designated available area at the same time, and the area cannot reasonably accommodate multiple occupancy, the superintendent will, whenever possible, direct the later-arriving group to relocate to another nearby designated available area.

(c) *Application for permit.* An application must provide:

(1) The name of the applicant or the name of the organization (if any);

(2) The date, time, duration, nature, and place of the proposed event;

(3) An estimate of the number of persons expected to attend;

(4) A statement of equipment and facilities to be used;

(5) Whether there is any reason to believe that there will be an attempt to disrupt, protest, or prevent the event; and

(6) Any other information required by the permit application form.

(d) The superintendant must not accept an application more than one year before the proposed event (including time required for set-up); applications received more than a year in advance will be returned to the applicant.

(e) *Processing the application.* The superintendent must issue a permit within ten days of receiving a complete and fully executed application unless:

(1) The superintendant has granted or will grant a prior application for a permit for the same time and place, and the activities authorized by that permit do not reasonably allow multiple occupancy of the particular area;

(2) It reasonably appears that the sale or distribution will present a clear and present danger to the public health and safety;

(3) The number of persons engaged in the sale or distribution exceeds the number that can reasonably be accommodated in the particular location applied for, considering such things as damage to park resources or facilities, impairment of a protected area's atmosphere of peace and tranquility, interference with program activities, or impairment of public use facilities;

(4) The location applied for has not been designated as available under § 2.51(c)(2);

(5) The application was submitted more than one year before the proposed event (including set-up); or

(6) The activity would constitute a violation of an applicable law or regulation.

(f) *Written denial of permit.* If a permit is denied, the superintendant will inform the applicant in writing of the denial and the reasons for it.

(g) *Permit conditions.* The permit may contain conditions reasonably consistent with the requirements of public health and safety, protection of park resources, and the use of the park area for the purposes for which it was established.

(h) *Permit duration.* (1) Permits may be issued for a maximum of 14 consecutive days.

(2) A permit may be extended for up to 14 days, but a new application must be submitted for each extension requested.

(3) The extension may be denied if another applicant has requested use of the same location and the location cannot reasonably accommodate multiple occupancy.

(i) *Misrepresentation.* It is prohibited for persons engaged in the sale or distribution of printed matter under this section to misrepresent the purposes or affiliations of those engaged in the sale or distribution, or to misrepresent whether the printed matter is available without cost or donation.

(j) *Violation prohibited.* Violation of these regulations or the terms of the permit is prohibited.

(k) *Permit revocation, termination of small group exception.* (1) The superintendent may revoke a permit for any violation of its terms and conditions.

(2) The superintendent may revoke a permit, or order a small group permit exception activity to cease, when any of the conditions listed in paragraph (e) of this section exist.

(3) The superintendent will make the revocation or order to cease in writing, with the reasons clearly set forth. In emergency circumstances the superintendent will make an immediate verbal revocation or order to cease, followed by written confirmation within 72 hours.

Dated: October 1, 2010.

Will Shafroth,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–26392 Filed 10–15–10; 4:15 pm]

BILLING CODE 4312–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0587; EPA–R05–OAR–2009–0732; FRL–9205–8]

Approval of Implementation Plans of Wisconsin: Nitrogen Oxides Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Wisconsin State Implementation Plan (SIP) submitted on June 12, 2007 and on September 14, 2009. These revisions incorporate provisions related to the implementation of nitrogen oxides (NO_X) Reasonably Available Control Technology (RACT) for major sources in the Milwaukee-Racine and Sheboygan County ozone nonattainment areas. EPA is approving SIP revisions that address the NO_X RACT requirements found in the Clean Air Act (CAA). EPA is also approving other miscellaneous rule changes that affect NO_X regulations that were previously adopted and approved into the SIP.

DATES: This final rule is effective November 18, 2010.

ADDRESSES: EPA has established the following dockets for this action: Docket ID Nos. EPA–R05–OAR–2007–0587 and EPA–R05–OAR–2009–0732. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, 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 *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. We recommend that you telephone Douglas Aburano, Environmental Engineer, at (312) 353–6960, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6960, *aburano.douglas@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

Table of Contents

I. What is the background for this rule?

The CAA amendments of 1990 introduced the requirement for existing major stationary sources of NO_X in nonattainment areas that are classified as moderate or above to install and operate NO_X RACT. Specifically, section 182(b)(2) of the CAA requires states to adopt RACT for all major sources of VOC in ozone nonattainment areas classified as moderate or above, and section 182(f) requires that the RACT provisions for VOC also apply to major stationary sources of NO_X. "RACT" is defined 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).

Section 302 of the CAA defines a major stationary source as any facility which has the potential to emit 100 tons per year of any air pollutant. For serious ozone nonattainment areas, a major source is defined by section 182(c) as a source that has the potential to emit 50 tons of NO_X per year. For severe ozone nonattainment areas, a major source is defined by section 182(d) as a source that has the potential to emit 25 tons per year.

