

Dated: October 4, 2001.

**Kenneth E. Thompson,**

*Subsistence Program Leader, USDA-Forest Service.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[PA-4176; FRL-7089-5]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO<sub>x</sub> RACT Determinations for Eighteen Individual Sources in the Philadelphia-Wilmington-Trenton Area

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for eighteen major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>). These sources are located in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

**EFFECTIVE DATE:** This final rule is effective on November 15, 2001.

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

**FOR FURTHER INFORMATION CONTACT:** Marcia Spink, (215) 814-2104 or by e-mail at [spink.marcia@epa.gov](mailto:spink.marcia@epa.gov).

## SUPPLEMENTARY INFORMATION:

### I. Background

On September 20, 1995, April 16, 1996, May 2, 1996, July 2, 1997, July 24, 1998, December 7, 1998, April 9, 1999, and April 20, 1999, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several sources of VOC and/or NO<sub>x</sub>. This rulemaking pertains to eighteen of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of plan approvals and operating permits which impose VOC and/or NO<sub>x</sub> RACT requirements for each source. These sources are all located in the Philadelphia area and include: Amerada Hess Corp.; Amoco Oil Company; Cartex Corporation; Exxon Company, USA; GATX Terminals Corporation; Hatfield Quality Meats, Incorporated; J. L. Clark, Incorporated; Johnson Matthey, Incorporated; Kurz Hastings, Incorporated; Lawrence McFadden Company; Philadelphia Baking Company; Philadelphia Gas Works; PPG Industries, Incorporated; SmithKline Beecham Pharmaceuticals; Teva Pharmaceuticals, USA; The Philadelphia Condominium Building; Warner Company; and Webcraft Technologies, Incorporated.

On August 20, 2001, EPA published a direct final rule (66 FR 43502) and a companion notice of proposed rulemaking (66 FR 43551) to approve these SIP revisions. On September 7, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On September 26, 2001, (66 FR 49107), we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 20, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 43551). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 20, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

### II. Public Comments and Responses

The Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on the proposed rule published by EPA in the **Federal Register** on August 20, 2001 to approve case-by-case RACT SIP submissions

from the Commonwealth for NO<sub>x</sub> and or VOC sources located in the Philadelphia area. A summary of those comments and EPA's responses are provided below.

**A. Comment:** PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO<sub>x</sub> and VOC controlled. In citing the definition of the term "RACT," and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan v. Thomas*, 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

**Response:** On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO<sub>x</sub> and VOCs*, requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements*. Under subsection 129.92, that proposal is to include, among other information: (1) A list of each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected

source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by-case RACT determinations by the DEP. Rather, EPA stated that " \* \* RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources."

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO<sub>x</sub> RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO<sub>x</sub> RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO<sub>x</sub> RACT regulations retained a limited approval status. On September 6, 2001 (66 FR 46571), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Philadelphia area. EPA received no comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Philadelphia area or (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by

Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by-case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

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

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for two located in the Philadelphia area, namely for Kurz-Hastings and GATX Terminals Corporation. EPA summarizes those

comments and provides responses in the final rule pertaining to those sources.

*B. Comment:* PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour "are some of the largest NO<sub>x</sub> emitting sources in the Commonwealth and in the Northeast United States" [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by-case RACT submissions, EPA has not demonstrated that these large boilers are subject to "numeric emission limitations" under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

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

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

examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Philadelphia area.

*C. Comment:* PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories.

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

The Act requires that states adopt regulations to impose RACT for "major

sources of VOC," located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for "any category of VOC sources" covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all "VOC sources" covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelof Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of "source category" in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

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

As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993,

stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

*D. Comment:* PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the "automatic" selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO<sub>x</sub> RACT Guidance Document for implementation of its NO<sub>x</sub> RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish "bright line" or "cook-book" approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its "Guidance Document on Reasonably Available Control Technology for Sources of NO<sub>x</sub> Emissions," March 11, 1994, and on pp. 8–9 states that the acceptable threshold is \$1500 per ton, and that this figure applies to "all source categories." PennFuture notes that EPA later objected to the \$1500 per ton methodology as "not generically acceptable to EPA" [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a "dollar per ton threshold" is "inconsistent with the definition of RACT" [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this \$1500 per ton threshold. PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of \$1500 per ton, or any other "bright line" approach, as failing to follow EPA procedures established for Pennsylvania RACT.

