challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)of the Act.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 10, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

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 SS—Texas

2. In § 52.2270 the table in paragraph (c) is amended under Chapter 115, Subchapter E, by removing the entry for ''Section 115.421 to 115.429'' and adding in its place a new heading ''Division 2: Surface Coating Processes'' and individual entries for Sections 115.420, 115.421, 115.422, 115.423, 115.424, 115.425, 115.426, 115.427, and 115.429 to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State submittal/approval date	EPA approval date	Explanation
*	*	*	*	*
Chapter 115 (Reg 5)—Control of Air Pollution from Volatile Organic Compounds				
*	*	*	*	*
Subchapter E: Solvent-Using Processes				
*	*	*	*	*
Division 2: Surface Coating Processes				
Section 115.420	Surface Coating Definitions	June 29, 2000	October 29, 2001	
Section 115.421	Emission Specifications	June 29, 2000	October 29, 2001	
Section 115.422	Control Requirements	June 29, 2000	October 29, 2001	
Section 115.423	Alternate Control Requirements	June 29, 2000	October 29, 2001	
Section 115.424	Inspection Requirements	June 29, 2000	October 29, 2001	
Section 115.425	Testing Requirements	June 29, 2000	October 29, 2001	
Section 115.426	Monitoring and Recordkeeping Requirements.	June 29, 2000	October 29, 2001	
Section 115.427	Exemptions	June 29, 2000	October 29, 2001	
Section 115.429	Counties and Compliance Schedules.	June 29, 2000	October 29, 2001	
*	*	*	*	*

3. Section 52.2299 is amended by adding a new paragraph (c)(121) to read as follows:

§ 52.2299 Original identification of plan section.

* * * * *

(C) * * *

(121) Revisions submitted by the Governor on July 13, 2000, that remove approval of the Alternate Reasonably Available Control Technology (ARACT) for Lockheed Corporation, Bell Helicopter Textron, Incorporated; Bell Plant 1, and Raytheon TI Systems, Inc., (RTIS).

[FR Doc. 01–27107 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4188; FRL–7090–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X 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_X). These sources are located in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is approving these revisions to the SIP in accordance with the Clean Air Act (CAA or the Act).

EFFECTIVE DATE: This final rule is effective on November 14, 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) 814–2014 or by e-mail at spink.marcia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 7, 1998, February 2, 1999, 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 sources of VOC and/or NO_X. This rulemaking pertains to fourteen (14) 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_X RACT requirements for each source. These sources are all located in the Philadelphia area and include Aldan Rubber Company; Arbill Industries, Inc.; Bethlehem Lukens Plate; Braceland Brothers, Inc.; Graphic Arts, Inc.; International Business Systems; McWhorter Technologies; Montenay Montgomery Ltd.; Newman and Company; Northeast Foods; Northeast Water Pollution Control Plant (Philadelphia Water Department); O'Brien (Philadelphia) Cogeneration, Inc.—Northeast Water Pollution Control Plant; O'Brien (Philadelphia) Cogeneration, Inc.—Southwest Water Pollution Control Plant; and Pearl Pressman Liberty.

On September 10, 2001 (66 FR 46953), EPA published a direct final rule and a companion notice of proposed rulemaking (66 FR 46971) 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 timely withdrawal for publication in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our September 10, 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 46971). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the September 10, 2001 direct final rule and will not be restated here. A summary of the comments submitted 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 10, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Philadelphia area. We also received letters of clarification from Montenay Energy Resources of Montgomery County; Pepper Hamilton LLP on behalf of its client, Bethlehem Steel Corporation; and from PADEP. 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_X 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_X 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 each of 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_X 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_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X 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 public 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_X 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. PennFuture contends that the case-by-case approach for establishing and approving RACT is unacceptable under a statutory scheme that specifically requires category-wide RACT regulations for sources covered by CTGs. PennFuture's comment cites to *Wall* v. *EPA,* 2001 FED App. 0318P (6th Cir.)(Cincinnati ozone redesignation and RACT) and goes on the state that EPA should reject any proposed case-by-case VOC RACT for a source in a category for

which there is a CTG but no Pennsylvania RACT regulation.