The requirements for NO_X RACT can be waived under section 182(f) of the CAA. See EPA memorandum dated December 16, 1993, from John Seitz, Director, Office of Air Quality Planning and Standards to Air Division Directors entitled, "Guideline for Determining the Applicability of Nitrogen Oxide Requirements Under Section 182(f)." Waivers can be granted if the Administrator determines that any one of the following tests is met:

1. In any area, the net air quality benefits are greater in the absence of NO_X reductions from the sources concerned;

2. In nonattainment areas not within an ozone transport region, additional NO_X reductions would not contribute to ozone attainment in the area; or

3. In nonattainment areas within an ozone transport region, additional NO_X reductions would not produce net ozone air quality benefits in the transport region.

Wisconsin received a NO_X RACT waiver under the 1-hour ozone standard on January 26, 1996 and, therefore, was not required to adopt NO_X RACT regulations for that standard. However, there are areas in Wisconsin that are nonattainment for the 1997 8-hour ozone standard. These areas were designated nonattainment on June 15, 2004 (69 FR 23947). Because Wisconsin does not have a waiver for the NO_X requirements for the 1997 8-hour ozone standard, NO_X RACT rules are required in the areas that are classified as moderate or above.

Since the only areas in Wisconsin that are required to adopt NO_X RACT are classified as moderate for the 1997 8-hour ozone standard, the rules that have been adopted only need to address sources with the potential to emit 100 tons per year. The NO_X RACT rules were to have been submitted by September 15, 2006.

On June 12, 2007, Wisconsin submitted rules and supporting material for addressing the NO_X RACT requirements. The Wisconsin Department of Natural Resources (WDNR) held a public hearing for these rules on March 15, 2007. WDNR also provided a comment period that was announced on February 2, 2007, and ended on March 19, 2007.

On September 14, 2009, Wisconsin submitted a supplemental SIP revision and additional supporting material for addressing the NO_X RACT requirements. WDNR held a public hearing for these rules on December 5, 2008, and also provided a comment period that was announced on October 30, 2008, and ended on December 10, 2008.

On March 24, 2010, EPA proposed to approve Wisconsin's submittals as meeting the section 182(f) requirements for NO_X RACT. 75 FR 14116. In the same action, EPA also proposed to approve other non-RACT NO_X rules that Wisconsin submitted for approval into the SIP. These non-RACT rules that Wisconsin submitted for approval were primarily miscellaneous changes to the NO_X rules that were approved into the SIP to meet Reasonable Further Progress requirements for the 1990 1-hour ozone standard. The primary background for today's actions is contained in EPA's March 24, 2010, proposal to approve Wisconsin's NO_X RACT submittal.

II. What comments did we receive on the proposed rule?

EPA provided a 30-day review and comment period. The comment period closed on April 12, 2010. During the comment period, we received comments from three individuals. These comments are summarized and addressed below.

Comment 1

A commenter notes that the correct reference in the Wisconsin Administrative Code for the "Clean Air Interstate Rule (CAIR) equals RACT" provision is not 428.25(3), as identified in the proposal to approve the Wisconsin NO_X RACT rules published on March 24, 2010 (75 FR 14116), but rather it is 428.25(2).

Response 1

EPA recognizes this typographical error and will correct the reference in this final approval. EPA is, however, not rulemaking on the CAIR equals RACT provisions at this time. See discussion under Comment 2.

Comment 2

A commenter claims that the EPA's CAIR equals RACT determination found in the "Phase 2 of the Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Notice of Reconsideration" (72 FR 31730), "is not mere "guidance"; it was and is a rule that is binding on EPA." The commenter goes on to state that, "The D.C. Circuit's remand of CAIR did nothing to impair the continued applicability of the CAIR=RACT rule."

The commenter, therefore, opposes EPA's decision to not rulemake on Wisconsin's rule 428.25(2) and suggests that EPA should instead promptly approve that provision as part of Wisconsin's NO_X RACT SIP.

Response 2

The D.C. Circuit remanded CAIR to EPA and, because there is uncertainty regarding the rule that will replace CAIR, it is not appropriate to move forward with the approval of this portion of Wisconsin's NO_X RACT rule. We should, however, point out that this is not a disapproval of rule 428.25(2). We are merely deferring making a decision now and will revisit rule 428.25(2) once EPA promulgates a rule that replaces CAIR.

On July 6, 2010, EPA Administrator Lisa P. Jackson signed a proposed replacement rule for CAIR. In the event that this CAIR replacement rule is finalized, Wisconsin's rule 428.25(2) must reference and conform to the new rule.

Comment 3

The commenter asserts that EPA has a well-known and longstanding definition of RACT, citing various **Federal Registers** and a memorandum from Roger Stelow, Assistant Administrator of Air and Waste Management, United States Environmental Protection Agency, to Regional Administrators (December 9, 1979). The definition of RACT that the commenter cites is, "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." (emphasis added). The commenter uses this point as the basis for stating that, "RACT must apply to each individual source, based on the technological feasibility and cost of control at that source."