*Response:* EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly

indicates that the Commonwealth's document, "Guidance Document on Reasonably Available Control Technology for Sources of NO<sub>x</sub> Emissions." March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's \$1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the \$1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO<sub>x</sub> emissions from 254.7 tons per year to 115 tons per year (by 55 %) at a cost of \$1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO<sub>x</sub> emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of \$1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of \$1500 per ton "Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an "automatic" rejection of a control technology as RACT for a source."

In no instance, has EPA proposed to approve a RACT determination submitted by the Commonwealth which

was based solely on a conclusion that controls that cost more than \$1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

*E. Comment:* PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO<sub>x</sub>-reducing rules, including the recent Chapter 145 rule, to reduce NO<sub>x</sub> at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

*Response:* EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the

baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

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

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

the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO<sub>x</sub> RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that "Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT." [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO<sub>x</sub> control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO<sub>x</sub> control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

*G. Comment:* PennFuture submitted comments specific to the case-by-case RACT determinations for two sources located in the Philadelphia area, namely for Kurz-Hastings, and GATX Terminals Corporation.

(1) Kurz-Hastings—PennFuture comments that the Kurz-Hastings plant is the second-highest VOC emitter in Philadelphia with the potential to emit 3400 tons per year of VOCs. PennFuture's comment recognizes that Kurz-Hastings' VOC-emitting processes (several printing machines) are subject to SIP-approved category RACT regulations and do not require a case-by-case RACT evaluation. PennFuture asserts, however, that Kurz-Hastings' own data show that annual emissions from these units are still one-third or more of its potential to emit, suggesting that VOC controls on these units are only modestly effective. PennFuture also comments that the case-by-case RACT evaluation of Kurz-Hastings' mixing room operations, rejects control technologies that are up to 99%

effective in favor of minimal work-practice efforts. Therefore, PennFuture comments that the RACT determination for Kurz-Hastings merits close review by EPA to determine whether RACT requires a more effective control strategy for VOCs, and as at other plants, EPA must not approve this RACT proposal without conducting a thorough evaluation of available control technology.

*Response:* EPA disagrees with PennFuture's comments. The comment regarding the RACT requirements applicable to the printing machines at Kurz-Hastings are outside the scope of this rulemaking. Those printing machines are subject to a SIP-approved source category VOC RACT regulation adopted by the Commonwealth pursuant to the Graphic Arts CTG. The fact that compliance with that applicable regulation achieves an approximate 66 percent annual reduction in VOCs from Kurz-Hastings' printing machines does not require that a different or more stringent RACT be explored and imposed on this facility. With regard to fugitive emissions from the mixing room and clean-up operations, the work practice standards imposed on Kurz-Hastings for its mixing room and clean-up operations are consistent with RACT determinations routinely made and approved for such fugitive emission sources at graphic arts facilities. EPA's review of the SIP revision submitted for Kurz-Hastings indicates that the applicable SIP-approved definitions, provisions and procedures have been followed in imposing RACT for this facility.

(2) GATX Terminals Corporation—Citing Philadelphia Air Management Service (AMS) documents, PennFuture notes that GATX has the potential to emit 12,867 tons per year of VOC as a Bulk Terminal facility, and that its marine vessel loading unit has a potential to emit 3,520 tons of VOC per year. PennFuture then comments that the Philadelphia AMS's RACT review memorandum notes that a permit restriction limits emissions from this marine vessel loading operation to 59 tons per year in place of an add-on VOC control device. PennFuture goes on to note that, EPA promulgated a National Emission Standard for Marine Tank Vessel Loading Operations in 1995, which specifically established RACT for such sources at 40 CFR Part 63, Subpart Y. PennFuture notes that the RACT evaluation submitted by GATX to AMS in 1994 noted the pendency of this rule, which requires capture of VOCs and routing for combustion or recovery at an efficiency of up to 98 percent (RACT Proposal for a Marine Tank Vessel