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 Strelow 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. EPA disagrees with the commenter's citing to *Wall* v. *EPA,* 2001 FED App. 0318P (6th Cir. Sept. 11, 2001) (Cincinnati ozone redesignation and RACT) as indicative of his contentions regarding states' obligations to adopt category-wide RACT regulations for sources covered by CTGs. The opinion rendered in the cited case neither requires states to adopt category-wide RACT regulations for sources covered by CTGs, nor does it preclude states from exercising their option to impose RACT for CTG-subject sources, on a case-by-case basis. Rather, it speaks only to the Act's requirement that states must implement RACT for CTG-subject sources in ozone nonattainment areas; and not to any specific regulatory construct by which they must do so. Pennsylvania has implemented RACT for all CTG-subject sources in the Philadelphia area, and, EPA has approved all such RACT determinations as revisions to the Pennsylvania SIP. 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_X RACT Guidance Document for implementation of its NO_X 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_X 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_X 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_X 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_X 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_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X 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_X emission requirements for utilities which must be met *in addition* to any RACT requirements (see NO_X 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_X 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_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X 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. Clarification: On October 8, 2001, Montenay Energy Resources of Montgomery County, Inc. (Montenay) submitted a letter on EPA's September 10, 2001 rulemaking as it pertains to its facility. Montenay does not adversely comment on the rulemaking. Rather, its letter clarifies that the conditions imposed in operating permit (OP) OP–46–0010A which specify that air contaminant emissions from the two municipal waste combustors must be controlled through the use of individual Research-Cottrell spray dryer absorber using Sorbalit 1 reagent to control mercury and acid gases, Research-Cottrell fabric collectors and a selective non-catalytic reduction (SNCR) control system; and that NO_X emissions per combustor (expressed as NO_2) shall not exceed a 24-hour daily arithmetic average of 205 parts per million by volume, corrected to 7 percent oxygen, dry basis and, in accordance with 40 CFR part 60 Section 60.33b(d), 109 pounds per hour, and 477.4 tons per year were imposed by PADEP pursuant to the applicable NO_X requirements of 40 CFR part 60, subpart Cb (relating to Emission Guidelines and Compliance Times for large Municipal Waste Combustors that are constructed on or before September 20, 1994)—and not as RACT. Montenay agrees that it is subject to all of the provisions imposed in OP–46–0010A but calls attention to the distinction between the permit's NO_X RACT provisions and its NO_X provisions imposed pursuant to 40 CFR Part 60, Subpart Cb (relating to Emission Guidelines and Compliance Times for large Municipal Waste Combustors that are constructed on or before September 20, 1994). Montenay's letter also clarifies that the compliance date for 40 CFR Part 60, Subpart Cb (relating to Emission Guidelines and Compliance Times for large Municipal Waste Combustors that are constructed on or before September 20, 1994) is September of 1999 versus its RACT compliance date under the Pennsylvania approved SIP.

Response: The letter of clarification submitted by Montenay has been placed in the administrative record for this final rule. EPA agrees that OP–46–0010A issued by PADEP serves to impose on Montenay both its applicable NO_X RACT requirements as determined under 25 Pa. Code 129.91–129.95 and the applicable NO_X requirements of 40 CFR Part 60, Subpart Cb (relating to Emission Guidelines and Compliance Times for large Municipal Waste Combustors that are constructed on or before September 20, 1994). EPA also agrees that OP–46–0010A, which is being approved as a SIP revision, makes the distinction between Montenay's NO_X RACT requirements and its applicable NO_X requirements of 40 CFR Part 60, Subpart Cb (relating to Emission Guidelines and Compliance Times for large Municipal Waste Combustors that are constructed on or before September 20, 1994).

EPA notes that it is not uncommon for the same emission sources at a given facility to be subject to multiple requirements of the Act. As both the compliance deadlines for NO_X RACT and the NO_X requirements of 40 CFR part 60, subpart Cb (relating to Emission Guidelines and Compliance Times for large Municipal Waste Combustors that are constructed on or before September 20, 1994) have now passed and are fully effective, Montenay's distinction between the RACT requirements and those of 40 CFR Part 60, Subpart Cb as imposed in OP–46–0010A has no environmental effect. Moreover, it is important to note that in the event that a determination of eligible ERCs were to be sought for NO_X reductions at the facility in the future, any emission reductions would have to surplus to all applicable requirements of the Act in order to qualify as ERCs under the Pennsylvania SIP.

H. Clarification: On October 10, 2001, EPA received a letter from Pepper Hamilton LLP on behalf of its client Bethlehem Steel regarding OP–46–0011 issued to Bethlehem Lukens Plate by PADEP on December 11, 1998. The letter states that it is not making adverse comments to EPA's September 10, 2001 rulemaking. Rather, the letter states that Pepper Hamilton LLP supports approval of the case-by-case RACT determination imposed as NO_X RACT in OP–46–0011, but notes that there is an error in an emission factor cited in OP–46–0011. The comment letter explains that an amended version of OP–46–0011 was issued by PADEP on July 31, 2001 correcting the emission factor and leaving the NO_X RACT limit unchanged. The letter from Pepper Hamilton LLP states that PADEP shortly intends to submit the revised version of OP–46–0011 to EPA as a SIP revision. On October 10, 2001, PADEP submitted a letter to EPA confirming the contents of the October 10, 2001 letter from Pepper Hamilton LLP. The PADEP letter requests that EPA proceed at this time to approve OP–46–0011, as proposed on September 10, 2001, but informs us that it will expeditiously prepare and submit a SIP revision for Bethlehem Lukens Plate to correct the reference to the emission factor in OP–46–0011. The PADEP confirms that the NO_X RACT emission limit shall remain unchanged.

