

and Conference Center, 4600 N. Fairfax Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004-1111. Telephone number (202) 272-5434 extension 34 (Voice); (202) 272-5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request. This document is also available on the Board's web site (<http://www.access-board.gov/rules/outdoor.htm>).

**SUPPLEMENTARY INFORMATION:** In June 1997, the Access Board established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. (62 FR 30546, June 4, 1997). The committee will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. The meeting site is accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Peggy Greenwell by April 9, 1999, by calling (202) 272-5434 extension 34 (voice) or (202) 272-5449 (TTY).

**Lawrence W. Roffee,**  
*Executive Director.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[DE011/021-1031; FRL-6313-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Delaware; Reasonably Available Control Technology Requirements for Nitrogen Oxide Sources

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing conditional limited approval of a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision requires major sources of nitrogen oxides (NO<sub>x</sub>) in the State of Delaware to implement reasonably available control technology (RACT). The intended effect of this action is to propose conditional limited approval of

Delaware regulation for imposing RACT on major sources of NO<sub>x</sub>.

**DATES:** Comments must be received on or before April 21, 1999.

**ADDRESSES:** Comments may be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M. Street, S.W., Washington, D.C. 20460; and Delaware Department of Natural Resources & Environmental Control, Richardson & Robins, 89 Kings Highway, Dover, Delaware 19901.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, at the EPA Region III address above, or via e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov). While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address in accordance with the procedures provided above.

**SUPPLEMENTARY INFORMATION:** On January 11, 1993, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted Regulation No. 12 CONTROL OF NITROGEN OXIDE EMISSIONS as a revision to its SIP. On November 26, 1993 (58 FR 62307), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Delaware. The NPR proposed limited approval/limited disapproval of Regulation No. 12 pertaining to the control of NO<sub>x</sub> emissions at major sources in the state. On January 20, 1994, DNREC submitted a SIP revision which amended Regulation No. 12. EPA is hereby withdrawing the NPR published on November 26, 1993 and repropounding conditional limited approval of this Delaware SIP revision. This action is being taken under Section 110 of the Clean Air Act (CAA).

#### I. Background

Pursuant to Part D, Sections 182 and 184 of the CAA, RACT is to be implemented at all major NO<sub>x</sub> sources by no later than May 31, 1995. A major source of NO<sub>x</sub> is defined by the classification of the ozone nonattainment area in which it is located and/or whether it is located in the ozone transport region (OTR)

established by the CAA. The entire State of Delaware is located in the OTR, and RACT applies statewide. New Castle and Kent Counties are part of the Philadelphia-Wilmington-Trenton ozone nonattainment area which is classified as severe. For New Castle and Kent Counties, CAA Section 182 defines all stationary sources with the potential to emit 25 tons per year (TPY) or more of NO<sub>x</sub> as major and requires that RACT be implemented at such sources by no later than May 31, 1995. For Sussex County, CAA Section 184 defines all stationary sources with the potential to emit 100 TPY or more of NO<sub>x</sub> as major and requires that RACT be implemented at such sources by no later than May 31, 1995.

#### II. Description of the Delaware Regulation No. 12 Imposing RACT on Major Sources of NO<sub>x</sub>

##### NO<sub>x</sub> Emission Standards Requirements

Delaware Regulation No. 12, Section 3.2 contains specific emission limits for fuel burning equipment with a rated heat capacity of 100 million BTU (MMBTU) per hour or greater. Gas fired face and tangential units are required to meet an emission limit of 0.20 lbs of NO<sub>x</sub>/MMBTU input. Oil or gas fired face and tangential units are required to meet an emission limit of 0.25 lbs of NO<sub>x</sub>/MMBTU input. Oil or gas fired cyclones are required to meet an emission limit of 0.43 lbs of NO<sub>x</sub>/MMBTU input. Dry bottom coal fired face and tangential units are required to meet an emission limit of 0.38 lbs of NO<sub>x</sub>/MMBTU input. Dry bottom coal fired stokers are required to meet an emission limit of 0.40 lbs of NO<sub>x</sub>/MMBTU input. These numerical emission limits are supported by data gathered by the State and Territorial Air Pollution Program Administrators (STAPPA) and Association of Local Air Pollution Control Officials (ALAPCO).