Loading Terminal Facility, prepared for GATX Terminals Corporation by Versar, Inc., July 14, 1994, p. 12). PennFuture comments that AMS either overlooked this reference or chose not to require as RACT a highly effective control technology that, according to the GATX consultant, was "technically viable" at this plant. PennFuture, therefore, asserts that since EPA has promulgated a regulation specifically designating RACT for sources such as the GATX marine vessel loading operation, EPA must not approve a RACT proposal for this operation unless it includes the application of technology required by EPA in its regulation at 40 CFR, Part 63, Subpart Y.

*Response:* EPA disagrees with PennFuture's comments regarding the marine vessel loading operation at GATX. The federal regulations cited by PennFuture were promulgated at 40 CFR, Part 63, Subpart Y on September 19, 1995 (61 FR 48399) more than 3 months after the compliance date imposed in Act for major sources of VOC subject to non-CTG RACT. Moreover, the compliance date promulgated for the RACT standards of Subpart Y for sources such as GATX was two years beyond after the regulation's effective date. Most relevantly, the 59 ton per year annual limit imposed by AMS (and submitted by DEP on its behalf as a SIP revision) on GATX's marine vessel loading operation represents a 98.3 percent reduction in VOC emissions from the operation's 3,520 tons per year potential to emit which is at least as stringent as the requirements of 40 CFR Part 63, Subpart Y. Moreover, GATX's RACT plan approval (PA-51-5003) requires the compliance with the 59 ton per year annual limit by the date imposed in Act for major sources of VOC subject to non-CTG RACT. Environmentally, there is no additional benefit that would result in disapproving the case-by-case RACT SIP submittal for GATX's marine vessel loading operation. Approval of the case-by-case RACT SIP revision for GATX in no way relieves the source from any otherwise applicable Maximum Available Control Technology (MACT) requirements of 40 CFR Part 63, Subpart Y.

### III. Final Action

EPA is approving the SIP revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO<sub>x</sub> RACT for 18 major sources located in the Philadelphia area. EPA is approving Pennsylvania's RACT SIP submittals because the AMS and PADEP established and imposed these RACT requirements in accordance with the

criteria set forth in the SIP-approved RACT regulations applicable to these sources. The AMS and PADEP have also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

#### IV. Administrative Requirements

##### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety

Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

##### B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for eighteen (18) named sources.

##### C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving VOC and/or NO<sub>x</sub> RACT for eighteen sources located in the Philadelphia area may not

be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(156) to read as follows:

##### § 52.2020 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(156) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and NO<sub>x</sub> RACT determinations for sources located in the Philadelphia area submitted by the Pennsylvania Department of Environmental Protection on September 20, 1995, April 16, 1996, May 2, 1996, July 2, 1997, July 24, 1998, December 7, 1998, April 9, 1999, and April 20, 1999.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO<sub>x</sub> RACT determinations, in the form of plan approvals and operating permits on September 20, 1995, April 16, 1996, May 2, 1996, July 2, 1997, July 24, 1998, December 7, 1998, April 9, 1999, and April 20, 1999.

(B) Plan approvals (PA), Operating permits (OP) issued to the following sources:

(1) Amerada Hess Corp., PA-51-5009, for PLID 5009, effective May 29, 1995.

(2) Amoco Oil Company, PA-51-5011, for PLID 5011, effective May 29, 1995.

(3) Cartex Corporation, OP-09-0076, effective April 9, 1999, except for the expiration date.

(4) Exxon Company, U.S.A., PA-51-5008, for PLID 5008, effective May 29, 1995.

(5) GATX Terminals Corporation, PA-51-5003, for PLID 5003, effective May 29, 1995.

