

health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, regarding the Philadelphia RACT requirements under the 1997 8-hour ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

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

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

Dated: June 3, 2016.

**Shawn M. Garvin,**

*Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2015-0238, FRL-9947-68-Region 1]

#### Air Plan Approval; CT; NO<sub>x</sub> Emission Trading Orders as Single Source SIP Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision continues to allow facilities to create and/or use emission credits using NO<sub>x</sub> Emission Trading and Agreement Orders (TAOs) to comply with the NO<sub>x</sub> emission limits required by Regulations of Connecticut State Agencies (RCSA) section 22a-174-22 (Control of Nitrogen Oxides). The intended effect of this action is to propose approval of the individual trading orders to allow facilities to determine the most cost-effective way to comply with the state regulation. This action is being taken in accordance with the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before July 15, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R01-OAR-2015-0238 at <http://www.regulations.gov>, or via email to [Dahl.Donald@epa.gov](mailto:Dahl.Donald@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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#### I. Background and Purpose

On November 15, 2011, the Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted a formal revision to its State Implementation Plan (SIP). This SIP revision consists of eighty-nine source-specific Trading Agreement and Orders (TAOs) that allow twenty-four individual stationary sources of nitrogen oxide (NO<sub>x</sub>) emissions to create and/or trade NO<sub>x</sub> emission credits in order to

ensure more effective compliance with EPA SIP-approved state regulations for reducing NO<sub>x</sub> emissions. We previously approved source-specific TAOs of the same kind issued by CT DEEP under this program for these same sources on September 28, 1999 (64 FR 52233), March 23, 2001 (66 FR 16135), and September 9, 2013 (78 FR 54962). The SIP submittal also includes Consent Order 8029A issued to Hamilton Sundstrand which addresses Volatile Organic Compound (VOC) emissions.

In our September 9, 2013 approval, EPA acted on most of the TAOs contained in CT DEEP’s July 1, 2004 SIP revision submission to EPA. At that time, EPA did not act on (1) TAO 8021 issued to Pfizer; (2) TAO 8246 issued to Sikorsky Aircraft; (3) TAO 8110A issued to Yale University; and (4) Consent Order 7019A issued to Hamilton Sundstrand Corporation. On May 29, 2015, CT DEEP revised its July 1, 2004 SIP revision submittal to EPA by modifying TAO 8110A. Today we are acting on the modified version of TAO 8110A. EPA will take action on TAOs 8246 and 8021 at a future date. Lastly, on April 22, 2014 the CT DEEP withdrew Consent Order 7019A from the 2004 SIP submittal.

The CAA requires states to develop Reasonably Available Control Technology (RACT) regulations for all major stationary sources of NO<sub>x</sub> in areas which have been classified as “moderate,” “serious,” “severe,” and “extreme” as well as in all areas of the Ozone Transport Region (OTR). EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762; September 17, 1979). This requirement is established by sections 182(b)(2), 182(f), and 184(b) of the CAA.

Connecticut, as part of the OTR as well as being designated nonattainment for ozone, established NO<sub>x</sub> emission limits for existing major sources in order to meet the RACT requirement. The NO<sub>x</sub> emission limits are codified in Regulations of Connecticut State Agencies (RCSA) section 22a-174-22 (Control of Nitrogen Oxides). These state regulations were last approved by EPA into the Connecticut SIP on October 6, 1997. (See 62 FR 52016).

As stated above, when determining what constitutes RACT for a source, a state and EPA need to consider both technology and economic feasibility. For example, it is technically possible for a source to install pollution control devices in series to further reduce emissions. However, if a state and EPA

determined that such an installation would be economically infeasible in relation to the additional emissions reductions achieved, then the RACT emission limit under Connecticut's regulations could legitimately be established at a higher rate than would be achieved by installing control devices in series.

RCSA 22a-174-22 establishes NO<sub>x</sub> emission limits for several types of fossil-fuel firing emission units. RCSA 22a-174-38 establishes NO<sub>x</sub> emission limits for municipal waste combustors. Since RACT is determined on a source-by-source basis, a fossil-fuel firing source may under Connecticut's regulations request a higher emission limit by making a demonstration to the CT DEEP that it is either technologically or economically infeasible, or both, to meet the NO<sub>x</sub> RACT limit in RCSA 22a-174-22. CT DEEP's use of the NO<sub>x</sub> TAOs has rendered the need for higher source-specific emission rates, based on demonstrations of technological and/or economic feasibility, less frequent, thus having the effect of reducing overall NO<sub>x</sub> emissions to a greater degree than would be the case without the TAO trading mechanism. For example, in its RACT Analysis for the 2008 ozone national ambient air quality standard (NAAQS) submitted to EPA on July 18, 2014 (2014 RACT Analysis), CT DEEP stated that "[t]he traditional cost effectiveness (\$/ton of NO<sub>x</sub> emitted) evaluation of controlling NO<sub>x</sub> emissions from the load-following boilers and uncontrolled turbines will not address high electric demand day (HEDD) emissions because the addition of controls on existing units that operate infrequently will nearly always result in a cost of control that is not reasonable."

Accordingly, as an alternative to these potential single source SIP determinations, which can lead to higher levels of NO<sub>x</sub> emissions, Connecticut established an emission trading program in RCSA 22a-174-22(j) for fossil-fuel firing emission units and RCSA 22a-174-38(d) for municipal waste combustors. These two SIP-approved regulations allow a source to participate in Connecticut's NO<sub>x</sub> emission trading program using two different mechanisms. RCSA 22a-174-22(j) requires a source that wants to participate in the program to enter into a TAO with the CT DEEP. RCSA 22a-174-38(d) does not require a municipal waste combustor (MWC) to enter into a TAO and instead contains specific requirements that an MWC must meet in order to create a NO<sub>x</sub> emission reduction credit that can be used in Connecticut's trading program. These emission trading programs provide

incentives for some facilities subject to the NO<sub>x</sub> emission limits in either RCSA 22a-174-22 or RCSA 22a-174-38 to reduce their NO<sub>x</sub> emissions beyond what is required to meet RACT by allowing them to create discrete emission reduction credits (DERCs).<sup>1</sup> The DERCs may then be purchased by other sources which otherwise may have needed a higher source-specific NO<sub>x</sub> emission limit due to technological and/or economic infeasibility. DERCs are created when a facility installs and operates a control device which reduces emissions beyond what is required to meet the NO<sub>x</sub> emission limitations in RCSA 22a-174-22 or in RCSA 22a-174-38(d). Once a DERC is created, it can then be sold to another source that is unable to meet the NO<sub>x</sub> limit in RCSA 22a-174-22.<sup>2</sup> The incentive to over control leads to a greater NO<sub>x</sub> emission reduction than the reduction that would have occurred if Connecticut had to establish a higher NO<sub>x</sub> emission limit for those sources which demonstrated that they would be unable to meet the NO<sub>x</sub> limits in RCSA 22a-174-22 due to cost or technological infeasibility, or both.

At the time Connecticut instituted the NO<sub>x</sub> emission trading program in 1995, the sources generating NO<sub>x</sub> emission credits in Connecticut were reducing their emissions to levels below those required by Connecticut's RACT regulations. Since that time, in more recent years, other states have established NO<sub>x</sub> RACT emission limits for emission units similar to those in Connecticut, at levels lower than the emission limits in RCSA 22a-174-22 which are currently approved in the Connecticut SIP as meeting RACT for the 1997 ozone standard. CT DEEP is now required by the CAA to recertify that its regulations meet RACT for the 2008 ozone standard. During this recertification process, CT DEEP recognized the fact the NO<sub>x</sub> emission limits contained in RCSA 22a-174-22 may not be stringent enough for the 2008 ozone standard by stating in its 2014 RACT Analysis that "[w]hile the combination of emissions limits and trading initially led (sic) to significant system-wide emission reductions throughout Connecticut in 1995, the efforts to "over-control" to generate credits are now merely RACT in many

other states. DEEP must therefore consider elimination of the single source emissions trading program, as well as more stringent emission limits, to meet current RACT levels and realize additional reductions in Connecticut emissions." In other words, CT DEEP's NO<sub>x</sub> emission trading program, as presently structured in RCSA 22a-174-22, may no longer be viable in the future to meet today's standards for RACT, as emission limits in RCSA 22a-174-22 may need to be revised in order for CT DEEP to demonstrate attainment with the 2008 ozone standard. In fact, CT DEEP's July 1, 2014 RACT submittal states, "DEEP commits to perform further evaluation of Connecticut's municipal waste combustor and fuel-burning source NO<sub>x</sub> requirements and to seek any regulatory revisions necessary to revise the control requirements to a RACT level for the 2008 ozone NAAQS," and also states, "DEEP commits to begin a review of NO<sub>x</sub> emissions and emissions controls for the sources now subject to RCSA section 22a-174-22 with the goal of developing changes to RCSA section 22a-174-22 sufficient to satisfy RACT under the 2008 ozone NAAQS."<sup>3</sup> Therefore, EPA is not deciding if the NO<sub>x</sub> trading program allowed by RCSA 22a-174-22 is sufficient to meet RACT for the 2008 ozone standard and is not taking any action on Connecticut's July 1, 2014 RACT SIP revision in this action. Rather, EPA will address those issues in a future rulemaking.