All emission limits are required to be met on a 24-hour rolling averaging period. For sources with a rated heat input capacity of 250 MMBTU/hr or more compliance shall be determined using continuous emission monitoring systems (CEMs) approved by DNREC. For sources with a rated heat input of greater than 150 MMBTU/hr but less than 250 MMBTU/hr compliance shall be determined using continuous emission monitoring systems (CEMs) approved by DNREC, or by an enhanced monitoring program approved by DNREC which identifies and correlates various operating parameters with NO<sub>x</sub> emission levels thorough source testing. These parameters will be used as surrogates to monitor NO<sub>x</sub> emissions.

Periodic source testing will be required to verify the validity of these surrogate parameters.

Regulation No. 12, Section 3.5 also contains specific emission limits for gas turbines. The emission limit for gas fired simple or combined cycle gas turbines, corrected to 15% oxygen, is 42 parts per million (ppm). The emission limit for liquid fired simple or combined cycle gas turbines, corrected to 15% oxygen, is 88 ppm. Both emission standards require compliance to be demonstrated using a one hour averaging period based on CEM or an alternative method approved by DNREC and EPA.

#### *NO<sub>x</sub> Technology Standards Requirements*

Regulation No. 12, Section 3.2 also includes control technology provisions for fuel burning equipment with a rated heat input capacity of 100 MMBTU/hr or greater, existing fuel burning equipment shall be presumed to be RACT if the owner or operator demonstrates that emission limitations specified in Section 3.2 (and described above) can be met. If the owner or operator does not make this demonstration, RACT shall be installed to meet the specified emission limits of Section 3.2. RACT for such sources will consist of combustion modification technology including either low NO<sub>x</sub> burner technology with low excess air (including Over Fire Air if technically feasible), or flue gas recirculation with low excess air. Regulation No. 12, in Section 3.3, requires that emissions from fuel burning equipment with a rated capacity of 50 MMBTU/hr or greater shall not exceed those achieved by installation of either low NO<sub>x</sub> burner technology with low excess air, or an equivalent control technology approved by DNREC and EPA. Section 3.3 requires emissions from fuel burning equipment with a rated capacity of less than 50 MMBTU/hr shall not exceed those achieved through an annual tune up performed by a qualified personnel. A log must be maintained of the tune ups performed on each unit.

Regulation No. 12, Section 3.4 requires stationary internal combustion engines to limit their emissions to no more than those emitted using pre-ignition chamber combustion (also referred to as clean burn technology) for gas fired units and those emitted when using lean burn technology for diesel fired units, or equivalent control technology approved by DNREC and EPA.

In Section 3.6, seasonal fuel switching shall be considered RACT for sources opting to switch to a lower NO<sub>x</sub>

emitting fuel. Fuel switching is limited to the use of natural gas, liquid petroleum gas (LPG), or distillate oil.

#### *Case-by-Case RACT Requirements*

Regulation No. 12, Section 3.8 covers all other major sources of NO<sub>x</sub> (i.e., those not subject to Sections 3.2, 3.3, 3.4, 3.5, or 3.6). These sources are to notify DNREC of their subject status, submit a proposal as what constitutes RACT, including technical and economic support documentation, and provide a schedule acceptable to DNREC for implementing RACT. The schedule for implementation of RACT must be by no later than May 31, 1995, and must include interim dates for the issuance of purchase orders, start and completion of modifications, and completion of compliance testing. The notification to DNREC, submittal of a RACT proposal and schedule must be made no later than November 15, 1993. DNREC will issue permits to these sources imposing RACT. Section 5 of Regulation No. 12 entitled, Alternative and Equivalent RACT Determination, also applies to these sources covered by Section 3.8. It specifies that DNREC will submit the RACT determinations made for such sources to EPA for approval as SIP revisions.

#### *Exempted Sources*

Under Section 4 of Regulation No. 12, the following source types and sizes are exempt from RACT requirements:

- (1) Any fuel burning equipment used exclusively for providing residential comfort and hot water.
- (2) Any incinerator or thermal/catalytic oxidizer used exclusively for pollution control.
- (3) Any fuel burning equipment with a rated heat input capacity of less than 15 MMBTU/hour.
- (4) Any stationary internal combustion engine with a rated capacity of less than 450 hp.
- (5) Any source operating during the time period from the month of November to the end of March and operating with a capacity factor of 5% or less from April 1 to October 31.
- (6) Any fuel burning equipment, gas turbine, or internal combustion engine with an annual capacity factor of less than 5%.

