue a FIP should it be necessary to do so. EPA published its proposed FIP on May 25, 2022 in order to be in a position to finalize a FIP by the Court's deadline. 87 FR 31798 at 31801. On May 26, 2022, PADEP submitted to EPA new SIP revisions containing title V permits setting case-by-case RACT limits and monitoring, recordkeeping and reporting requirements for Keystone, Conemaugh, and Homer City. Similarly, on June 9, 2022, PADEP submitted a new SIP revision containing a title V permit setting case-by-case RACT limits and monitoring, recordkeeping and reporting requirements for Montour as a SIP revision. In order to assure its authority to issue a FIP, on August 16, 2022, EPA also took final action to disapprove the vacated portions of the previously submitted RACT II SIP revision. 87 FR 50257. EPA's final FIP published on August 31, 2022. 87 FR 53381.

EPA's August 16, 2022 final disapproval started a sanctions clock under CAA section 179 and 40 CFR 52.31. The two-to-one new source emissions offset sanction took effect on March 15, 2024 (18 months following

the September 15, 2022 effective date of the August 16, 2022 partial disapproval), while highway funding sanctions will take effect September 15, 2024 unless the state submits, and EPA approves, SIP revisions that correct the deficiencies identified in the August 16, 2022 disapproval action. However, in a separate action concurrent with this proposed approval, EPA has issued an IFD that Pennsylvania's adoption of the emission limits and recordkeeping and reporting requirements of the FIP into title V permits for the four sources, and submission of the title V permits as SIP revisions, resolve the deficiencies which EPA cited in the August 16, 2022 disapproval action. The IFD stays the emission offset sanctions and defers the imposition of highway funding sanctions triggered by EPA's August 16, 2022, partial disapproval. Additionally, EPA intends to take action to withdraw the FIP at a later date, after the SIP revisions incorporating the FIP requirements have been approved into Pennsylvania's SIP.

Following issuance of the final FIP, Keystone-Conemaugh Projects LLC, the operator of the Keystone and Conemaugh Generating Stations, and Homer City Generation LP, the operator of the Homer City Generating Station (hereafter "Petitioners"), filed petitions for review with the U.S. Court of Appeals for the Third Circuit in October of 2022. PADEP intervened in support of Petitioners, and Sierra Club and Montour, LLC, the operator of the Montour Generating Station, intervened on behalf of Respondent, the EPA. In February 2023, Petitioners moved to stay their obligation to comply with the FIP pending the court's review, but the stay was denied. The litigation focused on two main issues: (1) whether EPA had proper authority to issue the FIP, and (2) whether EPA's record sufficiently supported that the NO_x limits represented RACT (as well as many sub-issues).

While the Petitioners' appeal was pending before the Third Circuit, several other things happened that are relevant to this action. First, on February 21, 2024, EPA proposed disapproval of PADEP's May 2022 SIP Revision setting case-by-case RACT limits for Keystone, Conemaugh and Homer City (89 FR 13022).¹

¹ EPA's proposed disapproval did not include the case-by-case RACT limits for Montour submitted by PADEP on June 9, 2022 because PADEP withdrew that SIP submittal in October 2022 after the owners of Montour had indicated that they would accept the limits in EPA's FIP. See letter from PADEP Acting Secretary Ramez Ziadeh to EPA Regional Administrator Adam Ortiz, and EPA's acknowledgment letter dated October 26, 2022. Both documents are in the docket for this action.

Subsequently, on April 10, 2024, PADEP submitted a letter withdrawing that May 2022 SIP revision. Because PADEP has withdrawn the May 2022 SIP revision setting the case-by-case RACT limits for Keystone, Conemaugh and Homer City, EPA will take no further action on the February 21, 2024 proposed disapproval of that SIP revision. Still pending before EPA is the submission proposed for approval in this notice—PADEP's April 10, 2024, SIP submission, which asks EPA to approve into the SIP newly-submitted title V permits containing the NO_x RACT limits and other requirements identical to those in the final August 31, 2022 FIP for Keystone, Conemaugh, Homer City, and Montour.²

On May 2, 2024, the Third Circuit issued a decision upholding the RACT limits and other requirements in EPA's August 31, 2022 FIP. *Keystone-Conemaugh Projects LLC v. EPA*, et al., No. 22–3026. The court decided and resolved all issues raised by the Petitioners in EPA's favor.

EPA is now proposing to approve the April 10, 2024 PADEP SIP revisions which consist of title V permits adopting the NO_x RACT limits and other requirements set by the FIP for the EGUs at Keystone, Conemaugh, Homer City, and Montour.³ This SIP revision addresses the major NO_x RACT requirements for the EGUs at these sources for both the 1997 and 2008 Ozone NAAQS. The incorporation of the title V permits containing the FIP requirements into Pennsylvania's SIP addresses the deficiencies identified in EPA's August 16, 2022 partial disapproval, which started the sanctions clock for offset and highway sanctions in Pennsylvania. EPA notes that the title V permits in the April 10, 2024 SIP revisions for Keystone and Conemaugh also contain case-by-case RACT limits for certain gas or oil-fired auxiliary boilers at these facilities. However, EPA is not taking action at this time on the case-by-case RACT limits in these permits for two auxiliary boilers at Keystone (Source IDs 037 and 038) and two at Conemaugh (Source IDs 039 and 041). These auxiliary boilers were not subject to the presumptive RACT limit

² See document, dated April 9, 2024, From PADEP Interim Acting Secretary Jessica Shirley to EPA Region III in the docket for this action.