Response 3

While we do not disagree with the cited definition of RACT, we do not view RACT as a program that should necessarily be evaluated on a facility-by-facility basis. The Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 speaks to this very issue. *See* section 4.2 *General Definition of RACT* (57 FR 55624):

> The 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). Although EPA has historically recommended source-category-wide presumptive RACT limits, and plans to continue that practice, decisions on RACT may be made on a case-by-case basis* * *

The emission limits found in Wisconsin's rule NR 428.22 "Emission limitation requirements" are source-category wide limits that EPA has traditionally accepted and approved, and there is no requirement for RACT to be evaluated on a facility-by-facility basis other than as an exception to the general rule.

Comment 4

The commenter points out that, "RACT must be applied to sources within the non-attainment area."

Response 4

We agree with this comment and we would respond that the RACT requirements apply in the nonattainment area.

Comment 5

The commenter states that, "Other states are also requiring much lower emission rates than proposed in DNR's draft rule. For example, Texas adopted rules in 2001 that require coal-fired power plants to achieve the following emission rates:

- 0.033 lb/MMBtu in the Dallas/Ft. Worth area on a 24-hour average.
- 0.050 lb/MMBtu on a 30-day average for wall fired units in the Houston/Galveston area.
- 0.045 lb/MMBtu on a 30-day average for tangential-fired units.

30 Tex. Admin. Code Section 117.106."

Response 5

We do not dispute that these limits are lower than the 0.10–0.18 lb/mmBtu limits on a 30-day average for coal-fired units that Wisconsin has adopted. It should, however, be recognized that Texas adopted these NO_X limits for attainment purposes. Reductions necessary for attainment will vary from nonattainment area to nonattainment area and will often require greater reductions than RACT level reductions. Texas recognizes that the limits the commenter pointed to are more stringent than RACT levels. The rule immediately preceding the citation provided by the commenter, 30 Tex. Admin. Code Code Section 117.105, "Emission Specifications for Reasonably Available Control Technology (RACT)," contains Texas' emission limits adopted to meet RACT. The RACT limits adopted by Texas for coal-fired units are in the 0.38–0.43 lb/mmBtu range on a 24-hour rolling average basis. While not directly comparable to the Wisconsin limits, because of the difference in averaging time, the Texas RACT limits are clearly much less stringent than the Texas limits the commenter pointed to which have been adopted for attainment purposes.

RACT limits are not meant to be the lowest achievable emission rates. The Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 addresses the issue of an acceptable emission limit. *See* section 4.6 *RACT for Certain Electric Utility Boilers* (57 FR 55626), "The EPA expects States, to the extent practicable, to demonstrate that the variety of emission controls adopted are consistent with the most effective level of combustion modification reasonably available for its individual affected sources." Presumptive limits (emission rates expressed in a lb/mm Btu basis) were listed for various utility boilers in this section:

- 0.45 for tangentially fired, coal burning,
- 0.50 for dry bottom wall fired (other than cell burner), coal burning,
- 0.20 for tangentially fired, gas/oil burning, and
- 0.30 for wall fired, gas/oil burning.

These limits were based on combustion modifications, the control technology that was deemed reasonably available at the time. Add-on controls like selective catalytic reduction (SCR) and selective non-catalytic reduction (SNCR) capable of achieving greater NO_X reductions than the presumptive NO_X limits were also evaluated but EPA chose to not base the presumptive limits on these controls and EPA chose to not set the limits at a lower point at that time.

To take into account the time that has passed since EPA set presumptive NO_X RACT limits for utility coal-fired boilers and other NO_X RACT technology guidance documents EPA issued in the mid-1990s, Wisconsin evaluated various control technologies on a source category-by-source category basis to determine what control level and emission limits are reasonably available today. Wisconsin re-evaluated coal-fired boiler limits and generally found that emission limits based on add-on control technology like selective catalytic reduction and selective non-catalytic reduction are now reasonably available. While Wisconsin did not adopt limits based on the lowest achievable emission rates based on these technologies, Wisconsin did adopt limits considered to be reasonably available based on capabilities and problems that are general to utility coal-fired boilers in Wisconsin.

Wisconsin also evaluated the cost-effectiveness of the control technologies on which the NO_X RACT limits were based. As described in the March 16, 1994, memorandum, "Cost-Effective Nitrogen Oxides (NO_X) Reasonably Available Control Technology (RACT)" from E. Kent Berry, Acting Director of EPA's Air Quality Management Division, "NO_X technologies with a cost-effectiveness range that overlaps the $160 to $1,300 range should, at minimum, be considered by States in the development of their NO_X RACT requirements." WDNR took the $1,300/ton figure and grew this out to the 2005 equivalent of roughly $2,000/ton using the consumer price index. WDNR took the additional step to increase the reasonable cost-effectiveness of controls upwards to $2,500/ton for evaluating RACT based on several considerations. The WDNR found $2,500/ton to be consistent with costs considered under NO_X RACT programs in other states including the NO_X RACT developed by Illinois concurrently with the Wisconsin rules. The WDNR also found $2,500/ton cost-effectiveness to encompass top-tier NO_X controls of selective catalytic reduction for most coal fire boilers, which is the largest source category of NO_X emissions affected by the rules. Applying this level of cost-effectiveness across the other affected source categories achieves comparability of RACT controls in a manner consistent with the 1994 memorandum.