#### *Alternative and Equivalent RACT Requirements*

Section 5 of Regulation No. 12 is entitled Alternative and Equivalent RACT Determinations. It requires that any RACT determinations made under Section 3.8, and any other alternative or equivalent RACT measures (emission limits or technology requirements)

determined under Sections 3.2, 3.3, 3.4, or 3.5, must be submitted by DNREC to EPA and approved as a SIP revisions. Section 5 also includes a specific provision to allow an owner or operator with more than one installation subject to Regulation No. 12 to use an alternative method of achieving an overall source-wide NO<sub>x</sub> emission reduction that is equivalent to the NO<sub>x</sub> emission reduction which would be achieved if each individual unit complied with the RACT standards in Section 3.

#### *Compliance Certification, Record Keeping and Reporting Requirements*

Section 7 specifies the compliance certification, record keeping and reporting requirements for NO<sub>x</sub> sources subject to Regulation No. 12. Section 7.4 requires that applicable CEMS and associated data collection meet 40 CFR, Part 60, Appendix F. It also requires that source stack testing be conducted in accordance with test methods approved by DNREC and EPA.

### **III. EPA's Evaluation of Regulation No. 12 Imposing RACT for Major Sources of NO<sub>x</sub>**

EPA is proposing to approve the emission and control technology standards required by Delaware Regulation No. 12 as RACT for fuel burning sources. In the November 26, 1993 limited/limited disapproval of Regulation No. 12, EPA specifically disapproved the exemptions listed at Section 4. Since proposing limited approval/limited disapproval of Regulation No. 12, EPA has reevaluated its position since control requirements at very small units, such as those exempted by Section 4, are generally not reasonable considering technological and economic feasibility. A fuller explanation of this decision is given in the TSD for this proposed rulemaking. In light of this reevaluation, EPA no longer has the basis to propose disapproval of Regulation No. 12 based on the Section 4 exemptions.

However, Regulation No. 12 does not include specific emission limitations or control technology requirements as RACT for other major sources of NO<sub>x</sub> in Delaware. Rather, Regulation No. 12 contains procedures for RACT to be imposed on non-fuel burning sources on a case-by-case basis as alternative RACT determinations from the specific RACT requirements for fuel burning sources. These sources are not subject to specific, "up-front" (i.e. immediately ascertainable) emission limitations. Instead, the regulations establish a process for the State to review and approve individual RACT emission

limitations proposed by the sources, which are then to be submitted to EPA as SIP revisions.

The CAA requires states to implement RACT on all major stationary sources. Process-oriented generic regulations, such as this, which do not include specific and ascertainable emission limitations for all major sources, do not by themselves provide standards for EPA to approve or disapprove as satisfying the definition of RACT. Therefore, the CAA's RACT requirements are satisfied only after the specific limitations imposed by the State on its major sources has been submitted to EPA as SIP revisions and approved by EPA as RACT for the subject sources.

In a November 7, 1996 policy memo from Sally Shaver, Director, Air Quality Strategies and Standards Division of OAQPS, EPA issued a guidance for approving state generic RACT regulations, like Delaware's, provided certain criteria are met. This guidance does not exempt any major source from RACT requirements but instead provides a de minimis deferral of RACT only for the purposes of approving the state's generic RACT regulation. The de minimis deferral level is determined by using the 1990 NO<sub>x</sub> emissions, excluding the utility boiler NO<sub>x</sub> emissions. The remaining 1990 non-utility boiler emissions are then compared with the amount of non-utility NO<sub>x</sub> emissions that have yet to have RACT approved into the SIP. Generally, EPA expects that all utility boiler RACTs will be approved prior to application of this de minimis deferral policy and possible conversion of the generic RACT conditional approval to full approval. EPA does not expect to defer more than 5% of the emissions calculated in this manner in order to fully approve Delaware's generic NO<sub>x</sub> RACT regulation. In accordance with the November 1996 policy, EPA is requiring that all utility boiler RACT determinations be approved into the SIP before the limited approval can be converted to full approval. Full approval of a generic RACT regulation under this policy does not change the State's statutory obligation to implement RACT for all major sources. No major NO<sub>x</sub> source is being exempted from RACT requirements through this policy or today's rulemaking.

