

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[PA105-4066a; FRL-5897-8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania, General Conformity Rule**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision consists of Pennsylvania's rule for General Conformity which sets forth policy, criteria, and procedures for demonstrating and assuring conformity of non-transportation related Federal projects to all applicable implementation plans. The intended effect of this action is to approve Pennsylvania's General Conformity Rule as a SIP revision.

DATES: This action is effective November 28, 1997 unless notice is received on or before October 29, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 2063, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566-2182, at the EPA Region III office or via e-mail at quinto.rose@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the Region III address.

SUPPLEMENTARY INFORMATION: On June 12, 1997, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation

Plan (SIP) to meet the requirements of 40 CFR 51.851, General Conformity. Pennsylvania adopted the provisions of the Federal General Conformity Rule, 40 CFR part 93, subpart B, effective November 16, 1994. This action to approve General Conformity Rule (25 Pa. Code Chapter 127, §§ 127.801 and 127.802) is being taken under section 110 of the Clean Air Act (CAA).

Summary of the SIP Revision

The Commonwealth of Pennsylvania has adopted by reference the General Conformity Rule promulgated by the U.S. Environmental Protection Agency under section 176(c) of the CAA and the regulations codified at 40 CFR part 93, subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans. The Federal rule requires that all Federal actions conform to applicable air quality implementation plans. This rule only applies to areas designated nonattainment under section 107 of the CAA and described in the 40 CFR part 81 or areas with approved maintenance plans under section 175(A) of the CAA.

The Federal rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of non-transportation related Federal projects to all applicable implementation plans developed pursuant to section 110 and part D of the CAA. The rule generally applies to Federal actions except:

- (1) Those required under the transportation conformity rule (40 CFR part 93, subpart A);
- (2) Actions with associated emissions below specified de minimis levels; and
- (3) Certain other actions which are exempt or presumed to conform to applicable air quality implementation plans.

Some examples of Federal actions requiring conformity determination include: Airport Construction/Modification grants; Leasing of Federal Land; Granting a Permit; Construction of Federal Office Buildings; Private Construction on Federal Land; Prescribed Burning; Reuse of Military Bases; and Water Treatment Plants.

At 40 CFR 51.851, State Implementation Plans, EPA promulgated the requirements that must be adopted by a state and submitted as a SIP revision to implement the General Conformity revisions. The provisions adopted by Pennsylvania are those contained in and required by the Federal rule. EPA has reviewed Pennsylvania General Conformity Rule, and has determined that it satisfies the requirements of 40 CFR 51.851. A

Technical Support Document (TSD) has been prepared which details the EPA's evaluation of Pennsylvania's General Conformity Rule. Interested parties may obtain a copy of the TSD by contacting the EPA Regional Office listed in the **ADDRESSES** section of this document.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 28, 1997 unless, by October 29, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 28, 1997.

Final Action

EPA is approving Pennsylvania's 25 Pa. Code Chapter 127, §§ 127.801 and 127.802, General Conformity Rule submitted by Pennsylvania as a SIP revision on June 12, 1997, which was effective on November 9, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements**A. Executive Order 12866**

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify

that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that included a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule

and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to the publication of the rule of today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 1997.

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, on the Pennsylvania General Conformity Rule, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference.

Dated: September 16, 1997.

W. Michael McCabe,

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. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(126) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(126) Revisions to the Pennsylvania State Implementation Plan on June 12, 1997 by the Pennsylvania Department of Environmental Protection.

(i) Incorporation by reference.

(A) A letter of June 12, 1997 from the Pennsylvania Department of Environmental Protection transmitting the General Conformity Rule.

(B) 25 Pa. Code Chapter 127, §§ 127.801 and 127.802—General Conformity Rule, effective November 9, 1996.

(ii) Additional material from the Pennsylvania's June 12, 1997 submittal pertaining to 25 Pa. Code Chapter 127.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–103–21a; FRL–5898–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of a NO_x RACT Determination for Panther Creek Energy Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires nitrogen oxides (NO_x) reasonably available control technology (RACT) for Panther Creek Energy Facility located in Carbon County, Pennsylvania. The intended effect of this action is to approve a source-specific operating permit that establishes the above-mentioned RACT requirements in accordance with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

DATES: This action is effective November 28, 1997 unless notice is received on or before October 29, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to David Campbell, Air, Radiation, and Toxics Division, Mailcode 3AT22, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.