

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[R09-OAR-2005-CA-0004; FRL-7932-4]

**Correction to the California State Implementation Plan, South Coast Air Quality Management District****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to delete a provision from the California State Implementation Plan (SIP) that was approved into the SIP in error. This provision is part of a rule concerning emissions of volatile organic compounds (VOC) from solvent cleaning operations. EPA has determined that the continued presence of this provision in the SIP is potentially confusing and thus harmful to affected sources, local agencies and to EPA. The intended effect of this proposal is to delete this provision and make the federally enforceable SIP consistent with the SIP as adopted and submitted by the State of California.

**DATES:** Any comments on this proposal must arrive by August 1, 2005.**ADDRESSES:** Submit comments, identified by docket number R09-OAR-2005-CA-0004, by one of the following methods:

1. Agency Web site: <http://docket.epa.gov/rmepub/>. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.

2. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions.

3. E-mail: [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

4. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

**Instructions:** All comments will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency website, eRulemaking portal or e-mail. The agency website and eRulemaking portal are "anonymous access" systems, and EPA will not know your identity or contact information

unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

**Docket:** The index to the docket for this action is available electronically at <http://docket.epa.gov/rmepub> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Francisco Dóñez, EPA Region IX, (415) 972-3956, [Donez.Francisco@epa.gov](mailto:Donez.Francisco@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposal addresses South Coast Air Quality Management District (SCAQMD) Rule 1171. In the Rules and Regulations section of this **Federal Register**, we are taking direct final action to delete a provision from this rule under section 110(k)(6) of the Clean Air Act, which provides EPA authority to correct the SIP without additional State submission. We are deleting this provision without prior proposal because we believe this SIP correction is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 16, 2005.

**Wayne Nastri,***Regional Administrator, Region IX.*

[FR Doc. 05-13053 Filed 6-30-05; 8:45 am]

**BILLING CODE 6560-50-P****ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[Region 2 Docket No. R02-OAR-2005-NJ-0001, FRL-7931-8]

**Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for a Specific Source in the State of New Jersey****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency is proposing to approve a revision to the State Implementation Plan (SIP) for ozone submitted by the State of New Jersey. This SIP revision consists of a source-specific reasonably available control technology (RACT) determination for controlling oxides of nitrogen from the cogeneration facility operated by Schering Corporation. This action proposes an approval of the source-specific RACT determination that was made by New Jersey in accordance with provisions of its regulation to help meet the national ambient air quality standard for ozone. The intended effect of this proposed rule is to approve source-specific emission limitations required by the Clean Air Act.

**DATES:** Comments must be received on or before August 1, 2005.**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R02-OAR-2005-NJ-0001 by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. Agency Web site: <http://docket.epa.gov/rmepub/> Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov).

4. Fax: (212) 637-3901.

5. Mail: "RME ID Number R02-OAR-2005-NJ-0001", Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

6. Hand Delivery or Courier. Deliver your comments to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

*Instructions:* Direct your comments to Regional Material in EDocket (RME) ID Number R02-OAR-2005-NJ-0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in EDocket (RME), [regulations.gov](http://regulations.gov), or e-mail. The EPA RME Web site and the federal [regulations.gov](http://regulations.gov) Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or

in hard copy at the Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Richard Ruvo for specific questions on New Jersey's NO<sub>x</sub> RACT SIP revisions; Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 617-4014 ([Ruvo.Richard@epa.gov](mailto:Ruvo.Richard@epa.gov)).

**SUPPLEMENTARY INFORMATION:**

**Overview**

The Environmental Protection Agency is proposing to approve the New Jersey State Department of Environmental Protection's (New Jersey's) source-specific reasonably available control technology (RACT) determination for controlling oxides of nitrogen (NO<sub>x</sub>) from the cogeneration facility operated by Schering Corporation (Schering).

