

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

#### IV. What Are New York's Regulatory Requirements for NO<sub>x</sub> RACT?

##### A. EPA Approval of New York's NO<sub>x</sub> RACT Regulation

On January 20, 1994, New York submitted to EPA for approval, as a revision to the SIP, 6 NYCRR Subpart 227-2, the State's NO<sub>x</sub> RACT plan entitled "Reasonably Available Control Technology For Oxides of Nitrogen (NO<sub>x</sub> RACT)—Stationary Combustion Installations." Subpart 227-2 provides the NO<sub>x</sub> RACT requirements for combustion sources in New York and it became effective 30-days after being adopted on January 19, 1994. On April 29, 1999, New York submitted amendments to Subpart 227-2 as part of the State's NO<sub>x</sub> Budget Trading Program (Part 227-3) SIP revision. On April 28, 2000, the EPA final approval action on the two SIP revisions for Subpart 227-2 was published in the **Federal Register** (65 FR 24875).

On April 3, 2000, New York submitted to EPA for approval additional amendments to Subpart 227-2 as part of the State's NO<sub>x</sub> Budget Trading Program SIP revision (Part 204). On May 22, 2001, the EPA final approval action on the April 2000 submittal was published in the **Federal Register** (66 FR 28059).

##### B. Case-by-Case NO<sub>x</sub> RACT Determinations

Provisions within Subpart 227-2 establish a procedure for a case-by-case determination of what represents RACT for an item of equipment or source operation. This procedure is applicable in two situations: (1) If the major NO<sub>x</sub> facility contains any source operation or item of equipment of a category not specifically regulated in Subpart 227-2, or (2) if the owner or operator of a source operation or item of equipment of a category that is regulated in Subpart 227-2 seeks approval of an alternative maximum allowable emission limit.

Subpart 227-2 requires the owners and/or operators of the affected facility to submit either a RACT proposal if they

are not covered by specific emission limitations or a request for an alternative maximum allowable emission limit if they are covered by specific emission limitations. For each situation, the owners/operators must include a technical and economic feasibility analysis of the possible alternative control measures. RACT determinations for an alternative maximum allowable emission limit must consider alternative control strategies (*i.e.*, system wide averaging and fuel switching) in addition to considering control technologies (*e.g.*, low NO<sub>x</sub> burners). In either case, Subpart 227-2 provides for New York to establish emission limits based upon a RACT determination specific to the facility. The resulting alternative maximum allowable emission limit must be submitted to EPA for approval as a SIP revision.

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

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

EPA has determined that the NO<sub>x</sub> emission limits identified in New York's approved permits to construct/certificates to operate and/or special permit conditions represent RACT for each source identified in this action. The permit conditions include emission limits, work practice standards, testing, monitoring, and record keeping/

reporting requirements. These permit conditions are consistent with the NO<sub>x</sub> RACT requirements specified in Subpart 227-2 and conform to EPA's NO<sub>x</sub> RACT guidance. Therefore, EPA is approving the source-specific SIP revision submitted by New York dated November 20, 1996, as supplemented on February 24, 1997.

EPA's evaluation of the RACT submittal is detailed in a document entitled "Technical Support Document-NO<sub>x</sub> RACT Source Specific SIP Revisions-State of New York." A copy of that document is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

#### VI. What Is EPA's Conclusion?

The EPA is approving the source-specific compliance plans described above as RACT for the control of NO<sub>x</sub> emissions from the eighteen sources located at three facilities identified in the this source-specific SIP revision. Please note that if EPA receives an adverse comment on an amendment, paragraph, or specific source addressed in this direct final rule and if the provision that relates to the adverse comment may be severed from the remainder of the rule, EPA may sever the provision and adopt as final those provisions of the rule that are not the subject of the adverse comment.

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

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