Banked emission reduction credits must be correctly accounted for in attainment plans in order to prevent unplanned future emissions. On February 1, 2008, Connecticut submitted its 2002 to 2008 reasonable further progress (RFP) plan and 2002 base year inventory to EPA as part of its attainment demonstration SIP submittal for the 1997 8-hr ozone standard. On October 14, 2009, Connecticut submitted a revision to the RFP plan. EPA approved Connecticut's RFP plan, as revised, on August 22, 2012 (77 FR 50595). In the October 14, 2009 revision, Connecticut explained that any DERCs that existed in the base year 2002 will have expired by the end of the RFP period in 2008. This is based on the fact that under Connecticut's NO<sub>x</sub> emission trading program, DERCs expire within five years of creation. Since any DERCs existing in 2002 would not be available for use in 2008, banked DERCs need not be accounted for in a state's RFP

<sup>1</sup> The NO<sub>x</sub> emission credits created pursuant to RCSA 22a-174-38(d) are referred to as emission reduction credits.

<sup>2</sup> RCSA 22a-174-38(d)(1) also allows a municipal waste combustor that commenced construction prior to December 20, 1989 to use emission credits created under RCSA 22a-174-38 to comply with the NO<sub>x</sub> emission limits contained in RCSA 22a-174-38(c)(8).

<sup>3</sup> Furthermore, CT DEEP is currently working with a RACT stakeholder workgroup on draft regulations. See [www.ct.gov/deep/cwp/view.asp?a=2684&q=546804&deepNav\\_GID=1619](http://www.ct.gov/deep/cwp/view.asp?a=2684&q=546804&deepNav_GID=1619).

analysis, and Connecticut has properly done that. Therefore, EPA is concluding the TAO's that we are proposing to approve into the SIP today have been properly accounted for in Connecticut's attainment plan.

With respect to the 2008 ozone standard, both Connecticut nonattainment areas were initially designated "marginal" nonattainment for this standard on May 21, 2012. (See 77 FR 30088). However, on May 4, 2016, EPA re-classified or "bumped-up" these areas to moderate nonattainment. (See 81 FR 26697). Connecticut will need to account for DERCS in its new RFP and attainment plans for this standard which must be submitted as expeditiously as practicable, but no later than January 1, 2017.

## II. Analysis of State Submission

EPA issued a guidance document "Improving Air Quality with Economic Incentive Programs" (EIP Guidance).<sup>4</sup> This guidance applies to discretionary economic incentive programs (EIPs). EPA's final action on these discretionary economic incentive programs occurs when EPA acts on a state's request to revise the SIP. EPA reviewed the source-specific TAOs with respect to the expectations of the EIP Guidance. EPA has concluded, after review and analysis of the source-specific TAOs, that they are consistent with the EIP Guidance. See the Technical Support Document in the docket for this action for EPA's analysis of why the TAO's are consistent with the EIP.

When EPA designated areas for the 2008 ozone standard, Connecticut was divided into two separate areas, the Greater Connecticut Area and the New York-N. New Jersey-Long Island NY-NJ-CT area. CT DEEP and EPA analyzed emission trading data for the period of time the TAOs were in effect to determine if more emission reduction credits were being used for compliance than were generated or created in any of Connecticut's two nonattainment areas. EPA has determined the TAOs have resulted in RACT equivalent emission reductions in each of the two nonattainment areas. See the Technical Support Document in the docket for this action for an explicit accounting of the emissions from each facility in each nonattainment area.

The TAOs being approved into Connecticut's SIP today are limited to facilities which have already been authorized in the past by the State to operate under a TAO and those TAOs continue to authorize the sources until

May 31, 2014 to create and/or use NO<sub>x</sub> emission credits and allow for unused NO<sub>x</sub> allowances to be converted into NO<sub>x</sub> emission credits. The TAOs previously issued by Connecticut to these facilities were approved by EPA into the Connecticut SIP on September 28, 1999 (64 FR 52233), March 23, 2001 (66 FR 16135), and September 9, 2013 (78 FR 54962). The reason the TAOs must be approved at this time for these same facilities is that the TAOs previously approved had all expired by May 1, 2007.

## III. Proposed Action

EPA is proposing to approve Connecticut's submitted SIP revision for the NO<sub>x</sub> TAOs submitted on November 15, 2011. EPA is not taking action on Consent Order 8029A issued to Hamilton Sundstrand Corporation. EPA will take action on this Consent Order at a later date. EPA is also proposing to approve TAO 8110A, submitted on July 1, 2004 and amended on May 29, 2015. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the ADDRESSES section of this **Federal Register**.

## IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

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

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

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

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

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

## List of Subjects in 40 CFR Part 52

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

Dated: May 31, 2016.

**H. Curtis Spalding,**

*Regional Administrator, EPA New England.*

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<sup>4</sup> See EPA-452/R-01-001, January 2001 at <https://www3.epa.gov/ttn/caaa/t1/memoranda/eipfin.pdf>.