The following tables of contents describes the format for this

**SUPPLEMENTARY INFORMATION** section:

- I. EPA's Proposed Action
  - A. What Action Is EPA Proposing Today?
  - B. Why Is EPA Proposing This Action?
  - C. What Are the Clear Air Act Requirements for NO<sub>x</sub> RACT?
  - D. How Has Schering Complied With the Act Requirements for NO<sub>x</sub> RACT Since 1995?
  - E. What Is EPA's Evaluation of New Jersey's SIP Revision?
- II. New Jersey's SIP Revision
  - A. What Are New Jersey's NO<sub>x</sub> RACT Requirements?
  - B. What Are New Jersey's Facility-Specific NO<sub>x</sub> RACT Requirements?
  - C. When Was New Jersey's RACT Determination Proposed and Adopted?
  - D. When Was New Jersey's SIP Revision Submitted to EPA?
- III. Conclusion
- IV. Statutory and Executive Order Reviews

**I. EPA's Proposed Action**

*A. What Action Is EPA Proposing Today?*

EPA is proposing an approval of New Jersey's revision to the ozone State Implementation Plan (SIP) submitted to EPA on March 31, 2005. This SIP revision relates to New Jersey's NO<sub>x</sub> RACT determination for Schering's heat recovery steam generator (HRSG) with duct burner for the cogeneration facility located in Union, Union County.

*B. Why Is EPA Proposing This Action?*

- EPA is proposing this action to:
- Give the public the opportunity to submit comments on EPA's proposed action, as discussed in the **DATES** and **ADDRESSES** sections
  - Fulfill New Jersey's and EPA's requirements under the Clean Air Act (the Act)
  - Make New Jersey's RACT determination federally-enforceable.

*C. What Are the Clean Air Act Requirements for NO<sub>x</sub> RACT?*

The Act requires certain states to develop RACT regulations for major stationary sources of NO<sub>x</sub> and to provide for the implementation of the required measures as soon as practicable but no later than May 31, 1995. Under the Act, the definition of major stationary source is based on the tons per year (tpy) of air pollution a source emits and the quality of the air in the area of the source. In ozone transport regions, attainment/unclassified areas as well as marginal and moderate ozone nonattainment areas, a major stationary source for NO<sub>x</sub> is considered to be one which emits or has the potential to emit 100 tpy or more of NO<sub>x</sub> and is subject to the requirements of a moderate nonattainment area. New Jersey is within the Northeast ozone transport region, established by section 184(a) of the Act, and has defined a major stationary source for NO<sub>x</sub> as a source which has the potential to emit 25 tpy, the level set for severe ozone nonattainment areas. Consequently, all major stationary sources of NO<sub>x</sub> within the State of New Jersey are required to implement RACT no later than May 31, 1995. For detailed information on the Act requirements for NO<sub>x</sub> RACT see the Technical Support Document (TSD), prepared in support of today's proposed action. A copy of the TSD is available upon request from the EPA Regional Office listed in **ADDRESSES** section or it can be viewed at <http://docket.epa.gov/rmepub/>.

*D. How Has Schering Complied With the Act Requirements for NO<sub>x</sub> RACT since 1995?*

On June 3, 1996, New Jersey adopted the New Jersey Open Market Emission Trading (OMET) program, Subchapter 30 of Chapter 27, Title 7 of the New Jersey Administrative Code. The OMET program permitted regulated facilities to purchase "discrete emission reduction" (DER) credits for volatile organic compounds (VOC) and NO<sub>x</sub> to meet VOC and NO<sub>x</sub> emission limits set forth in Subchapters 16 and 19 of Chapter 27, Title 7 of the New Jersey Administrative Code, respectively.

On January 9, 2001, EPA published in the **Federal Register**, a proposed conditional approval of the OMET program. (66 FR 1796) After discussion with New Jersey, on June 24, 2002, EPA sent New Jersey a letter reiterating a number of concerns about the OMET program. On August 13, 2002, New Jersey responded to this letter indicating that it concluded the OMET program should be terminated. On October 18, 2002, EPA published, in the **Federal Register** (67 FR 64347), its determination to withdraw a prior proposed conditional approval of the OMET program.

