

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

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

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

Dated: December 9, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0562; FRL–9957–25–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; 2016 Nitrogen Oxides Averaging Plan Consent Agreement With Raven Power

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Maryland state implementation plan (SIP). Maryland has submitted for inclusion in the SIP a Consent Agreement between Maryland and Raven Power concerning an inter-facility averaging plan for emissions of nitrogen oxides (NO_x) at facilities located in Maryland and owned by Raven Power. The Consent Agreement allows Raven Power to use system-wide emissions averaging to comply with the applicable NO_x emission limits for six units located at two electric generating

facilities, Brandon Shores and H.A. Wagner, owned by Raven Power. EPA is proposing to approve this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before January 26, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0562 at <http://www.regulations.gov>, or via email to pino.maria@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, 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. 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: Irene Shandruk, (215) 814–2166, or by email at shandruk.irene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Maryland's COMAR 26.11.09.08—Control of NO_x Emissions for Major Stationary Sources—was approved into Maryland's SIP pursuant to section 182 of the CAA. This regulation established NO_x emission limits for the 1-hour ozone national ambient air quality standard (NAAQS) for specific types of boilers and other fuel-burning equipment. Specifically, COMAR 26.11.09.08.C(2) established maximum NO_x emission rates as pounds (lbs) of NO_x per million British thermal units (MMBtu) per hour, ranging from 0.45 lbs/MMBtu to 0.80 lbs/MMBtu, depending on the type of combustion unit. COMAR 26.11.09.08 also contains a provision that allows an owner or operator of more than one unit to

demonstrate compliance with system-wide emissions standards through the use of an averaging plan.

II. Summary of SIP Revision

On July 28, 2016, the State of Maryland through the Maryland Department of the Environment (MDE) submitted to EPA a SIP revision submittal consisting of a Consent Agreement between MDE and Raven Power establishing an inter-facility averaging plan for NO_x emissions at two electric generating facilities, Brandon Shores and H.A. Wagner, collectively called Fort Smallwood. Both facilities are owned by Raven Power. MDE requests that this new Consent Agreement and NO_x averaging plan replace the Consent Order and NO_x averaging plan previously approved into the Maryland SIP on February 27, 2002 (67 FR 8897).

The Consent Agreement between MDE and Raven Power allows Raven Power to use system-wide emissions averaging to comply with the applicable NO_x limits for six boiler units (Brandon Shores units 1 and 2 and H.A. Wagner units 1 through 4) subject to COMAR 26.11.09.08. Pursuant to the new Consent Agreement, Raven Power is required to calculate mass emissions from the affected units on a daily basis, determine compliance with the averaging plan using continuous emissions monitors (CEMs), and to submit quarterly reports to both MDE and EPA. In the Consent Agreement, Raven Power agreed that if it fails to comply with the NO_x averaging plan, all sources at Brandon Shores and Wagner remain subject to the unit-specific emission limits of COMAR 26.11.09.08.C (shown in Table 1) and must demonstrate compliance through the requirements found in COMAR 26.11.09.08.B(2). The aggregate mass emissions from all units at Brandon Shores and Wagner, under the NO_x averaging plan, must be less than the mass emissions that would otherwise occur if each unit were subject to the applicable NO_x emissions limit of COMAR 26.11.09.08.C.

TABLE 1—NO_x EMISSION LIMITS FOR FORT SMALLWOOD
[as per COMAR 26.11.09.08.C]

Facility	Unit	Limit (lbs/MMBtu)
Brandon Shores	1	0.5
	2	0.5
H.A. Wagner	1	0.3
	2	0.5
	3	0.5
	4	0.3

Additionally, according to the Consent Agreement, Raven Power must submit a written report and certify annually that the annual NO_x mass emissions for all six affected units are at least twenty percent less than otherwise allowed from the affected units by the applicable NO_x emission limits of COMAR 26.11.09.08. A more detailed description of the NO_x averaging plan can be found in the technical support document (TSD) on www.regulations.gov under Docket ID No. EPA-R03-OAR-2016-0562. In addition, in the July 28, 2016 SIP submittal, Maryland seeks to remove from the Maryland SIP the April 2001 Consent Order between Maryland and Constellation Power Source Generation (Constellation) which functioned as a NO_x averaging plan for compliance with COMAR 26.11.09.08 for ten units at five facilities—Brandon Shores units 1 and 2; C.P. Crane units 1 and 2; H.A. Wagner units 1 through 4; Gould Street unit 3; and Riverside unit 4. EPA had approved the April 2001 Consent Order between Maryland and Constellation into the Maryland SIP on February 27, 2002 (67 FR 8897). The 2001 NO_x averaging plan is no longer effective for compliance with COMAR 26.11.09.08 as Constellation is not the owner of all of these units and COMAR 26.11.09.08 permitted system-wide averaging only when the same person owned or operated all affected units. COMAR 26.11.09.08.B(4)(a).

III. Proposed Action

EPA has evaluated Maryland's SIP revision submittal and believes Raven Power's NO_x emissions averaging plan meets all the applicable requirements of the SIP-approved COMAR 26.11.09.08, particularly subsection .08B(4) for emissions averaging. The Consent Agreement also includes appropriate provisions for monitoring, recordkeeping, and reporting as well as assuring compliance and enforceability. As discussed in the TSD in more detail, EPA expects the Consent Agreement will strengthen the Maryland SIP and lead to additional NO_x emission reductions. Thus, the SIP is approvable under CAA section 110.

In addition, EPA finds that this SIP revision submittal meets the requirements of CAA section 110(l) as it will not interfere with attainment and maintenance of any NAAQS, reasonable further progress, or any other applicable CAA requirement, because the NO_x averaging plan requires that annual system-wide NO_x mass emissions from Brandon Shores and Wagner be at least twenty percent less than otherwise allowed from these affected units by the

applicable NO_x emission limits of COMAR 26.11.09.08 and because the prior NO_x emissions averaging plan that included Brandon Shores, Wagner, and other unrelated units is no longer effective, since the owners have changed. The previously approved April 2001 Constellation NO_x averaging plan required that annual system-wide NO_x mass emissions be at least five percent less than otherwise allowed by the applicable NO_x emission limits of COMAR 26.11.09.08. The system-wide averaging from the new NO_x averaging plan which requires at least a twenty percent reduction compared to rates applicable to individual emitting units should provide additional NO_x emission reductions. EPA believes the emission reductions from this NO_x averaging plan will be beneficial to both Maryland and the ozone transport region (OTR). Therefore, EPA is proposing to approve this SIP revision in accordance with requirements in CAA section 110. EPA is soliciting public comments on the issues discussed in this document and these comments will be considered before taking final action.

IV. Incorporation by Reference

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Maryland's Consent Agreement with Raven Power concerning a NO_x averaging plan discussed in section II of this document as well as in the TSD supporting this rulemaking action. EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and/or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. 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 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 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 proposed rule concerning Maryland's NO_x averaging plan Consent Agreement with Raven Power 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.

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

Dated: December 12, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

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