

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

[Region 2 Docket No. NJ48-229, FRL-7057-7]

**Approval and Promulgation of Implementation Plans; New Jersey Reasonably Available Control Measure Analysis and Additional Ozone Control Measures****AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a June 18, 2001 New Jersey State Implementation Plan (SIP) revision involving the State's one-hour Ozone Plan which is intended to meet two requirements: an analysis of Reasonably Available Control Measures and the need for additional emission reductions in order to attain the one-hour national ambient air quality standard for ozone. The SIP revision applies to the New Jersey portions of two severe ozone nonattainment areas—the New York, Northern New Jersey, Long Island Area, and the Philadelphia, Wilmington, Trenton Area. The intended effect of this action is to propose approval of programs required by the Clean Air Act.

**DATES:** Comments must be received on or before October 24, 2001.

**ADDRESSES:** All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

Copies of the New Jersey submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency,  
Region 2 Office, Air Programs Branch,  
290 Broadway, 25th Floor, New York,  
New York 10007-1866

New Jersey Department of  
Environmental Protection, Office of  
Air Quality Management, Bureau of  
Air Pollution Control, 401 East State  
Street, CN027, Trenton, New Jersey  
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**FOR FURTHER INFORMATION CONTACT:** Paul R. Truchan of the Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

**SUPPLEMENTARY INFORMATION:** This supplemental information section is organized as follows:

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**I. Overview****A. What Action Is EPA Taking Today?**

EPA is proposing approval of a June 18, 2001 New Jersey SIP submittal which includes: an analysis of Reasonably Available Control Measures (RACM) and the identification of the additional emission reductions needed to attain the one-hour national ambient air quality standard for ozone. After reviewing the SIP revision and considering it in light of EPA policy and guidance, EPA concludes that the emission reductions from the potential RACM measures will not advance the one-hour ozone attainment date and thus there are no additional potential RACM measures that can be considered RACM for New Jersey's two severe one-hour ozone nonattainment areas.

With respect to additional control measures designed to meet the one-hour ozone standard, New Jersey has identified the regional model rules developed by the Ozone Transport Commission as those which the State will be pursuing rulemaking for and which should result in sufficient emission reductions to achieve the reductions of volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>) needed to attain the one-hour ozone standard. New Jersey will be taking actions to adopt these measures separately from this SIP revision.

The submittal also includes an assessment of the progress New Jersey has made in attaining the one-hour ozone standard. The assessment shows a continued downward trend in both the number of violations of the standard and the measured ozone concentrations. While New Jersey submitted this SIP revision to fulfill its commitment to provide a mid-course review of its attainment status, EPA has determined

that several more years of monitored data and implementation of the Regional NO<sub>x</sub> Program are needed before a true mid-course review of the attainment demonstration can be made. Therefore, EPA is not acting on the mid-course review at this time and expects New Jersey to supplement the existing analysis after further emission reductions have accrued.

**B. What Did New Jersey Submit?**

On June 18, 2001, New Jersey submitted the proposed revision to the SIP entitled "Update to Meeting the Requirements of the Alternate Ozone Attainment Demonstration Policy: Additional Emission Reductions, Reasonably Available Control Measures (RACM) Analysis, and Mid-Course Review," and requested that EPA process the SIP revision in parallel with its administrative process. New Jersey held a public hearing on July 26, 2001 and is evaluating the comments that were received.

This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this document, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this document, EPA will publish a final rulemaking on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by New Jersey and submitted formally to EPA for incorporation into the SIP.

This submittal applies to the New Jersey portions of two severe ozone nonattainment areas—the New York, Northern New Jersey, Long Island Area, and the Philadelphia, Wilmington, Trenton Area. For purposes of this action these areas will be referred to, respectively, as the Northern New Jersey ozone nonattainment area (NAA) and the Trenton ozone NAA. The counties located within the Northern New Jersey NAA are: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union. The counties within the Trenton NAA are: Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem.