On December 16, 2002, New Jersey held a public meeting discussing options for repealing the OMET program. EPA's withdrawal of its proposed approval and this meeting were indications that sources could no longer rely on the OMET program to satisfy the Act requirements for VOC and NO<sub>x</sub> RACT. On February 25, 2004, New Jersey adopted rules, repealing the OMET program and adopted rule repeals, and amendments to rules governing other programs impacted by the repeal of the OMET program, including Subchapter 19 (the state NO<sub>x</sub> RACT rules). 36 New Jersey Register 1791(a). On that date, New Jersey also adopted amendments and new rules to replace provisions provided by the OMET program. The effective date of the repeals, amendments and new rules is April 5, 2004 and the operative date is April 25, 2004.

On April 26, 2004, EPA notified, by letter, New Jersey that "sources should be advised that if they rely on the extended compliance deadlines or compliance options provided in the revised NJDEP rule, they would not comply with the federally-approved regulations, which do not provide for any such deadline extensions." By copy of that letter, EPA notified sources identified as OMET credit users in the revised rule about "unresolved issues regarding that rule and the probability of SIP disapproval." This letter also refers to a September 18, 2003 letter in which EPA provided comments to New Jersey, which identified serious deficiencies in the originally proposed regulation.

While the State of New Jersey has adopted new state NO<sub>x</sub> RACT rules that allowed Schering and other sources until April 25, 2005 to achieve compliance with State NO<sub>x</sub> RACT rules, the federally-approved NO<sub>x</sub> RACT rule in the SIP requires compliance with the federal RACT regulations by May 31, 1995. Since the new state NO<sub>x</sub> RACT rules have not been and are not likely to be federally-approved and included

in the SIP, the federally enforceable compliance date for NO<sub>x</sub> RACT remains May 31, 1995.

On May 27, 2004, EPA held a meeting with Schering and several other owners/operators of sources copied on the April 26, 2004 letter to New Jersey to discuss compliance options. Schering attended the meeting and advised EPA that it would submit a timely proposal for compliance. On July 15, 2004, Schering submitted for EPA and New Jersey review, a proposal for an alternative emission limit (AEL) to comply with both Federal and State NO<sub>x</sub> RACT. On January 19, 2005, EPA sent Schering a Notice of Violation describing its violations of Subchapter 19. On April 11, 2005, EPA issued Schering a Compliance Order which required Schering to comply with the proposed NO<sub>x</sub> RACT emissions limits set forth in its AEL application, submitted on July 15, 2004, until the limits are approved by the State. Following state approval, Schering shall comply with the state-approved AEL, until it is federally-approved, and thereafter comply with the NO<sub>x</sub> RACT pursuant to the federally-approved AEL. Today's proposed action is the next step in the federal approval process.

#### *E. What Is EPA's Evaluation of New Jersey's SIP Revision?*

EPA has determined New Jersey's SIP revision for New Jersey's NO<sub>x</sub> RACT determination for Schering's HRSG with duct burner is consistent with New Jersey's NO<sub>x</sub> RACT regulation and EPA's guidance. EPA's basis for evaluating New Jersey's SIP revision, is whether it meets the SIP requirements described in section 110 of the Act. EPA thinks that New Jersey's SIP revision will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act.

After reviewing New Jersey's SIP revision submittal, EPA found it administratively and technically complete. EPA has determined that the NO<sub>x</sub> emission limits identified in New Jersey's Conditions of Approval document represents RACT for Schering's HRSG with duct burner. The conditions contained in the Conditions Of Approval Document currently specify emission limits, work practice standards, and testing, monitoring, and recordkeeping/reporting requirements. These conditions are consistent with the NO<sub>x</sub> RACT requirements specified in Subchapter 19 and conform to EPA NO<sub>x</sub> RACT guidance. More specifically, EPA proposes to approve the current Conditions of Approval document which includes an alternative emission

limit for the HRSG/duct burner when operating in the fresh air fired mode and when firing natural gas. The limit will be the lower of 0.17 lbs/MMBtu, or 115% of the average of three one-hour stack tests, each performed over a consecutive 60-minute period. Please note there may be other requirements, such as adequate monitoring, which States and sources will need to provide for, through the Title V permitting process. The TSD prepared in support of this proposed action, contains a detailed description of New Jersey's submittal and EPA's evaluation.