(6) Hatfield, Inc., OP-46-0013A, effective January 9, 1997 (as revised

October 1, 1998), except for the expiration date.

(7) J. L. Clark, Inc., OP-36-02009, effective April 16, 1999, except for the expiration date.

(8) Johnson Matthey, Inc., OP-15-0027, effective August 3, 1998 (as revised April 15, 1999), except for the expiration date.

(9) Kurz Hastings, Inc., PA-51-1585, for PLID 1585, effective May 29, 1995.

(10) Lawrence McFadden, Inc., PA-51-2074, for PLID 2074, effective June 11, 1997.

(11) Philadelphia Baking Company, PA-51-3048, for PLID 3048, effective April 10, 1995.

(12) Philadelphia Gas Works, PA-51-4921, for PLID 4921, effective May 29, 1995.

(13) PPG Industries, Inc., OP-23-0005, effective June 4, 1997, except for the expiration date.

(14) SmithKline Beecham Pharmaceuticals, OP-46-0035, effective March 27, 1997 (as revised October 20, 1998), except for the expiration date.

(15) Teva Pharmaceuticals USA, OP-09-0010, effective April 9, 1999, except for the expiration date.

(16) The Philadelphian Condominium Building, PA-51-6512, for PLID 6512, effective May 29, 1995.

(17) Warner Company, OP-15-0001, effective July 17, 1995 except for the expiration date.

(18) Webcraft Technologies, Inc., OP-09-0009, effective April 18, 1996 (as revised October 15, 1998), except for the expiration date.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(156)(i)(B) of this section.

[FR Doc. 01-26766 Filed 10-30-01; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[PA-4186; FRL-7089-9]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO<sub>x</sub> RACT Determinations for 14 Individual Sources in the Philadelphia-Wilmington-Trenton Area

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve revisions to the Commonwealth

of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for fourteen major sources of volatile organic compounds (VOC) and/or nitrogen oxides (NO<sub>x</sub>). These sources are located in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA or the Act).

**EFFECTIVE DATE:** This final rule is effective on November 15, 2001.

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

**FOR FURTHER INFORMATION CONTACT:** Marcia Spink, (215) 814-2104 or by e-mail at [spink.marcia@epa.gov](mailto:spink.marcia@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On December 8, 1995, March 21, 1996, January 21, 1997, July 24, 1998, April 20, 1999, March 23, 2001 (two separate submissions), and July 5, 2001; PADEP submitted revisions to the Pennsylvania SIP to establish and impose RACT for several major sources of VOC and/or NO<sub>x</sub>. This rulemaking pertains to fourteen of those sources. The remaining sources are or have been the subject of separate rulemakings. These sources are all located in the Philadelphia area and include: Perkasio Industries; Quaker Chemical Corporation; Rohm and Haas—Bucks County Plant; Rohm and Haas—Philadelphia Plant; SBF Communications Graphics; Schlosser Steel, Inc.; SEPTA's Berridge/Courtland Maintenance Shop; Smith-Edwards-Dunlap Company; Southwest Water Pollution Control Plant/Biosolids Recycling Center; Stroehman Bakeries, Inc.; Sunoco, Inc. (R&M) Refinery; Tasty Baking Company; Transcontinental Gas Pipeline Corp.—Compressor Station #200; and Worthington Steel Company.

On September 6, 2001 (66 FR 46525), EPA published a direct final rule and a

companion notice of proposed rulemaking (66 FR 46573) to approve these SIP revisions. On October 9, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On October 10, 2001, EPA signed a withdrawal notice for timely publication in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our September 6, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 46573). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the September 6, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

##### II. Public Comments and Responses

On October 9, 2001, the Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on the proposed rule published by EPA in the **Federal Register** on September 6, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO<sub>x</sub> and or VOC sources located in the Philadelphia area. A summary of those comments and EPA's responses are provided below.

*A. Comment:* PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO<sub>x</sub> and VOC controlled. In citing the definition of the term "RACT," and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan v. Thomas*, 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT