Environmental Protection Agency (EPA) submitting Indiana's revisions to the ozone SIP.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY60–257a, FRL–7519–8]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for Specific Sources in the State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is announcing approval of a revision to the State Implementation Plan (SIP) for ozone submitted by the State of New York. This revision consists of a source-specific reasonably available control technology (RACT) determination for controlling oxides of nitrogen (NO_X) from eighteen units at three facilities owned by Tenneco Gas Corporation in New York. This direct final rule approves the source-specific RACT determination that was made by New York in accordance with provisions of its regulation. The intended effect of this rulemaking is to approve source-specific emission limitations required by the Clean Air Act.

DATES: This direct final rule is effective on September 19, 2003 without further notice, unless EPA receives adverse comment by August 20, 2003. If an adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866. Electronic comments could be sent either to *Werner.Raymond@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. Please follow the on-line instructions for submitting comments. Copies of the State submittals are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. New York Department of Environmental Conservation, Division of Air Resources, 625 Broadway, 2nd Floor, Albany, New York 12233. Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102T), 1301 Constitution Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella (*Gardella.Anthony@epa.gov*) or Richard Ruvo *(Ruvo.Richard@epa.gov),* Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: The following table of contents describes the format for the Supplementary Information section:

I. What Action Is EPA Taking Today?

EPA is approving a revision to New York's ozone SIP submitted on November 20, 1996 as supplemented on February 24, 1997. The SIP revision addresses specific sources that were submitted by New York in response to the Clean Air Act (CAA) requirement that states require Reasonably Available Control Technology (RACT) at all major stationary sources of NO_X. The SIP revision consists of a source-specific NO_X RACT determination for controlling oxides of nitrogen (NO_X) from eighteen gas-fired reciprocating engines, located at three compressor stations in New York State, that are owned/operated by Tenneco Gas Corporation (also known as Tenneco Gas Pipeline Company and Tennessee Gas Pipeline Company).

II. What Are EPA's Findings of Each State Submittal?

The following is a summary of EPA's finding for a source-specific SIP revision for the Tenneco Gas Corporation's eighteen stationary internal combustion engines at three facilities. Tenneco Gas sought approval of, and New York agreed to, NO_X RACT emission limits higher than that which are established in Subpart 227–2. It should be noted that EPA is only acting on the permitted emission rates and conditions of approval related to emissions of NO_X; action is not being taken on any other pollutants which may be permitted by New York with regard to these sources.

Tenneco Gas Corporation (Tenneco Gas Pipeline Company or Tennessee Gas Pipeline Company)

Tenneco Gas operates six 1400-horsepower reciprocating engines at the Hamburg (Eden) Compressor Station in Erie County, six 1400-horsepower engines at the Nassau (Chatham) Compressor Station in Columbia County, and five 1400-horsepower and one 3500-horsepower engine (Worthington model ML–12) at the West Winfield Station in Herkimer County. All 18 units are gas-fired reciprocating lean-burn internal combustion engines. The facility's RACT analysis concluded, and New York agreed, that RACT for the seventeen 1400-horsepower engines (Worthington model UTC–165) is low emission combustion, consisting of a pre-combustion chamber with modified turbochargers, whereas RACT for the one 3500-horsepower engine (Worthington ML–12) is timing controls, new air-to-fuel ratio controls and modifications of the turbochargers. The alternative NO_X emission limit for each of the seventeen 1400-horsepower engines is 7.0 grams per horsepower-hour and for the one 3500-horsepower engine is 13.3 grams per horsepower-hour.

III. What Are the Clean Air Act Requirements for NO_X RACT?

The CAA required certain states to develop RACT regulations for major stationary sources of NO_X and to provide for the implementation of the required measures as soon as practicable but no later than May 31, 1995. Under the CAA, the definition of major stationary source is based on the tons per year (tpy) 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_X is considered to be one which emits or has the potential to emit 100 tpy or more of NO_X and is subject to the requirements of a moderate nonattainment area. New York is within the Northeast ozone transport region

established by section 184(a) of the Act. New York has defined a major stationary source of NO_X as a source which has the potential to emit 25 tpy in the New York City and lower Orange County metropolitan areas and 100 tpy in the rest of the State. Consequently, all major stationary sources of NO_X within the State of New York are required to implement RACT no later than May 31, 1995. For detailed information on the CAA requirements for NO_X RACT see the Technical Support Document prepared for today's action.

IV. What Are New York's Regulatory Requirements for NO_X RACT?

A. EPA Approval of New York's NO_X RACT Regulation

On January 20, 1994, New York submitted to EPA for approval, as a revision to the SIP, 6 NYCRR Subpart 227–2, the State's NO_X RACT plan entitled ''Reasonably Available Control Technology For Oxides of Nitrogen (NO_X RACT)—Stationary Combustion Installations.'' Subpart 227–2 provides the NO_X RACT requirements for combustion sources in New York and it became effective 30-days after being adopted on January 19, 1994. On April 29, 1999, New York submitted amendments to Subpart 227–2 as part of the State's NO_X Budget Trading Program (Part 227–3) SIP revision. On April 28, 2000, the EPA final approval action on the two SIP revisions for Subpart 227–2 was published in the **Federal Register** (65 FR 24875).