³ The Homer City facility ceased all coal-burning operations on July 1, 2023 when Unit 3 stopped operating. However, because Homer City has not formally surrendered its CAA permits, which would demonstrate that the shutdown is permanent, SIP-approved NO_x RACT limits are still necessary to address the 1997 and 2008 Ozone RACT requirements for this facility. See www.pjm.com/planning/service-requests/gen-deactivations.

in 25 Pa. Code 129.97(g)(1)(viii) for which EPA issued a final disapproval in August 2022.

II. Summary of Pennsylvania’s SIP Revision and EPA’s Analysis

Pennsylvania’s SIP revision, dated April 9, 2024, and received by EPA on

April 10, 2024, included four redacted title V permits incorporating the FIP requirements for the EGUs equipped with SCR at Keystone, Conemaugh, Homer City, and Montour. EPA has reviewed these permits and determined that the permits incorporate the same emission limits, monitoring, testing,

recordkeeping, reporting, work practices and other requirements for these EGUs found in EPA’s FIP. The permits are listed in Table 1 in this document. These submissions and permits are part of the docket for this rule making and are available online at www.regulations.gov.

TABLE 1—LIST OF TITLE V PERMITS INCORPORATING THE REQUIREMENTS OF THE AUGUST 31, 2022 FEDERAL IMPLEMENTATION PLAN

Source name	Title V permit No.	County	Permit effective date
Conemaugh	32–0059	Indiana	March 14, 2024.
Homer City	32–00055	Indiana	March 14, 2024.
Keystone	03–00027	Armstrong	March 14, 2024.
Montour	47–00001	Montour	March 14, 2024.

EPA’s assessment regarding the approvability of the RACT limits and other requirements for these EGUs found in Pennsylvania’s SIP submission is substantially the same as the justification and analysis in the record EPA created for its FIP.⁴ EPA provided an in-depth discussion of the methodology and reasoning for setting the FIP limits for each of these EGUs in EPA’s proposed FIP (87 FR 31798), the associated technical support document supporting the proposed FIP, and in responses to comments received on the proposed FIP and published with the final FIP approval (87 FR 53381). EPA has put the technical support document for EPA’s FIP into the docket for this action. The **Federal Register** notifications for the proposed and final FIP are available at www.regulations.gov under docket number EPA–R03–OAR–2022–0347 and in the **Federal Register** at the citations provided in the prior sentence. EPA is not aware of any change in the facts since the FIP was finalized that would alter any of the limits or requirements or EPA’s analysis supporting the FIP.

III. Proposed Action

EPA is proposing to approve Pennsylvania’s April 10, 2024 SIP revisions, which consist of four revised title V permits containing RACT limits for NO_x emissions from the coal-fired EGUs equipped with SCR, as well as associated recordkeeping, monitoring and reporting requirements for the four facilities listed in Table 1 of this document. If approved, the SIP revisions will incorporate by reference into the Pennsylvania SIP, via the redacted title V permits, those source specific NO_x emission limits for the EGUs equipped with SCR at each

facility and the associated monitoring, recordkeeping and reporting requirements for those limits that EPA set forth in the August 2022 FIP. If approved, these SIP revisions will address the RACT requirements for the 1997 and 2008 ozone NAAQS for NO_x for these EGUs, and also address the deficiencies outlined in EPA’s August 16, 2022 partial disapproval (87 FR 50257) of certain portions of Pennsylvania’s RACT II regulations. That disapproval started a mandatory sanctions clock under CAA section 179 and 40 CFR 52.31. EPA notes that the title V permits for Keystone and Conemaugh in the April 10, 2024 SIP revisions also contain case-by-case RACT limits for certain gas or oil-fired auxiliary boilers at these facilities. EPA is not taking action at this time on the RACT limits in these permits for two auxiliary boilers at Keystone (Source IDs 037 and 038) and for two at Conemaugh (Source IDs 039 and 041). These auxiliary boilers were not subject to the presumptive RACT limit in 25 Pa. Code 129.97(g)(1)(viii) for which EPA issued a final disapproval in August 2022.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. As EPA views each facility as a severable SIP revision, EPA may take separate, final action regarding the requirements for each facility independently.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference source specific requirements via the title V permits as described in Section II of this preamble, excluding the auxiliary boiler limits for Keystone (all source

group requirements in Section E for G11: alternative RACT II for Auxiliary Boilers) and Conemaugh (all source group requirements in Section E for G11: alternative RACT II for Auxiliary Boilers). EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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 proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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

⁴ The docket number for the FIP is EPA–R03–OAR–2022–0347.

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); and

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.” The Pennsylvania Department of Environmental Protection did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, this proposed rulemaking addressing the NO_x RACT requirements for EGUs equipped with SCR at the

Keystone, Conemaugh, Homer City and Montour facilities for the 1997 and 2008 Ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2022–0647, FRL–12038–01–R2]

Approval and Promulgation of State Implementation Plans; New Jersey; Elements of the 2008 and 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the demonstration portions of the comprehensive State Implementation Plan (SIP) revision submitted by New Jersey that certify that the State has satisfied the requirements for an emission statement program, certify that the State has satisfied the requirements for an ozone nonattainment new source review program, certify that the State has satisfied the requirements for a nonattainment emission inventory, and certify that the State has satisfied the requirements for clean fuels for fleets. The EPA is also proposing to approve New Jersey’s reasonable further progress plans and associated motor vehicle emission budgets for both the Moderate and Serious classifications of the 2008 ozone NAAQS. These actions are being taken in accordance with the requirements of the Clean Air Act.

DATES: Written comments must be received on or before August 9, 2024.

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

R02–OAR–2022–0647 at <https://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Controlled Unclassified Information (CUI) (formally 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>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be CUI or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CUI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Fausto Taveras, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, at (212) 637–3378, or by email at Taveras.Fausto@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA.

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