## **II. New Jersey's SIP Revision**

### *A. What Are New Jersey's NO<sub>x</sub> RACT Requirements?*

On November 15, 1993, New Jersey submitted to EPA, as a revision to the SIP, Subchapter 19 of Chapter 27, Title 7 of the New Jersey Administrative Code. Subchapter 19 is entitled "Control and Prohibition of Air Pollution From Oxides of Nitrogen." This Subchapter provides the NO<sub>x</sub> RACT requirements for New Jersey and was effective on December 20, 1993. New Jersey submitted Subchapter 19 to EPA, as a revision to the SIP, on November 15, 1993 and on January 27, 1997, the EPA final approval action on Subchapter 19 was published in the **Federal Register** (62 FR 3804).

On March 24, 1995, New Jersey adopted amendments to Subchapter 19 and submitted them to EPA for approval as a SIP revision on June 21, 1996. On March 29, 1999, the EPA final approval action on the revised Subchapter 19 was published in the **Federal Register** (64 FR 14832).

### *B. What Are New Jersey's Facility-Specific NO<sub>x</sub> RACT Requirements?*

Section 19.13 of New Jersey's regulation establishes a procedure for a case-by-case determination of what represents RACT for a major facility, item of equipment of source operation. This procedure applies to facilities considered major for NO<sub>x</sub> which are in one of the following two situations: (1) Except for non-utility boilers, if the NO<sub>x</sub> facility contains any source operation or item of equipment of a category not listed in section 19.2 which has the potential to emit more than 10 tons of NO<sub>x</sub> per year, or (2) if the owner or operator of a source operation or item of equipment of a category listed in section 19.2 seeks approval of an alternative maximum allowable emission rate. Today's proposal relates to a facility in the second type of situation discussed above.

New Jersey's procedure requires either submission of a NO<sub>x</sub> control plan if specific emission limitations do not apply to the specific source, or submission of a request for an alternative maximum allowable emission rate if specific emission limitations do apply to the specific source. In either case, the owners/operators must include a technical and economic feasibility analysis of the possible alternative control measures. Also, in either case, Subchapter 19 requires that New Jersey establish emission limits which rely on a RACT determination specific to the facility. The resulting NO<sub>x</sub> control plan or alternative maximum allowable emission rate must be submitted to EPA to approval as a SIP revision.

#### C. When Was New Jersey's RACT Determination Proposed and Adopted?

New Jersey's RACT determination was proposed on October 23, 2004, with a public comment period ending November 24, 2004. New Jersey adopted the RACT determination on March 9, 2005.

#### D. When Was New Jersey's SIP Revision Submitted to EPA?

New Jersey's SIP revision was submitted to EPA on March 31, 2005. EPA determined the submittal administratively and technically complete on April 25, 2005.

### III. Conclusion

EPA is proposing to approve the New Jersey SIP revision for an alternative RACT emission limit determination for Schering's HRSG with duct burner. This SIP revision contains source-specific NO<sub>x</sub> emission limitations for Schering. EPA will consider all information submitted prior to any final rulemaking action as a supplement or amendment to the SIP submittal.

EPA is requesting public comment on the issues discussed in today's action. EPA will consider all public comments before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to the EPA Regional Office listed in the **ADDRESSES** section.

### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposed to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 (Pub. L. 104-4).

This proposed 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 proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This proposed 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 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 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 proposed 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.*).

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

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

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

Dated: June 22, 2005.

**George Pavlou,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 05-13056 Filed 6-30-05; 8:45 am]

**BILLING CODE 6560-50-M**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[R05-OAR-2005-MN-0002; FRL-7931-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Minnesota

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the sulfur dioxide requirements for Flint Hills Resources, L.P. (Flint Hills) of Dakota County, Minnesota. The requested revisions will allow the Rosemont, Minnesota petroleum refinery to produce ultra low sulfur diesel fuel. This expansion will add five sources and create an increase in sulfur dioxide emissions. An analysis of the additional sources was conducted. The results shows that the air quality of Dakota County will remain in compliance with the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide.

In the final rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we do not receive any adverse comments in response to these direct final and proposed rules, we do not contemplate taking any further action in relation to this proposed rule. If EPA receives adverse comments, we will withdraw the direct final rule and will respond to all public comments in a subsequent final rule based on this