## II. Reasonably Available Control Measure (RACM) Analysis

### A. What Are the Requirements for RACM Technology?

Section 172(c)(1) of the Act requires SIPs to contain RACM as necessary to provide for attainment as expeditiously as practicable. EPA has previously provided guidance interpreting the RACM requirements of section 172(c)(1). See the "General Preamble for Implementation of Title I of the CAAA of 1990" (General Preamble), 57 FR 13498, 13560. In that preamble, EPA stated that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in the General Preamble that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, the General Preamble indicates that states should provide in the SIP submittals a discussion of whether the measures considered are reasonably available or not. If the measures are reasonably available, they must be adopted as RACM. Finally, EPA indicated that states could reject potential RACM either because they would not advance the attainment date or would cause substantial widespread and long-term adverse impacts. States could also consider local conditions, such as economics or implementation concerns, in rejecting potential RACM. On November 30, 1999, John S. Seitz, Director, Office of Air Quality Planning and Standards, issued a memorandum on this topic, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas" which reiterated the CAA RACM requirements and elaborated on the General Preamble.

### B. How Does the State Analysis Address the RACM Requirement?

New Jersey performed a RACM analysis which included an evaluation of potential transportation control measures (TCMs) for onroad mobile sources, potential control measures for point, area and offroad sources, and other non-TCM onroad control measures. New Jersey ranked the source categories by emission level to identify source categories with the greatest potential for additional control measure benefits. Individual measures were then evaluated with regard to their technical feasibility, economic feasibility and the speed at which they could be

implemented. Finally, the sums of the estimated emissions benefits from the potentially implementable measures were then compared to the emission reductions required to advance the attainment dates for each nonattainment area. This analysis was performed for the New Jersey portions of the two severe nonattainment areas, the Trenton NAA and the Northern New Jersey NAA.

#### 1. Consideration and Implementation of Transportation Control Measures (TCMs)

The New Jersey Department of Environmental Protection (NJDEP) examined 15 prospective mobile source measures to determine if any of these TCMs could be considered reasonably available control measures. The measures considered for this RACM analysis were identified by the New Jersey Department of Transportation in consultation with NJDEP. New Jersey initially screened the candidate measures to determine if they were available for potential implementation, and then each measure analyzed for its potential emissions reduction benefit, economic impact, practicability and potential adverse impact. New Jersey analyzed each prospective emission control measure for each nonattainment area.

The mobile source measures the State analyzed can be grouped into the following five categories; Travel Demand Management and Commuter Choice, Transportation Pricing Strategies and Scenarios, Traffic Flow Improvements, Transit Projects and Transit Oriented Design and Vehicle Fuel and Technology. The State also examined two non-mobile source land use related measures which have the potential to reduce vehicle miles traveled and vehicle emissions.

The State's analysis found that none of the TCM's, singularly or in combination, will yield emissions benefits sufficient to advance the attainment dates for the respective New Jersey ozone nonattainment areas. The range of combined emissions benefits from VOC and NO<sub>x</sub> was 0.0 tons/day to 2.054 tons/day in the New Jersey portion of the Northern New Jersey NAA and from 0.0 tons/day to 1.10 tons/day in the New Jersey portion of the Trenton NAA. In addition, the State also found that implementing certain measures is not cost effective. These TCMs are not reasonably available at this time, nor may they be able to generate significant emission reductions by the attainment date. However, over a longer period some of them may prove to be reasonable, particularly with

respect to an eight-hour ozone standard with an attainment date further into the future.

Two land use measures were also reviewed and evaluated for their potential impact to reduce vehicle miles traveled and emissions. The measures were developed to achieve other State goals and include the statewide programs: Open Space Preservation Program in which the State commits to preserving 1,000,000 acres of open space over a ten-year period, and New Development and Redevelopment Plan which is based on "smart growth" principles.

The estimated emissions benefits in 2006 for the Open Space Preservation Program are approximately 0.11 tons per/day of VOCs and NO<sub>x</sub> with an estimated cost per ton of \$1.78 million. However, it is important to note that this program would provide many other environmental and public benefits and costs should not be judged on air quality alone. This 10 year program can not be phased in faster and fully implemented by the attainment date for the two NAAs. Thus, it is not anticipated to advance the attainment dates in the New Jersey NAAs.

The estimated emissions benefits in 2006 for the State Development and Redevelopment Plan are approximately 0.452 ton per/day of VOCs and NO<sub>x</sub>. The cost per ton was not quantifiable in the scope of this analysis. In addition, the State plan is a voluntary plan and has no force of law under municipal home rule. This limits EPA's ability to enforce such a program as part of a SIP. Like the Open Space Preservation Program, this program would provide many other environmental and public benefits and costs should not be judged on air quality alone. Furthermore, long lead times would be required before this measure could be effective on a regional scale and it is not anticipated to advance the attainment dates in the New Jersey nonattainment areas.

#### 2. Consideration and Implementation of Stationary Source, Area Source, and Other Non-TCM Measures

The NJDEP sorted the projected attainment year VOC and NO<sub>x</sub> emission inventories (2005 for the Trenton NAA and 2007 for the Northern New Jersey NAA) by size of each source category for each nonattainment area. Considering VOC and NO<sub>x</sub> emissions separately, New Jersey examined all source categories with emissions of 5 tons per day or greater for potential application of new control measures. NJDEP evaluated 29 VOC source categories and 25 NO<sub>x</sub> source categories. The analysis for feasibility of potential controls for

each source category included evaluation of the potential emissions reduction benefit, technical and economic feasibility, and analysis of whether the measure could be implemented in time to advance the attainment date. New Jersey analyzed the prospective emission control measures for each nonattainment area.

### 3. Results of RACM Analysis

New Jersey identified six potentially implementable control measures which have a combined potential emission reduction benefit of 2.2 tons per day of VOC and 0.4 tons per day of NO<sub>x</sub> in 2004 for the Trenton NAA and 7.3 tons per day of VOC and 3.3 tons per day of NO<sub>x</sub> in 2006 for the Northern New Jersey NAA. In order to assess whether these emission reductions would advance the attainment date for each area, New Jersey compared these potential emission reductions to the emission reductions which are projected to occur in New Jersey in the year before the attainment year from the adopted control measures and the additional control measures identified in this SIP

revision, (i.e., compare these reductions to the reductions projected for 2004 for the Trenton NAA and reductions projected for 2006 for the Northern New Jersey NAA). For both nonattainment areas, the combined benefit from all the potential control measures is less than the emission reductions which will be occurring in the year before the attainment year. Therefore, no TCM or other measure, either singularly or combined, has been identified which could advance the attainment dates of either area and be considered RACM.

EPA has reviewed the RACM analysis and finds that the documentation New Jersey provided supports the State's conclusions. New Jersey evaluated all source categories that could contribute meaningful emission reductions. An extensive list of potential control measures was identified and reviewed. The State considered the time needed to implement these measures as a further screen of their reasonableness and availability. However, EPA believes that some of these control measures may offer some benefits in the future for purposes of an eight-hour ozone

standard, and recommends that New Jersey and other states in the OTR revisit these controls in the context of any future planning obligations.

Therefore, EPA is proposing to approve New Jersey's RACM analysis and to determine that there are no individual or combined measures that are technically and economically feasible and that would advance the one-hour ozone attainment dates for the two severe nonattainment areas in New Jersey.

### III. Additional Ozone Control Measures

#### A. Why Additional Emission Reductions Are Needed?

When EPA evaluated New Jersey's one-hour ozone attainment demonstrations, EPA determined that additional emission reductions were needed for the two severe nonattainment areas in order to attain the one-hour ozone standard with sufficient surety (December 16, 1999, 64 FR 70380). The table below identifies the additional emission reductions needed for the two nonattainment areas.

TABLE 1.—EPA IDENTIFIED ADDITIONAL EMISSION REDUCTIONS

| Nonattainment area                               | Additional required emission reductions (tons per day) |                 |
|--------------------------------------------------|--------------------------------------------------------|-----------------|
|                                                  | VOC                                                    | NO <sub>x</sub> |
| Philadelphia, Wilmington, Trenton .....          | 62                                                     | 3               |
| New York, Northern New Jersey, Long Island ..... | 85                                                     | 7               |

EPA provided that the States in the OTR could achieve these emission reductions through regional control programs. New Jersey decided to participate with the other states in the Northeast in an Ozone Transport Commission (OTC) regulatory development effort. New Jersey has been an active participant in the OTC's process of developing regional control strategies that would achieve the necessary additional reductions to attain the one-hour ozone standard.

#### B. What Control Measures Will New Jersey Propose?

New Jersey has decided to proceed with State rulemaking efforts for the source categories for which the OTC developed model rules. This includes the following source categories:

##### VOC Control Measures

Commercial and consumer products, Architectural and industrial maintenance coatings, Solvent cleaning operations,

Mobile equipment repair and refinishing operations, and Portable fuel containers.

