

Reasonably Available Control Technology (RACT) at all major stationary sources of NO<sub>x</sub>. The seven sources addressed are: American Ref-Fuel Company/Essex County Resource Recovery Facility; Co-Steel Corporation of Sayreville (formerly New Jersey Steel Corporation); Co-Steel Raritan Corporation; Homasote Company; Milford Power Limited Partnership; University of Medicine and Dentistry of Newark, and Roche Vitamins, Inc.

Additionally, on February 21, 2001, in a letter to EPA, New Jersey indicated that with regard to the Township of Wayne, in accordance with a previously submitted and approved SIP revision the State had changed the permitted NO<sub>x</sub> limit to a more stringent limit. The previously approved SIP revision for this source indicated that the emission limits may be revised to reflect results from required stack testing. The permit required tests had been completed and New Jersey established a new, more stringent emission limit based upon the results of these tests and the new limit is also being incorporated into the SIP.

The specific NO<sub>x</sub> emission limitations that EPA is approving in today's rulemaking and the full evaluation can be found in actions (68 FR 47532 and 68 FR 47477) published in the **Federal Register** on August 11, 2003.

## II. What Comments Did EPA Receive in Response to Its Proposal?

### A. Background Information

On August 11, 2003, EPA announced, in proposed and direct final rules published in the **Federal Register** (68 FR 47532 and 68 FR 47477, respectively), approval of New Jersey's NO<sub>x</sub> RACT determinations for the same eight sources which are subject to today's final rulemaking. On August 11, 2003, EPA received an adverse comment on the direct final rule. EPA had indicated in its August 11, 2003 direct final rule that if EPA received adverse comments, it would withdraw the direct final rule. Consequently, EPA informed the public, in a withdrawal notice published in the **Federal Register** (68 FR 54163) on September 16, 2003, that EPA received an adverse comment and that the direct final rule did not take effect. EPA did not receive any other comments. EPA is addressing the adverse comment in today's final rule based upon the proposed action published on August 11, 2003.

### B. Comments Received and EPA's Response

EPA received one adverse comment on its August 11, 2003 direct final rule to approve New Jersey's NO<sub>x</sub> RACT

determinations for eight facilities located throughout the State from a concerned citizen. That comment and EPA's response follows.

*Comments:* A concerned citizen commented that "the standards for New Jersey should be set higher and require fewer tons per year emissions" and the citizen "did not feel these standards are high enough." The comments did not address any specific source or any specific NO<sub>x</sub> emission limitation. In addition, no supporting information or justification was provided.

*Response:* The 1990 CAA requires states, in which areas are designated as nonattainment for the one-hour ozone standard and are classified as moderate or higher, to submit SIP provisions, for EPA approval, which establish RACT for major stationary sources of NO<sub>x</sub>. 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).

In this regard, New Jersey determined that each of the eight sources were major stationary sources of NO<sub>x</sub> and therefore subject to the CAA requirement to implement RACT. As discussed in the August 11, 2003 direct final rule, New Jersey submitted SIP revisions, for EPA approval, that established RACT, including NO<sub>x</sub> emission limitations for each of the eight sources subject to the citizen's comment. It should be noted that EPA requires some new sources to be subject to more stringent requirements than the RACT requirements for existing sources, such as Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER). One of the eight sources addressed in the SIP submission is subject to BACT requirements, but the remaining seven sources are not subject to these more stringent requirements. New Jersey submitted its RACT determinations, for EPA approval, for the eight sources, to fulfill the CAA requirements for RACT and not to meet any other more stringent requirement.

EPA evaluated each RACT determination and documented its findings in "Technical Support Document—NO<sub>x</sub> RACT Source Specific SIP Revisions—State of New Jersey" dated May 23, 2003. The August 11, 2003 direct final rule announced the availability of this technical support document to the public. However, EPA did not receive any requests for a copy. In the Technical Support Document for this rule, EPA indicates that New Jersey's submittals are consistent with

relevant EPA guidance and the requirements of the State's RACT regulation (Subchapter 19) and provide sufficient justification to support the established NO<sub>x</sub> requirements. For the reasons provided in this section and in the Technical Support Document, EPA is approving the NO<sub>x</sub> emission limitations for the eight sources subject to today's rulemaking as consistent with the RACT requirements of the CAA.

## III. What Is EPA's Conclusion?

The EPA is approving the source-specific SIP revisions described above as RACT for the control of NO<sub>x</sub> emissions from the seven sources identified in the three source-specific SIP revisions and for an eighth source, is approving the stricter limit revised by the State in accordance with a SIP revision which EPA previously approved. EPA is approving the State's RACT determinations because New Jersey established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulation applicable to these sources and because they conform with CAA requirements and EPA guidance. New Jersey has also established recordkeeping and testing requirements for these sources sufficient to determine compliance with the applicable RACT determinations.

## IV. Statutory and Executive Order Reviews

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. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). 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 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a