In its evaluation of RACT for sources in Wisconsin, WDNR examined various control technologies that can reduce NO_X emissions and determined what is

reasonably achievable given the availability of these technologies, the type of source, the level of control that is generally achievable, and the costs associated with achieving the reductions associated with the technology.

EPA reviewed the method used by Wisconsin to update RACT limits for the 1997 8-hour ozone standard and found it to be appropriate. Therefore, EPA is approving the NO_X RACT limits adopted by Wisconsin.

Comment 6

The commenter indicates that SCR is capable of achieving emissions reductions from coal-fired power plants. Therefore, NO_X RACT emission rates should be lower than the limits adopted in Wisconsin's NO_X RACT rules.

Response 6

We do not dispute the fact that SCR is capable of achieving NO_X emission rates lower than the NO_X RACT limits adopted by Wisconsin. The question is whether or not Wisconsin appropriately evaluated emission limits and the costs associated with such controls on the affected facilities and arrived at limits suitable for NO_X RACT. We believe Wisconsin referred to the appropriate EPA guidance and set the limits in accordance with this guidance. *See* response to Comment 5 above.

Comment 7

The commenter suggests that the compliance margin used by Wisconsin should not have been used to calculate the emission limits for the sources subject to the NO_X RACT rules. The commenter states that, "There are two reasons that the compliance margin is unnecessary. First, there is a compliance margin built in to the existing rate limitations. By assuming a lower than 90% emissions control efficiency (some as low as 46%) for SCR technology, the rule already provides significant leeway for achieving a cost-effective emission rate * * * Second, the multi-unit and multi-facility averaging provided for in the Rule provides an additional cushion for facilities that are unable to meet the emission limitations."

Response 7

Wisconsin has adopted definitive NO_X limits for the various types of electric generating units in the nonattainment area. In its evaluation of the adopted limits, the State followed the applicable EPA guidance. *See* Response 5. The limits that the State has adopted are at an acceptable level.

Comment 8

The commenter states that, "RACT is a measure intended to improve local air quality * * * Thus, each plant affected by RACT must be required to reduce pollution locally, and may not be allowed to trade in pollution reductions in other areas to justify continued high emission by certain plants."

Response 8

We agree that NO_X RACT is a measure intended to improve local air quality (*i.e.,* the air quality within the nonattainment areas). We do not agree that sources subject to Wisconsin's NO_X RACT rules should not be allowed to comply through an averaging program within the nonattainment areas. Wisconsin's NO_X RACT averaging provisions do not allow sources outside of the moderate nonattainment areas to participate in this averaging program. This ensures that the reductions of NO_X will occur in the nonattainment areas where these reductions are needed.

The Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 clearly anticipates and even encourages states to adopt averaging plans as a compliance option. *See* section 4.6 *RACT for Certain Electric Utility Boilers:* "EPA believes that the above emission rates are appropriate for application to groups of boil[ers] on an areawide average, Btu-weighted basis" and "* * * EPA encourages States to structure their RACT requirements to inherently incorporate an emissions averaging concept (*i.e.,* installing more stringent controls on some units in exchange for lesser controls on others). Therefore, in the interest of simplifying State RACT determinations and enhancing the ability of States to adopt market-based trading systems for NO_X, the State may allow individual owners/operators in the nonattainment area (or, alternatively, Statewide within an ozone transport region) to have emission limits which result in greater or lesser emission reductions so long as the areawide emission rates described above are met on a Btu-weighted basis." *See* 57 FR 55625. Allowing emissions averaging to meet the NO_X RACT rules makes sense for reducing ozone in the nonattainment area in a cost-effective way without compromising the environmental benefit of these reductions. Moreover, Wisconsin has enhanced the environmental benefit of the State's NO_X RACT rules by requiring an additional 10% reduction of emissions from those sources that are complying with the NO_X RACT requirements by using the multi-facility averaging compliance provisions.

Comment 9

The commenter also states that multi-facility averaging threatens environmental justice. The commenter points out that NO_X is a precursor not only to ozone but to fine particulates ($PM_{2.5}$) and that EPA has recently promulgated a new NO_2 standard. The commenter adds that because of the multi-facility averaging provisions, Wisconsin Energy is allowed to put greater controls on its Pleasant Prairie facility, located in Kenosha County, that will, in effect, reduce the need for additional reductions at its Valley Plant located in downtown Milwaukee where, the commenter asserts, greater environmental protection is warranted.

Response 9

The commenter states that the Valley Power Plant is located in the City of Milwaukee and that, because of compliance options in the rule that allow multi-facility averaging, the Valley Power Plant has the option of averaging its emission with other power plants that would make more significant reductions of NO_X.

Emissions from the Valley Power Plant do not impact any community greater than any other power plants affected by this rule. The compliance option allowing emissions averaging does not disproportionately impact any group of people in any area. The rule is required to reduce ozone precursors and the rule accomplishes this. Everyone in the Milwaukee-Racine and Sheboygan nonattainment areas, as well as downwind areas, will be breathing cleaner air because of the NO_X reductions required by this rule. The compliance option of multi-facility averaging allows companies to make reductions within their own fleet of facilities, which would result in lower emissions than simply complying with the general provisions of the rule to meet the NO_X RACT requirements (*See* response to Comment 8), due to the additional 10% emissions reduction requirement for facilities using the multi-facility averaging provisions as the compliance option. There will be no increases of emissions from the Valley Power Plant, which seems to be of particular concern to the commenter. The facility has, in fact, seen emissions reductions from new combustion modifications that have been installed as a result of this rule.

Other than the fact that add-on controls are being placed on the Pleasant Prairie Power Plant that are not being placed on the Valley Power Plant,

it is unclear why the commenter believes there is a case of environmental injustice. Table 1 shows the ozone design values for various monitors in the southeast portion of Wisconsin. All of the monitors are meeting the 1997 8-hour ozone standard of 0.08 ppm. In fact, all of the monitors in Wisconsin are currently meeting the 1997 8-hour ozone standard. The monitor that is closest to the Valley Plant, the 16th St. Health Center monitor, has the lowest monitored ozone values in the southeast Wisconsin area. It is roughly 1.1 miles to the south-southwest of the Valley Plant, the plant of greatest concern to the commenter. For comparison, the monitor closest to the Pleasant Prairie Plant has the highest values recorded in the southeast Wisconsin area. The monitoring data do not indicate that ozone is a problem in the immediate vicinity of the Valley Power Plant and that greater controls should be placed on the Valley Power Plant.

It is not always the case that reductions will benefit the immediate area where they are made. It is, however, clear that ozone and its precursors tend to travel from south to north along the Lake Michigan shoreline in Wisconsin. The high levels of ozone monitored in Kenosha County at the Pleasant Prairie monitor are most likely due in part to emissions from sources in the Chicago area. Similarly, if reductions are made at the Pleasant Prairie Power Plant, the benefits will be experienced downwind in the Milwaukee area (*i.e.,* near the Valley Power Plant). Similarly, reductions made at the Valley Power Plant will likely reduce ozone downwind. The nearest monitor that would be able to verify this is the WDNR's Regional Headquarters (WDNR SER HQTRS) monitor that is roughly 2.2 miles to the north-northeast of the Valley Power Plant.

TABLE 1

Monitor	2004–2006 Design value (ppm)	2005–2007 Design value (ppm)	2006–2008 Design value (ppm)	2007–2009 Design value (ppm)
Pleasant Prairie	0.083	0.085	0.078	0.076
Health Center	0.068	0.070	0.063	0.064
WDNR SER HQTRS	0.074	0.077	0.068	0.068

The commenter also raises NO_2 levels as a concern. As the commenter states in the comment submitted, "The Milwaukee County design value for 2007–2009 is 47 ppb or 89 $\mu g/m^3$." However, 47 ppb is well below the National Ambient Air Quality Standard (NAAQS) for NO_2, which is 100 ppb. The NAAQS are established to protect human health and the environment. With this in mind, monitors to determine if areas are meeting or violating the NAAQS are required in and around areas where people live, and these monitors are usually placed at ground-level where people are breathing the ambient air.

The commenter claims to have modeled a violation of the NO_2 standard, but the commenter's modeling technique is flawed. The commenter takes NO_2 emissions concentrations from the Valley Power Plant stack and adds them to background concentrations to get a modeled ambient concentration that shows a violation of the NO_2 NAAQS. First, the emissions data that the commenter uses are outdated (from 1998–2000) and these data fail to reflect controls added since that time, the same controls the commenter mentions in a separate part of its comments. The controls that were added to the Valley Power Plant in 2008 are low NO_X burners, which reduced NO_X emissions by roughly 45%. Second, adding a source's estimated emissions concentrations to background concentration for comparison does not accurately reflect the source's contribution to ground-level NO_2 levels for comparison to a NAAQS. It is inaccurate to use a facility's modeled stack emissions and to add this figure to a background concentration for comparison to a NAAQS, because a facility's stack emissions are at a much higher concentration than what a monitor would record at ground level. Because of dispersion and other chemical reactions that take place in the atmosphere, monitored levels of NO_2 at ground level are much lower than the levels the commenter used in their "modeled" violation of the NO_2 NAAQS. This also explains why the actual monitored values (47 ppb) are less than half of the NO_2 NAAQS (100 ppb) where the commenter claims to have modeled a violation. Because the Milwaukee-Racine area is meeting both the ozone and NO_2 standards, the health of all people within this area is protected with respect to these pollutants.

It is true that the Milwaukee area is in violation of the $PM_{2.5}$ standard. As is the case with ozone, however, the formation of $PM_{2.5}$ as a secondary pollutant resulting from the NO_X emissions from the Valley Power Plant is more likely to impact communities farther downwind than communities in the immediate vicinity. Conversely, the emissions and/or emissions reductions from other power plants upwind of the Milwaukee area (*e.g.,* the Pleasant Prairie Power Plant) are likely to have more of an impact on the communities around the Valley Power Plant. Finally, because the Milwaukee area has been designated as nonattainment for $PM_{2.5}$, Wisconsin is required to develop a plan to reduce emissions of $PM_{2.5}$ precursors to bring the area into attainment with the $PM_{2.5}$ standard. If reductions are needed from the Valley Power Plant, they will be included in the $PM_{2.5}$ attainment demonstration that will be submitted to EPA for approval. Such a demonstration would constitute a separate and distinct rulemaking process than the evaluation of the NO_X RACT rules that we are approving today for purposes of attainment and maintenance of the 1997 8-hour ozone standard.

Comment 10

The commenter states that, "U.S. EPA Should Not Adopt DNR's Reasonable Cost of Control Value of $2,500/ton."

Response 10

EPA has never established a brightline dollars per ton amount as RACT. RACT determinations are not solely based on a dollars per ton of NO_X reduced. RACT determinations take various factors into account. As described in the March 16, 1994, memorandum, "Cost-Effective Nitrogen Oxides (NO_X) Reasonably Available Control Technology (RACT)" from E. Kent Berry, Acting Director of EPA's Air Quality Management Division, "NO_X technologies with a cost-effectiveness range that overlaps the $160 to $1,300 range should, at a minimum, be considered by States in the development of their NO_X RACT requirements." WDNR took the $1,300/ton figure and grew this out to the 2005

equivalent of roughly $2,000/ton using the consumer price index. WDNR took the additional step to increase the cost-effectiveness to $2,500/ton as a reasonable measure for evaluating various controls that would constitute RACT. In its evaluation of RACT for sources in Wisconsin, WDNR examined various control technologies that can reduce NO_X emissions and determined what is reasonably achievable given the availability of these technologies, the type of source, the level of reduction that is generally achievable, and the costs associated with achieving the reductions associated with the technology.

We believe that Wisconsin established significantly stringent limits using the $2,500/ton cost-effectiveness in its evaluation process. Again, we would stress that the dollar per ton factor should be weighed in combination with the actual limits adopted by a state to determine RACT levels. In this case, the NO_X limits that have been adopted are deemed sufficient to meet RACT when considered with the dollar per ton cost-effectiveness used to evaluate the controls assumed to determine the actual limits.

Comment 11

The commenter states that Wisconsin proposed to require sources to perform combustion tuning as part of the State's NO_X RACT requirements. These provisions were removed from the rules that were adopted in final by Wisconsin. The commenter suggests that combustion tuning should be a required part of a RACT determination for any steam generator.

Response 11

WDNR proposed that sources should participate in combustion tuning, since it provides energy and environmental benefits. However, the provisions of the proposed rule dealing with combustion tuning were controversial, because they were viewed by some as overly prescriptive and requiring unnecessary recordkeeping. Considering the comments from the industrial sector in Wisconsin, WDNR dropped combustion tuning requirements from the NO_X RACT rule. This provision would not have accounted for very large emission reductions, because it would have applied to smaller sources and some of the reductions will be achieved through voluntary combustion tuning.

Comment 12

The commenter contends that the Valley Power Plant, located in downtown Milwaukee, causes or contributes to violations of the 1-hour NO_2 NAAQS of 100 parts per billion (ppb) published in the **Federal Register** on February 19, 2010. *See* 75 FR 6474.

Response 12

As the commenter points out, the most current (2007–2009) data available show the Milwaukee area is well below the 100 ppb NO_2 NAAQS with a monitored value of 47 ppb. The purpose of the NO_X RACT rules, as set forth in section 182(f) of the CAA, is to help areas attain and maintain the ozone standard. The NO_X RACT rules do not address the protection of any other NAAQS. If additional NO_X reductions are needed to attain or maintain any other NAAQS, additional measures will be adopted for those NAAQS.

There is no monitored violation of the NO_2 NAAQS. If there was a monitored violation of the NO_2 NAAQS, controls to address a NO_2 nonattainment problem would be dealt with through a separate NO_2 SIP requirement.

EPA Conclusions Resulting From the Public Comments

After considering all public comments received and our responses to those comments, we conclude that no issues have been raised that would cause us to alter the conclusions set forth in the March 24, 2010, proposed rule.

III. What actions is EPA taking?

After reviewing Wisconsin's NO_X RACT SIP submittal, EPA has determined that it meets the criteria set forth in section 182(f) of the CAA. EPA has received comments on the proposed approval of the NO_X RACT rules and, after evaluating these comments, has determined that no changes to the proposed approval made on March 24, 2010 (75 FR 14116) are necessary. Therefore, EPA is approving the NO_X RACT SIP submittal for the Milwaukee-Racine and Sheboygan County 1997 8-hour ozone nonattainment areas. EPA is not, however, rulemaking on Wisconsin NR 428.25(2). EPA will reconsider this portion of the Wisconsin NO_X RACT rules after EPA has finalized a replacement rule for the remanded CAIR.

Non-RACT Portion of June 12, 2007 and September 14, 2009 Submittals

We are also approving miscellaneous changes to other NO_X rules previously approved into the SIP for ozone attainment purposes. These non-RACT NO_X rules, originally approved into Wisconsin's SIP on November 13, 2001 (66 FR 56931), were submitted as part of Wisconsin's reasonable further progress SIP for the 1990 1-hour ozone standard. A description of the rules and the miscellaneous changes being made to those rules can be found in the March 24, 2010, proposed approval (75 FR 14116). The changes clarify the intent of the existing rules and correct typographical errors.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. Accordingly, this 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 action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 CAA; 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, this rule 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.

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. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 20, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: September 14, 2010.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ 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 YY—Wisconsin

■ 2. Section 52.2570 is amended by adding paragraph (c)(122) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(122) On June 12, 2007, the Wisconsin Department of Natural Resources submitted a State Implementation Plan revision request for the state's nitrogen oxides (NO_X) reasonably available control technology (RACT) rules. This request was supplemented on September 14, 2009. The state adopted NO_X RACT rules to satisfy section 182(f) of the Clean Air Act for the Milwaukee-Racine and Sheboygan County areas that were designated as nonattainment for the 1997 8-hour ozone standard and classified as moderate under that standard.

(i) Incorporation by reference. The following sections of the Wisconsin Administrative Code are incorporated by reference:

(A) NR 428.02 Definitions.

(1) NR 428.02(7e) "Maximum theoretical emissions" published in the Wisconsin Administrative Register, on August 30, 2009, No. 644, effective September 1, 2009.

(2) NR 428.02(7m)"Process heater" as published in the Wisconsin Administrative Register, on July 30, 2007, No. 619, effective August 1, 2007.

(B) NR 428.04 Requirements and performance standards for new or modified sources.

(1) NR 428.04(1) and NR 428.04(3)(b) as published in the Wisconsin Administrative Register, on August 30, 2009, No. 644, effective September 1, 2009.

(2) NR 428.04(2)(h)1. and NR 428.04(2)(h)2. as published in the Wisconsin Administrative Register, on July 30, 2007, No. 619, effective August 1, 2007.

(C) NR 428.05 Requirements and performance standards for existing sources.

(1) NR 428.05(1) and NR 428.05(4)(b)2. as published in the Wisconsin Administrative Register, on August 30, 2009, No. 644, effective September 1, 2009.

(2) NR 428.05(3)(e)1. to 4. as published in the Wisconsin Administrative Register, on July 30, 2007, No. 619, effective August 1, 2007.

(D) NR 428.07 General Requirements. NR 428.07(intro.), NR 428.07(1)(a), NR428.07(1)(b)1., NR 428.07(1)(b)3., NR 428.07(3), NR 428.07(4)(c) as published in the Wisconsin Administrative Register, on August 30, 2009, No. 644, effective September 1, 2009.

(E) NR 428.08 Specific provisions for monitoring NO_X and heat input for the purpose of calculating NO_X emissions. NR 428.08(title), NR 428.08(2)(title) and NR 428.08(2)(f) as published in the Wisconsin Administrative Register, on August 30, 2009, No. 644, effective September 1, 2009.

(F) NR 428.09 Quarterly reports. NR 428.09(2)(a) as published in the Wisconsin Administrative Register, on August 30, 2009, No. 644, effective September 1, 2009.

(G) NR 428.12 Alternative monitoring, recordkeeping. NR 428.12 as published in the Wisconsin Administrative Register, on August 30, 2009, No. 644, effective September 1, 2009.

(H) NR 428.20 Applicability and purpose.

(1) NR 428.20(1) as published in the Wisconsin Administrative Register, on August 30, 2009, No. 644, effective September 1, 2009.

(2) NR 428.20(2) as published in the Wisconsin Administrative Register, on July 30, 2007, No. 619, effective August 1, 2007.

(I) NR 428.21 Emissions unit exemptions. NR 428.21 as published in the Wisconsin Administrative Register, on July 30, 2007, No. 619, effective August 1, 2007.

(J) NR 428.22 Emission limitation requirements.

(1) NR 428.22(1)(intro), NR 428.22(1)(a) to (c), NR 428.22(1)(e) to (i), NR 428.22(2)(a) to (b) as published in the Wisconsin Administrative Register, on July 30, 2007, No. 619, effective August 1, 2007.

(2) NR 428.22(1)(d) and NR 428.22(2)(intro) as published in the Wisconsin Administrative Register on August 30, 2009, No. 644, effective September 1, 2009.

(K) NR 428.23 Demonstrating compliance with mission limitations.

(1) NR 428.23(intro), NR 428.23(1)(a), NR 428(1)(b)2. to 8., and NR 428.23(2) as published in the Wisconsin Administrative Register, on July 30, 2007, No. 619, effective August 1, 2007.

(2) NR 428.23(1)(b)1. and NR 428.23(1)(b)9. as published in the Wisconsin Administrative Register on August 30, 2009, No. 644, effective September 1, 2009.

(L) NR 428.24 Recordkeeping and reporting.

(1) NR 428.24(1)(intro), NR 428.24(1)(a), NR 428.24(1)(b)1. to 3., and NR 428.24(2) to (4) as published in the Wisconsin Administrative Register, on July 30, 2007, No. 619, effective August 1, 2007.

(2) NR 428.24(1)(b)(intro) as published in the Wisconsin Administrative Register on August 30, 2009, No. 644, effective September 1, 2009.

(M) NR 428.25 Alternative compliance methods and approaches.

(1) NR 428.25(1)(intro), NR 428.25(1)(a)1.b., NR 428.25(1)(a)2. to 4.,

NR 428.25(1)(b) to (d), NR 428.25(2), NR 428.25(3)(a), and NR 428.25(3)(c) as published in the Wisconsin Administrative Register, on July 30, 2007, No. 619, effective August 1, 2007.

(2) NR 428.25(1)(a)1.a. and c. and (3)(b) as published in the Wisconsin Administrative Register on August 30, 2009, No. 644, effective September 1, 2009.

(N) NR 428.26 Utility reliability waiver. NR 428.26 as published in the Wisconsin Administrative Register, on July 30, 2007, No. 619, effective August 1, 2007.

(ii) Additional material.

(A) NR 484.04 Code of federal regulations appendices. NR 428.04(13), (15m), (16m), (21m), (26m)(bm), (26m)(d) and (27) as published in the Wisconsin Administrative Register, on July 30, 2007, No. 619, effective August 1, 2007.

[FR Doc. 2010–26256 Filed 10–18–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket EPA–R10–OAR–2010–0433; FRL–9214–7]

Determination of Attainment for PM_{10}: Eagle River PM_{10} Nonattainment Area, AK

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA has determined that the Eagle River nonattainment area in Alaska attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM_{10}) as of December 31, 1994.

DATES: This rule is effective on December 20, 2010, without further notice, unless EPA receives adverse comment by November 18, 2010. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2010–0433, by any of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: vaupel.claudia@epa.gov.*
- *Mail:* Claudia Vergnani Vaupel, EPA Region 10, Office of Air, Waste and Toxics, AWT–107, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Claudia Vergnani Vaupel, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2010–0433. 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://www.regulations.gov,* 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 *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, 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 *http://www.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 docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., 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. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Claudia Vergnani Vaupel at telephone number: (206) 553–6121, e-mail address: *vaupel.claudia@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us" or "our" are used, we mean EPA. Information is organized as follows:

Table of Comments

I. Background

A. PM_{10} Standard

The NAAQS are levels for certain ambient air pollutants set by EPA to protect public health and welfare. PM_{10}, or particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, is among the ambient air pollutants for which EPA has established health-based standards. On July 1, 1987 (52 FR 24634), EPA promulgated two primary standards for PM_{10}: A 24-hour standard of 150 micrograms per cubic meter ($\mu g/m^3$) and an annual PM_{10} standard of 50 $\mu g/m^3$. EPA also promulgated secondary PM_{10} standards that were identical to the primary standards.

Effective December 18, 2006, EPA revoked the annual PM_{10} standard but retained the 24-hour PM_{10} standard. 71 FR 61144 (October 17, 2006). The 24-hour PM_{10} standard is attained when the expected number of days per calendar year with a 24-hour concentration above 154 $\mu g/m^3$, as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one.[1] 40 CFR 50.6 and 40 CFR part 50, appendix K.

[1] An exceedance is defined as a daily value that is above the level of the 24-hour standard (150 $\mu g/m^3$) after rounding to the nearest 10 $\mu g/m^3$ (i.e. values ending in 5 or greater are to be rounded up). Thus, a recorded value of 154 $\mu g/m^3$ would not be an exceedance since it would be rounded to 150$\mu g/m^3$ whereas a recorded value of 155 $\mu g/m^3$ would be an exceedance since it would be rounded to 160 $\mu g/m^3$. See 40 CFR part 50, appendix K, section 1.0.