##### NO<sub>x</sub> Control Measures

Industrial boilers, Stationary combustion turbines, and Stationary internal combustion engines.

New Jersey will be proposing rules for these source categories in separate rulemakings and taking public comment on the actual regulations and the basis and background which support the regulations. The purpose of this portion of the SIP submittal is to provide information in advance of New Jersey's rulemaking as to which source categories will be proposed and to provide a projection of the emission benefits from these proposed control measures. The State also provided evidence that the cumulative benefit from these measures will be sufficient to meet the additional emission reductions EPA identified as being needed to insure attainment of the one-hour ozone standard in the multi-state nonattainment areas. EPA will evaluate

whether the adopted measures meet the shortfall at the time it evaluates the submitted measures as SIP revisions.

Applying OTC model rule's projected emission reductions to the VOC and NO<sub>x</sub> inventories, the State has determined and EPA agrees that the entire New York, Northern New Jersey, Long Island Area NAA will have sufficient emission reductions in both VOC and NO<sub>x</sub> to attain the one-hour ozone standard. In the Philadelphia, Wilmington, Trenton NAA, excess NO<sub>x</sub> emission reductions will need to be substituted for VOC reductions in order to achieve the VOC emission reduction target. Implementation of the OTC measures statewide will result in additional emission reductions that will be beneficial towards attaining the ozone standard in the Philadelphia, Wilmington, Trenton NAA. See Table 2 for estimated emission reductions and required additional emission reductions for the entire nonattainment area.

TABLE 2.—ESTIMATED EMISSION REDUCTIONS FROM THE PROPOSED CONTROL MEASURES

| Control measure                                                 | Philadelphia, Wilmington, Trenton NAA |                 | New York, Northern New Jersey, Long Island Area NAA |                       |
|-----------------------------------------------------------------|---------------------------------------|-----------------|-----------------------------------------------------|-----------------------|
|                                                                 | VOC (tpd)                             | NO <sub>x</sub> | VOC (tpd)                                           | NO <sub>x</sub> (tpd) |
| Commercial and Consumer Products .....                          | 9                                     | .....           | 26                                                  | .....                 |
| Architectural and Industrial Maintenance Coatings .....         | 19                                    | .....           | 42                                                  | .....                 |
| Solvent Cleaning Operations .....                               | 20                                    | .....           | 7                                                   | .....                 |
| Mobile Equipment Repair and Refinishing Operations .....        | 6                                     | .....           | 20                                                  | .....                 |
| Portable Fuel Containers .....                                  | 5                                     | .....           | 25                                                  | .....                 |
| Selected Stationary Sources of NO <sub>x</sub> Reductions ..... | .....                                 | 6               | .....                                               | 22                    |
| Total Projected Reductions .....                                | 59                                    | 6               | 120                                                 | 22                    |
| Needed Reductions .....                                         | 62                                    | 3               | 85                                                  | 7                     |

### C. What Other Efforts Is New Jersey Pursuing?

New Jersey is pursuing three additional strategies: applying the OTC model rules to the three attaining counties in New Jersey, heavy duty diesel engine compliance assurance requirements, and more stringent requirements for gasoline transfer operations.

### IV. Conclusions

EPA is proposing to approve New Jersey's RACM analysis along with its conclusions that there are no additional control measures available that are technically or economically feasible and that whose emission reductions would advance the attainment dates of 2005 for the Trenton NAA or 2007 for the Northern New Jersey NAA. EPA finds that the additional control measures that New Jersey will be proposing, coupled with those to be implemented by other states in the nonattainment area, should result in sufficient additional emission reductions to attain the one-hour ozone standard by 2005 for the Trenton NAA and 2007 for the Northern New Jersey NAA. However, EPA will evaluate the measures and associated emission reductions at the time they are submitted as a SIP revision.

### V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. 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 (Public Law 104-4). This rule also does 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), nor will it 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), because it 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 (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. As required by section 3 of Executive Order 12988 (61

FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. 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.*).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 10, 2001.

**William J. Muszynski,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 01-23220 Filed 9-21-01; 8:45 am]

BILLING CODE 6560-50-P

### ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[TX-104-1-7401b; FRL-7063-3]

### Approval and Promulgation of Implementation Plans; Texas; Revisions to General Rules and Regulations for Control of Air Pollution by Permits for New Sources and Modifications

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

**ACTION:** Proposed rule.