Response: The letter submitted by Pepper Hamilton LLP on behalf of its client Bethlehem Steel regarding OP–46–0011 has been placed in the administrative record for this final rule. As requested by PADEP, EPA will proceed to approve the version of OP–46–0011, as proposed on September 10, 2001, in this final rule. As also requested by PADEP, we will act upon the soon to be submitted SIP revision for Bethlehem Lukens Plate via the Federal rulemaking process for amending the SIP as expeditiously as practicable.

III. Final Action

EPA is approving the SIP revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for fourteen major sources located in the Philadelphia area. EPA is approving these SIP submittals because the Philadelphia 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/or testing requirements 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 14 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_X RACT for 14 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)(185) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(185) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and NO_X RACT for 14 sources located in the Philadelphia area, submitted by the Pennsylvania Department of Environmental Protection on December 7, 1998, February 2, 1999, April 20, 1999, March 23, 2001 (two separate submissions), and July 5, 2001.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals and operating permits December 7, 1998, February 2, 1999, April 20, 1999, March 23, 2001 (two separate submissions), and July 5, 2001.

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

(*1*) International Business Systems, Inc., OP–46–0049, effective October 29, 1998 and as revised December 9, 1999, except for the expiration date.

(*2*) Bethlehem Lukens Plate, OP–46–0011, effective December 11, 1998, except for the expiration date.

(*3*) Montenay Montgomery Limited Partnership, OP–46–0010A, effective April 20, 1999 and as revised June 20, 2000, except for the expiration date.

(*4*) Northeast Foods, Inc., OP–09–0014, effective April 9, 1999, except for the expiration date.

(*5*) Aldan Rubber Company, PA–1561, effective July 21, 2000, except for conditions 1.A.(1), 1.A.(2) and 1.A.(4); and conditions 2.A. and 2.C.

(*6*) Braceland Brothers, Inc., PA–3679, effective July 14, 2000.

(*7*) Graphic Arts, Incorporated, PA–2260, effective July 14, 2000.

(*8*) O'Brien (Philadelphia) Cogeneration, Inc.—Northeast Water Pollution Control Plant, PA–1533, effective July 21, 2000.

(*9*) O'Brien (Philadelphia) Cogeneration, Inc.—Southwest Water

Pollution Control Plant, PA–1534, effective July 21, 2000.

(*10*) Pearl Pressman Liberty, PA–7721, effective July 24, 2000.

(*11*) Arbill Industries, Inc., PA–51–3811, effective July 27, 1999, except for condition 5.

(*12*) McWhorter Technologies, PA–51–3542, effective July 27, 1999, except for condition 2.B. and condition 5.

(*13*) Northeast Water Pollution Control Plant, PA–51–9513, effective July 27, 1999, except for condition 1.A.(1), conditions 2.A. and 2.B., and condition 7.

(*14*) Newman and Company, PA–3489, effective June 11, 1997.

(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)(185)(l)(B) of this section.

[FR Doc. 01–26761 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA041–4180; FRL–7089–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Reasonably Available Control Technology Requirements for Volatile Organic Compounds and Nitrogen Oxides in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is removing the limited status of its approval of the Commonwealth of Pennsylvania State Implementation Plan (SIP) revision that requires all major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) to implement reasonably available control technology (RACT) as it applies in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is converting its limited approval of Pennsylvania's VOC and NO_X RACT regulations to full approval because EPA has approved all of the case-by-case RACT determinations submitted by Pennsylvania for the affected sources located in the Philadelphia area. The intended effect of this action is to remove the limited nature of EPA's approval of Pennsylvania's VOC and NO_X RACT regulations as they apply in the Philadelphia area.

EFFECTIVE DATE: This final rule is effective on November 29, 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; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201; 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.*

SUPPLEMENTARY INFORMATION

I. Background

On September 6, 2001 (66 FR 46571), EPA published a notice of proposed rulemaking (NPR) for the State of Pennsylvania. The NPR proposed to remove the limited status of EPA's approval of the Commonwealth of Pennsylvania SIP revision that requires all major sources of VOC and NO_X to implement reasonably available control technology (RACT) as it applies in the Philadelphia area. The rationale for EPA's action is explained in the NPR and will not be restated here. No comments were received on the NPR.

II. Final Action

EPA is converting its limited approval of Pennsylvania's generic VOC and NO_X RACT regulations, 25 Pa Code Chapter 129.91 through 129.95, to full approval as they apply in the five-county Philadelphia-Wilmington-Trenton ozone nonattainment area. EPA has approved all of the case-by-case RACT determinations submitted by PADEP for affected major sources of NO_X and/or VOC sources located in Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties, the five counties that comprise the Pennsylvania portion of the Philadelphia area.

III. 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