

TABLE 1.—EPA-APPROVED KENTUCKY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
<b>Chapter 52 Permits, Registrations, and Prohibitory Rules</b>				
401 KAR 52:080 .....	Regulatory limit on potential to emit .....	10/31/03	8/24/05. [Insert citation of publication].	
*	*	*	*	*

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[FR Doc. 05-16804 Filed 8-23-05; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY**  
**40 CFR Part 52**  
[R03-OAR-2005-PA-0011; FRL-7958-1]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO<sub>x</sub> RACT Determinations for Five Individual Sources**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania 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 five major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) pursuant to the Commonwealth of Pennsylvania's

(Pennsylvania's or the Commonwealth's) SIP-approved generic RACT regulations. EPA is approving these revisions in the SIP in accordance with the Clean Air Act (CAA).  
**DATES:** *Effective Date:* This final rule is effective on September 23, 2005.  
**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) ID Number R03-OAR-2005-PA-0011. All documents in the docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Once in the system, select "quick search," then key in the appropriate RME identification number. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (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 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. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On February 4, 2003, PADEP submitted a formal SIP revision that consists of source-specific operating permits and/or plan approvals issued by PADEP to establish and require RACT pursuant to the Commonwealth's SIP-approved generic RACT regulations. On March 30, 2005 (70 FR 16115), EPA published a direct final rule (DFR) approving revisions to PADEP-issued operating permits which establish and require RACT for five individual sources. The following table identifies the sources and the individual plan approvals (PAs) and operating permits (OPs) which are the subject of this rulemaking.

PENNSYLVANIA—VOC AND NO<sub>x</sub> RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source's name	County	Plan approval (PA #) operating permit (OP #)	Source type	"Major source" pollutant
R.H. Sheppard Co., Inc .....	York .....	67-2016 .....	Foundry operations .....	VOC
Wheatland Tube Co .....	Mercer .....	OP 43-182 .....	Steel pipe manufacturing .....	VOC
Transcontinental Gas Pipeline Corp .....	Potter .....	OP-53-0006 .....	Natural gas units .....	VOC/NO <sub>x</sub>
Transcontinental Gas Pipeline Corp .....	Columbia .....	OP-19-0004 .....	Natural gas-fired engines .....	VOC/NO <sub>x</sub>
Transcontinental Gas Pipeline Corp .....	Lycoming .....	PA-41-0005A .....	Natural gas-fired engines .....	VOC/NO <sub>x</sub>

An explanation of the CAA's RACT requirements as they apply to the Commonwealth and EPA's rationale for approving these SIP revisions were provided in the DFR and will not be restated here. In accordance with direct final rulemaking procedures, on March 30, 2005 (70 FR 16203), EPA also published a companion notice of

proposed rulemaking (NPR) on these SIP revisions inviting interested parties to comment on the DFR. Timely adverse comments were submitted on EPA's March 30, 2005 DFR.

On May 26, 2005 (70 FR 30377), due to receipt of the adverse comments submitted in response to the DFR, EPA published a withdrawal of the DFR. A

summary of those comments and EPA's responses are provided in Section II of this document.

**II. Summary of Public Comments and EPA Responses**

*Comment:* On April 9, 2005, a citizen submitted adverse comments on EPA's DFR notice approving PADEP's VOC

and NO<sub>x</sub> RACT determinations for five individual sources. The commenter states that all regulations for sources of air pollution in Pennsylvania impact the air quality in New Jersey and New York, that Pennsylvania's standards should be set to the highest level available and should be more rigorous than those developed as RACT for these sources. The commenter also states that the word "reasonable" [sic] be deleted before "available" in the phrase "reasonably available control technology," in order to avoid billions of dollars in costs to taxpayers in litigation over defining what is reasonable. The commenter also accuses EPA of embarking on a campaign to kill Americans with air laden with lead and mercury and that deformed babies are being born.