Because EPA has not received SIP revisions of source-specific RACT determinations for all major sources of NO<sub>x</sub> subject to RACT under the CAA, EPA can at best, according to the November 7, 1996 policy memorandum, propose conditional limited approval of the NO<sub>x</sub> generic rule. In support of this

proposed rulemaking, the State committed in a letter dated August 18, 1998 to submit, as SIP revisions, the case-by-case RACT determinations made under Section 5 of Regulation No. 12 within 12 months of EPA's final conditional approval of the generic rule. For this reason, EPA is proposing conditional limited approval of Regulation No. 12 as explained below.

#### *Conditional Approval*

EPA is proposing conditional limited approval of Delaware's NO<sub>x</sub> RACT regulation. The proposed conditional approval is based upon DNREC's commitment to submit all the source-specific RACT determinations made under Section 5 of Regulation No. 12 as SIP revisions by a date certain that is no later than 12 months after the effective date of EPA's final conditional approval of Regulation No. 12. Therefore, to fulfill the condition of this approval, DNREC must, by no later than 12 months after the effective date of EPA's final conditional approval of this NO<sub>x</sub> RACT regulation, certify that it has submitted all required case-by-case RACT determinations for all currently known subject sources. Once EPA has determined that Delaware has satisfied this condition, EPA shall remove the conditional nature of its approval and Regulation No. 12 will at that time retain limited approval status. Should Delaware fail to meet the condition as specified above, the final conditional limited approval of the Delaware Regulation No. 12 shall convert to a disapproval.

#### *Limited Approval*

EPA is also proposing limited approval of Regulation No. 12 on the basis that it strengthens the Delaware SIP. Once EPA has approved all of the case-by-case RACT determinations submitted by DNREC in fulfillment of the conditional approval described above, the limited approval will convert to a full approval.

EPA is soliciting public comments on the issues discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional office listed in the ADDRESSES section of this document.

#### **Proposed Action**

EPA is proposing conditional limited approval of Delaware Regulation No. 12 imposing RACT on major sources of NO<sub>x</sub>, submitted on January 11, 1993 and January 20, 1994. EPA is proposing conditional limited approval of this SIP revision based upon the commitment made by DNREC to submit of all the case-by-case RACT determinations made under Section 5 of Regulation No. 12 for all subject within one year of the effective date of the final conditional limited approval of Regulation No. 12. Within one year of the effective date of the final conditional limited approval of Regulation No. 12, DNREC must provide a written statement certifying to EPA that to the best of its knowledge, it has submitted all of the SIP revisions described above.

#### **IV. Administrative Requirements**

##### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

##### *B. Executive Order 12875*

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

##### *C. Executive Order 13045*

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997),

applies to any rule that EPA determines (1) is "economically significant," as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health and safest risk that would have a disproportionate effect on children.

#### *D. Executive Order 13084*

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E. O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

#### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on substantial number of small entities because SIP approvals under section 110 and 301, and subchapter I, part D of the Clean Air Act 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, I certify that this action will not have a significant impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act 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). If conditional approval is converted to disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that this proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

#### *F. Unfunded Mandates*

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 includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to 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 proposed 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 to propose conditional limited approval of Delaware Regulation No. 12 for NO<sub>x</sub> RACT proposes to approve 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.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: March 11, 1999.

**W. Michael McCabe,**

*Regional Administrator, Region III.*

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## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 73**

[MM Docket No. 98-152; RM-9338]

### **Radio Broadcasting Services; Avon, NC**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; denial.

**SUMMARY:** The Commission denies the request of Avon Broadcasting Company to allot Channel 294A to Avon, NC, as its first local aural service, finding that, based on the information provided, it is not a "community" for allotment purposes. See 63 FR 45213, August 25, 1998. With this action, this proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 98-152, adopted March 3, 1999, and released March 12, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

### **List of Subjects in 47 CFR Part 73**

Radio broadcasting.