On April 3, 2000, New York submitted to EPA for approval additional amendments to Subpart 227–2 as part of the State's NO_X Budget Trading Program SIP revision (Part 204). On May 22, 2001, the EPA final approval action on the April 2000 submittal was published in the **Federal Register** (66 FR 28059).

B. Case-by-Case NO_X RACT Determinations

Provisions within Subpart 227–2 establish a procedure for a case-by-case determination of what represents RACT for an item of equipment or source operation. This procedure is applicable in two situations: (1) If the major NO_X facility contains any source operation or item of equipment of a category not specifically regulated in Subpart 227–2, or (2) if the owner or operator of a source operation or item of equipment of a category that is regulated in Subpart 227–2 seeks approval of an alternative maximum allowable emission limit.

Subpart 227–2 requires the owners and/or operators of the affected facility to submit either a RACT proposal if they are not covered by specific emission limitations or a request for an alternative maximum allowable emission limit if they are covered by specific emission limitations. For each situation, the owners/operators must include a technical and economic feasibility analysis of the possible alternative control measures. RACT determinations for an alternative maximum allowable emission limit must consider alternative control strategies (*i.e.*, system wide averaging and fuel switching) in addition to considering control technologies (*e.g.*, low NO_X burners). In either case, Subpart 227–2 provides for New York to establish emission limits based upon a RACT determination specific to the facility. The resulting alternative maximum allowable emission limit must be submitted to EPA for approval as a SIP revision.

V. What Is EPA's Analysis of the State Submittal?

The source specific SIP revision that is the subject of this action was adopted by New York in August 1995 and February 1997, and found by EPA to be administratively and technically complete. The SIP revision was a request by New York for EPA approval of alternative emission limits in accordance with provisions of Subpart 227–2 for stationary combustion sources. Prior to adoption, New York published its proposed RACT determinations in the State's ''Environmental Notice Bulletin'' and provided 30 days for public comment and an opportunity to request a public hearing. There were no requests for public hearings and New York reviewed and responded to all comments made. New York determined that the alternative maximum allowable emission limits proposed by the owner conform with the applicable provisions of Subpart 227–2. New York has issued to the owner a revised permit to construct/certificate to operate and/or special permit conditions incorporating approved permit conditions which are fully enforceable by the State and which contain conditions consistent with Subpart 227–2. These permitted documents are identified in the ''Incorporation by reference'' section at the end of this rulemaking.

EPA has determined that the NO_X emission limits identified in New York's approved permits to construct/certificates to operate and/or special permit conditions represent RACT for each source identified in this action. The permit conditions include emission limits, work practice standards, testing, monitoring, and record keeping/reporting requirements. These permit conditions are consistent with the NO_X RACT requirements specified in Subpart 227–2 and conform to EPA's NO_X RACT guidance. Therefore, EPA is approving the source-specific SIP revision submitted by New York dated November 20, 1996, as supplemented on February 24, 1997.

EPA's evaluation of the RACT submittal is detailed in a document entitled ''Technical Support Document-NO_X RACT Source Specific SIP Revisions-State of New York.'' A copy of that document is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

VI. What Is EPA's Conclusion?

The EPA is approving the source-specific compliance plans described above as RACT for the control of NO_X emissions from the eighteen sources located at three facilities identified in the this source-specific SIP revision. Please note that if EPA receives an adverse comment on an amendment, paragraph, or specific source addressed in this direct final rule and if the provision that relates to the adverse comment may be severed from the remainder of the rule, EPA may sever the provision and adopt as final those provisions of the rule that are not the subject of the adverse comment.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the same source-specific SIP revision should adverse comments be filed. This final rule will be effective September 19, 2003 without further notice unless the Agency receives relevant adverse comments by August 20, 2003.

If the EPA receives adverse comments, then EPA will publish a notice withdrawing the final rule or the portion to be severed from the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 19, 2003 and no further action will be taken on the proposed rule.

VII. Statutory and Executive Order Reviews

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.*).

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 this action under section 801 because this is a rule of particular applicability.

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 September 19, 2003. 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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 17, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations 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 HH—New York

■ 2. Section 52.1670 is amended by adding new paragraph (c)(102) to read as follows:

§ 52.1670 Identification of plan.

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(c) * * *

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(102) Revisions to the State Implementation Plan submitted by the New York State Department of Environmental Conservation on November 20, 1996 as supplemented on February 24, 1997.

(i) Incorporation by reference:

(A) Permits to Construct/Certificates to Operate: The following facilities have been issued permits to construct/certificates to operate and/or special permit conditions by New York State and such permits and/or certificates are incorporated for the purpose of establishing NO_X emission limits consistent with Subpart 227–2:

(*1*) Tenneco Gas Corporation's (also known as Tenneco Gas Pipeline Company and Tennessee Gas Pipeline Company) eighteen gas-fired reciprocating internal combustion engines, Erie, Columbia, and Herkimer Counties; Compressor Station #229 at Eden, NY: permits to construct and certificates to operate dated August 22, 1995 for emission points 0001A through 0006A; Compressor Station #254 at Chatham, NY: permits to construct and certificates to operate dated October 4, 1995 with attached Special Conditions dated September 15, 1995 for emission points 00001 through 00006; Compressor Station #245 at West Winfield, NY: Special (Permit) Conditions attached to New York State's letter dated February 24, 1997 for emission points 00001 through 00006.

