

treatment plant located in Wayne, Passaic County. On October 20, 1998, EPA approved (63 FR 55949) a December 1996 SIP revision for this same facility that included a RACT limitation and a State requirement to perform compliance testing which would confirm or establish a new facility-specific NO<sub>x</sub> emission limit. In a letter dated February 21, 2001, New Jersey informed EPA that, as a result of stack tests conducted in April 1998, the State, on December 21, 2000, revised the facility-specific NO<sub>x</sub> emission limit requirements previously approved by EPA. The maximum allowable NO<sub>x</sub> emission limit was revised from 12.0 lb/hr to 7.0 lb/hr per incinerator and the maximum allowable sludge feed rate was revised from 1.0 dry ton per hour to 0.8 dry ton per hour per incinerator. EPA is incorporating the revised permit condition into the SIP.

Once a permit limit is submitted and approved of by EPA as a SIP emission limit, in accordance with sections 110(l) and 116 of the CAA, it can not be made less stringent than the federally approved limit unless it is submitted and approved as a SIP revision with the exception of cases where the approved SIP establishes procedures which allow for making the limit more stringent. The CAA is silent on whether a more stringent adjustment of a previously approved SIP limit must be submitted to EPA as a SIP revision. In the case of Township of Wayne, the Agency has accepted notification of a new limit rather than submission as a SIP revision because the previously approved SIP revision stated that the limit could be made more stringent as a consequence of required compliance test results. This Federal Register notice is the agency publication of the new NO<sub>x</sub> limit. The new limit will become the new federally enforceable NO<sub>x</sub> SIP limit upon the effective date of this Federal Register notice. At that point, it can not be made less stringent without submission of, and approval by EPA as, a SIP revision.

### III. What Are the Clean Air Act Requirements for NO<sub>x</sub> RACT?

The CAA required certain states to develop RACT regulations for major stationary sources of NO<sub>x</sub> and to provide for the implementation of the required measures as soon as practicable but no later than May 31, 1995. Under the CAA, the definition of major stationary source is based on the tons per year (tpy) air pollution a source emits and the quality of the air in the area of the source. In ozone transport regions, attainment/unclassified areas as well as marginal and moderate ozone nonattainment areas, a major stationary

source for NO<sub>x</sub> is considered to be one which emits or has the potential to emit 100 tpy or more of NO<sub>x</sub> and is subject to the requirements of a moderate nonattainment area. New Jersey is within the Northeast Ozone Transport Region, established by section 184(a) of the CAA, and has defined a major stationary source for NO<sub>x</sub> as a source which has the potential to emit 25 tpy, the level set for severe ozone nonattainment areas. For detailed information on the CAA requirements for NO<sub>x</sub> RACT see the Technical Support Document prepared for today's rulemaking action.

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

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

On November 15, 1993, New Jersey submitted to EPA, as a revision to the SIP, Subchapter 19 of Chapter 27, Title 7 of the New Jersey Administrative Code. Subchapter 19 is entitled "Control and Prohibition of Air Pollution From Oxides of Nitrogen." This Subchapter provides the NO<sub>x</sub> RACT requirements for New Jersey and was effective on December 20, 1993. New Jersey submitted Subchapter 19 to EPA, as a revision to the SIP, on November 15, 1993 and on January 27, 1997, the EPA final approval action on Subchapter 19 was published in the **Federal Register** (62 FR 3804).

On March 24, 1995, New Jersey adopted amendments to Subchapter 19 and submitted them to EPA for approval as a SIP revision on June 21, 1996. On March 29, 1999, the EPA final approval action on the revised Subchapter 19 was published in the **Federal Register** (64 FR 14832).

#### B. Section 19.13—Facility-Specific NO<sub>x</sub> Emission Limits

Section 19.3 of New Jersey's regulation establishes a procedure for a case-by-case determination of what represents RACT for a particular facility item, equipment or source operation. This procedure is applicable in two situations: (1) Except for non-utility boilers, if the major NO<sub>x</sub> facility contains any source operation or item of equipment of a category not listed in section 19.2 which has the potential to emit more than 10 tons of NO<sub>x</sub> per year, or (2) if the owner or operator of a source operation or item of equipment of a category listed in section 19.2 seeks approval of an alternative maximum allowable emission rate.

New Jersey's procedure requires either submission of a NO<sub>x</sub> control plan if specific emission limitations do not

apply to the specific source, or submission of a request for an alternative maximum allowable emission rate if specific emission limitations do apply to the specific source. In either case, 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 rate must consider control technologies (e.g., low NO<sub>x</sub> burners) and alternative control strategies (e.g., emissions averaging, seasonal fuel switching to natural gas, and repowering). Also, in either case, Subchapter 19 requires that New Jersey establish emission limits which rely on a RACT determination specific to the facility. The resulting NO<sub>x</sub> control plan or alternate maximum allowable emission rate must be submitted to EPA for approval as a SIP revision.

#### C. Section 19.21—Phased Compliance Through Repowering

Section 19.21 of New Jersey's regulation allows attainment of compliance through repowering. Under Subchapter 19, repowering is defined as the permanent cessation of steam generator operations replaced by either the installation of a new combustion source or the purchase of heat or power from a new combustion source located in New Jersey.

Section 19.21 requires that a source owner who requests compliance through repowering: (1) Enter into an enforceable commitment with the State to repower; (2) submit an analysis that defines RACT for the interim period between May 31, 1995 and the date the unit will be repowered; (3) specify a date, which can be no later than May 31, 1999, by which the unit will be repowered; (4) include appropriate milestones for the repowering project; (5) meet applicable SIP and Federal requirements upon the repower date; and (6) ensure that the repowering commitment is federally enforceable.

Section 19.21 also requires that a source establish emission limits using advanced control techniques and commit to meet these limits once the source is repowered. The maximum allowable NO<sub>x</sub> emissions rate, expressed in pounds per million BTUs, for repowered utility boilers ranges from 0.1 to 0.2 depending upon the type of boiler and the type of fuel. Section 19.21 allows repowering of all combustion sources.

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

After reviewing the submittals, EPA found them all administratively and