

III. EPA's Rationale for Conditional Approval

In light of the DC Circuit decision in *NRDC v. EPA* regarding requirements in the Phase 2 Ozone Implementation Rule, EPA determined it could not approve the presumption in the 2006 SIP submittal that the NO_x SIP Call constitutes RACT for EGU sources in Philadelphia County. Thus, AMS needs to perform a NO_x RACT analysis for EGUs as provided in the April 26, 2013 commitment letter from PADEP for AMS. EPA also determined that the 2006 SIP revision does not specifically and sufficiently address whether the source-specific RACT controls for 46 major sources in Philadelphia County that were previously approved in the Pennsylvania SIP under the 1-hour ozone NAAQS continue to represent RACT for the 1997 8-hour ozone NAAQS. Therefore, to satisfy the major source RACT requirement for the 1997 8-hour ozone NAAQS, AMS must either: (1) Provide a certification that previously adopted source-specific RACT controls approved by EPA in Pennsylvania's SIP under the 1-hour ozone NAAQS for major sources in Philadelphia County (as listed in 40 CFR 52.2020(d)(1)) continue to represent adequately RACT for the 1997 8-hour ozone NAAQS; or (2) perform a source-specific RACT analysis for each source for which controls do not currently and adequately represent RACT for the 1997 8-hour ozone NAAQS.

In this rulemaking action, EPA is conditionally approving Philadelphia County's 1997 8-hour ozone RACT demonstration provided in the 2006 and 2010 SIP revisions, based upon the commitment from AMS in the April 26, 2013 letter from PADEP to submit additional SIP revisions to address the deficiencies in the current RACT demonstration for Philadelphia County. The SIP revisions, to be submitted by PADEP on behalf of AMS no later than twelve months from today's final conditional approval, will address source-specific RACT determinations for the following major sources in Philadelphia County: (1) Exelon—Delaware Station; (2) Exelon—Richmond Station; (3) Exelon—Schuylkill Station; (4) Veolia—Edison Station (formerly Trigen-Edison Station); (5) Veolia—Schuylkill Station (formerly Trigen—Schuylkill Station); (6) Philadelphia Energy Solutions Refinery (formerly Sunoco Refinery); (7) Kraft Nabisco (formerly Nabisco Biscuit Company); (8) Temple University, Health Sciences Center; (9) GATX Terminals Corporation; and (10)

Honeywell (formerly Sunoco Chemicals, Frankford Plant). The SIP revisions to be submitted will also include a certification that previously adopted source-specific RACT controls approved by EPA in Pennsylvania's SIP for the 1-hour ozone NAAQS for the remaining sources in Philadelphia County continue to represent adequately RACT for the 1997 8-hour ozone NAAQS.

IV. Final Action

In this rulemaking action, EPA is conditionally approving Philadelphia County's RACT demonstration under the 1997 8-hour ozone NAAQS, as provided in the 2006 and the 2010 SIP revisions. Pursuant to section 110(k)(4) of the CAA, this conditional approval is based upon the April 26, 2013 letter from PADEP for AMS committing to submit to EPA, no later than twelve months from today's final conditional approval, additional SIP revisions to address the deficiencies in the current RACT demonstration for Philadelphia County. The SIP revisions will provide source-specific RACT determinations for 10 major sources of VOC and NO_x in Philadelphia County and a certification that previously adopted source-specific RACT controls approved by EPA in Pennsylvania's SIP for the 1-hour ozone NAAQS for the remaining sources in Philadelphia County continue to adequately represent RACT for the 1997 8-hour ozone NAAQS. Once EPA has determined that AMS has satisfied this condition, EPA shall remove the conditional nature of this approval and Philadelphia County's 1997 8-hour ozone RACT demonstration will, at that time, receive a full approval status. Should AMS fail to meet the condition specified above, today's final conditional approval of Philadelphia County's 1997 8-hour ozone RACT demonstration will convert to a disapproval.

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 action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under

Executive Order 12866 (58 FR 51735, October 4, 1993);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule 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.

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. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it

is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. 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 February 11, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 [add language that is unique to this action] 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: November 29, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for "RACT" under the 1997 8-hour ozone NAAQS" for Philadelphia County at the end of the table. The added text reads as follows:

§ 52.2020 Identification of plan.

* * * * *
 (e) * * *
 (1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA Approval date	Additional explanation
RACT under the 1997 8-hour ozone NAAQS.	Philadelphia County	9/29/06 6/22/10	12/13/13 [<i>Insert page number where the document begins</i>].	Conditional approval. See § 52.2023(l).

■ 3. Section 52.2023 is amended by adding paragraph (l) to read as follows:

§ 52.2023 Approval status.

* * * * *

(l) EPA conditionally approves Philadelphia County's reasonably available control technology (RACT) demonstration under the 1997 8-hour ozone NAAQS, as provided in SIP revisions submitted on September 29, 2006 and June 22, 2010. Pursuant to section 110(k)(4) of the CAA, this

conditional approval is based upon an April 26, 2013 letter from Pennsylvania on behalf of Philadelphia County committing to submit to EPA, no later than twelve months from EPA's final conditional approval, additional SIP revisions to address the deficiencies in the current RACT demonstration for Philadelphia County. The SIP revisions, to be submitted by Pennsylvania on behalf of Philadelphia County, will address source-specific RACT determinations for ten (10) major

sources in Philadelphia County and will include a certification that previously adopted source-specific RACT controls approved by EPA in Pennsylvania's SIP under the 1-hour ozone NAAQS for the remaining sources in Philadelphia County (as listed in 40 CFR 52.2020(d)(1)) continue to adequately represent RACT for the 1997 8-hour ozone NAAQS.

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