(*2*) [Reserved]

(ii) Additional information—Documentation and information to support NO_X RACT alternative emission limits in two letters addressed to EPA from New York State Department of Environmental Conservation and dated as follows:

(*1*) November 20, 1996 letter to Ms. Kathleen C. Callahan, Director of the Division of Environmental Planning and Protection from Deputy Commissioner David Sterman providing a SIP revision for Tenneco Gas Pipeline Company.

(*2*) February 24, 1997 letter to Ronald Borsellino, Chief of the Air Programs Branch from Donald H. Spencer, P.E., providing supplemental information for Tenneco Gas Pipeline Company's Compressor Station #245.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 22, 24, 27, 73, 80, 90, 95 and 101

[WT Docket No. 97–82; FCC 03–98]

Competitive Bidding Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses five petitions for reconsideration filed in response to the Commission's Part 1 *Order on Reconsideration of the Third Report and Order, and Fifth Report and Order.* The Commission also adopts several minor modifications and revisions to certain part 1 general competitive bidding rules to provide specific guidance to auction participants and to streamline the competitive bidding regulations.

DATES: Effective September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Regina Martin, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*, adopted on April 22, 2003 and released on May 8, 2003. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

I. Overview

1. In the *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*, the Commission addresses five petitions for reconsideration filed in response to the Commission's *Order on Reconsideration of the Part 1 Third Report and Order*, 65 FR 52401 (August 29, 2000), and *Fifth Report and Order*, 65 FR 52323 (August 29, 2000), which clarified and amended the general competitive bidding rules for all auctionable services.

2. Specifically, in the *Order on Reconsideration of the Part 1 Fifth Report and Order*, the Commission:

- Clarifies that in calculating an applicant's gross revenues under the controlling interest standard, the personal net worth, including personal income, of its officers and directors will not be attributed to the applicant. To the extent that the officers and directors of the applicant are controlling interest holders of other entities, the Commission will attribute the gross revenues of those entities to the applicant.
- Establishes a narrow exemption for the officers and directors of a rural telephone cooperative so that the gross revenues of the affiliates of a rural telephone cooperative's officers and directors need not be attributed to the applicant. Specifically, the gross revenues of the affiliates of an applicant's officers and directors will not be attributed if either the applicant or a controlling interest, as the case may be, meets *all* of the following conditions: (i) The applicant (or the controlling interest) is validly organized as a cooperative pursuant to state law; (ii) the applicant (or the controlling interest) is a ''rural telephone company'' as defined by the Communications Act; and (iii) the applicant (or the controlling interest) is eligible for tax-exempt status under the Internal Revenue Code. However, the exemption will not apply if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interest's officers and directors) are available to the applicant.
- Declines to revise the controlling interest standard to exclude entities operating under control group structures.
- Modifies the Commission's part 1 default payment rule, § 1.2104(g)(2), to incorporate the combinatorial bidding default rule adopted in the *700 MHz Second Memorandum Opinion and Order*.
- Revises the part 1 rules to make certain conforming edits in the following areas: (i) License default; (ii) definition of consortium; (iii) women- and minority-owned businesses; (iv) clarification of the attribution rule; (v) ownership disclosure requirements; and (vi) short-form disclosure requirements for small or very small business consortiums. Additionally, technical edits are made to Commission rules that refer to service-specific competitive bidding rules that have been removed, revised, or modified.

3. In the *Second Order on Reconsideration of the Part 1 Third Report and Order*, the Commission:

- Dismisses a repetitive challenge to modifications to the installment payment rules adopted in the *Part 1 Third Report and Order*, 63 FR 770 (January 7, 1998) and the *Order on Reconsideration of the Part 1 Third Report and Order*.
- Reorganizes § 1.2112(a) to move the requirement that each application fully disclose all ''real party or parties in interest'' into § 1.2112(a)(1). The Commission also conforms § 1.2112(a)(1) to the disclosure requirements as set forth in § 1.919(e) to ensure a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant.

II. Order on Reconsideration of the Part 1 Fifth Report and Order

A. Controlling Interest Standard

4. In the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000), the Commission adopted as its general attribution rule a controlling interest standard, § 1.2110(c)(2), to be used for determining which applicants are eligible for small business status. The attribution rule is significant because, among other things, it is used to determine which applicants qualify as small businesses and therefore, may apply for bidding credits if they are available in a particular service.

5. Under the controlling interest standard, the Commission attributes to the applicant the gross revenues of the applicant, its controlling interests, the applicant's affiliates, and the affiliates of the applicant's controlling interests, in assessing whether the applicant is eligible for the Commission's small business provisions. Section 1.2110(c)(2)(i) defines a controlling interest as including ''individuals or entities with either *de jure* or *de facto* control.'' Thus, there may be more than one ''controlling interest'' whose gross revenues must be counted. The premise