**Response:** The rulemaking at issue is limited in scope and addresses the CAA section 182(b)(1) RACT requirements for sources located in the ozone nonattainment area classified as moderate or above. The commenter did not comment specifically on the RACT determinations for the five individual sources and did not submit any supporting technical data or information to support that the standards for the five individual sources do not represent RACT. Rather, the commenter makes broad statements alleging (1) that the regulations should be more stringent than those required under the Act, (2) that the CAA should be amended to remove the term "reasonable" [sic] from the CAA phrase "reasonably available control technology," and (3) that the current administration is not sufficiently regulating mercury and lead. These comments are not "significant comments" that to which EPA needs to respond. *Whitman v. American Trucking Ass'n.*, 531 U.S. 457, n.2 at 471 (2001) (Under the CAA, EPA need only respond to significant comments, *i.e.*, comments relevant to EPA's decision). Mere "assertions that in the opinions of the commenter the Agency got it wrong," are not relevant comments warranting a response. *International Fabricare Inst. v. EPA*, 972 F.2d 384, 391 (D.C. Cir. 1992). As to the first comment, that the rules should be more stringent than required under the Act, EPA has no authority to mandate that a State regulate more stringently than required. Under the CAA's bifurcated scheme, the State is responsible for choosing how a source must be regulated for purposes of attaining the NAAQS and EPA's role is limited in reviewing the State's choice to ensure it meets the minimum statutory requirements. Here, as is clear from the commenter's first two points,

the commenter is not claiming that the regulations do not meet the statutory minimum, but rather that the statute does not require enough. EPA has no authority to modify the statute, as requested by the commenter nor does EPA have authority to require that the State to regulate more stringently than required by the statute. The CAA is based upon "cooperative federalism," which contemplates that each State will develop its own SIP, and that States retain a large degree of flexibility in choosing which sources to control and to what degree. EPA must approve a State's plan if it meets the "minimum requirements of the CAA. *Union Elec. Co. v. EPA*, 427 U.S. 246, 264-266 (1976).

As to the commenter's third point, the rulemaking at issue creates additional, Federally enforceable controls for VOCs and NO<sub>x</sub>. This rulemaking does not address any adverse health effects due to mercury or lead in New Jersey, New York or elsewhere. Comments regarding the ill effects of those pollutants are not relevant to this rulemaking.

### III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP on February 4, 2003 to establish and require VOC and NO<sub>x</sub> RACT for five major sources pursuant to the Commonwealth's SIP-approved generic RACT regulations.

### IV. Statutory and Executive Order Reviews

#### 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 (Pub. L. 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 five 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 October 24, 2005. 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 source-specific VOC and NO<sub>x</sub> RACT requirements for five sources in the Commonwealth of Pennsylvania 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 17, 2005.  
**Donald S. Welsh,**  
*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. In § 52.2020, the table in paragraph (d)(1) is amended by adding the entries for R.H. Sheppard Co., Inc., Wheatland Tube Company, and three Transcontinental Gas Pipeline Corporations at the end of the table to read as follows:

**§ 52.2020 Identification of plan.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
R.H. Sheppard Co., Inc	67-2016	York	8/4/95	8/24/05	52.2020(d)(1)(i)
Wheatland Tube Company	OP 43-182	Mercer	7/26/95	8/24/05	52.2020(d)(1)(i)
Transcontinental Gas Pipeline Corporation.	OP-53-0006	Potter	10/13/95	8/24/05	52.2020(d)(1)(i)
Transcontinental Gas Pipeline Corporation.	OP-19-0004	Columbia	5/30/95	8/24/05	52.2020(d)(1)(i)
Transcontinental Gas Pipeline Corporation.	PA-41-0005A	Lycoming	8/9/95	8/24/05	52.2020(d)(1)(i)

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[R05-OAR-2005-MN-0002; FRL-7958-3]

**Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Withdrawal of Direct Final Rule**

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to the receipt of an adverse comment the EPA is withdrawing the July 1, 2005 (70 FR 38025), direct final rule approving

revisions to the sulfur dioxide requirements for Flint Hills Resources, L.P. of Dakota County, Minnesota. In the direct final rule, EPA stated that if adverse comments were submitted by August 1, 2005, the rule would be withdrawn and not take effect. On July 28, 2005, EPA received a comment from the Leech Lake Band of Ojibwe. EPA believes the comment is adverse and, therefore, EPA is withdrawing the direct final rule. EPA will address the comment in a subsequent final action based upon the proposed action also published on July 1, 2005 (70 FR 38071). EPA will not institute a second comment period on this action.

**DATES:** The direct final rule published at 70 FR 38025 on July 1, 2005 is withdrawn as of August 24, 2005.

**FOR FURTHER INFORMATION CONTACT:** Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch

(AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886-6524, e-mail: [rau.matthew@epa.gov](mailto:rau.matthew@epa.gov).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

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

Dated: August 8, 2005.

**Norman R. Niedergang,**  
*Acting Regional Administrator, Region 5.*

**PART 52—[AMENDED]**

**§ 52.1220 [Amended]**

Accordingly, the revision of 40 CFR 52.1220(d) (which published in the **Federal Register** on July 1, 2005 at 70