

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

CERTIFICATE OF ADOPTION

AGENCY ACTION: 6 NYCRR Subparts 201-3 and 227-2

Pursuant to the provisions of Environmental Conservation Law, Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305 and 19-0311, I, Erin M. Crotty, Commissioner of Environmental Conservation, do hereby order that 6 NYCRR Subpart 201-3 and Subpart 227-2 be adopted to read as on the attached original, and certify that this is the original thereof, as adopted on January 9, 2004, to be effective thirty days after filing with the Department of State, and further certify that prior notice as required under the State Administrative Procedure Act was published in the *State Register* on July 16, 2003, and further certify that prior notice of public hearings, scheduled for and held on August 19, 2003 in Long Island City, NY, August 21, 2003 in Buffalo, NY, and on August 22, 2003 in Albany, NY, and was published in newspapers throughout the State on July 16, 2003, and further certify that this action was approved by the State Environmental Board pursuant to Article 5 of the Environmental Conservation Law on December 15, 2003.



Erin M. Crotty
Commissioner of Environmental Conservation

DATED: January 9, 2004
Albany, New York

Because of the proposed exception for Bighead carp in the New York City area, the job impact of this rulemaking will be minimal. A small business survey of Asian fish markets indicated that they do not sell other species of Asian carp, and snakeheads are now banned from importation and interstate transport by the Federal Lacey Act.

2. Categories and numbers affected:

Fewer than 100 small businesses may be slightly impacted. Businesses that may be impacted are all Asian live fish markets.

3. Regions of adverse impact:

The proposed rule would have an effect throughout the New York City area only.

4. Minimizing adverse impact:

The proposed exception for live Bighead carp in the New York City area will significantly reduce the potential job impact of this rule. Small businesses indicated that Bighead carp were the only regulated species that they sold in significant numbers. All known Asian fish markets that sell these fish are in the New York City area. The proposed exception for parts of Westchester County will allow transport of live Bighead carp to identified markets in the Boston area.

5. Self employment opportunities:

The proposed rule would not prevent a person from starting a new fish market that sells live Bighead carp in the New York City area. However, it will prohibit the live sale of other species of Asian carp and snakeheads, although no known markets exist for these species. Markets are not known to exist in other parts of New York for live sale of these species.

NOTICE OF ADOPTION

Stationary Combustion Installation

I.D. No. ENV-28-03-00024-A

Filing No. 28

Filing date: Jan. 12, 2004

Effective date: 30 days after filing

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Parts 201 and 227 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305 and 19-0311

Subject: Stationary combustion installations.

Purpose: To reduce emissions of oxides of nitrogen from stationary internal combustion engines.

Revised summary of final rule: 6 NYCRR Part 201, Permits and Registrations

Subpart 201-3, Exemptions and Trivial Activities

6 NYCRR Part 227, Stationary Combustion Installations

Subpart 227-2, Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_x)

The proposed changes to 6 NYCRR Subpart 227 and 6 NYCRR Part 201 mark the latest in a sustained series of actions undertaken by New York State, in concert with the U.S. Environmental Protection Agency (EPA) and other states, to control emissions of ozone precursors, nitrogen oxides (NO_x), and volatile organic compounds (VOCs), so that New York State may attain the one-hour national ambient air quality standard (NAAQS) for ozone.

On December 16, 1999, EPA issued a proposed rule in which it proposed to conditionally approve the November 1998 One-Hour Ozone Attainment Demonstration for the New York City Metropolitan Area/Lower Orange County Metropolitan Area (64 Fed. Reg. 70364). This conditional approval required the State to adopt sufficient measures to achieve the level of reductions of VOCs and NO_x that were identified by EPA as necessary for the State to reach attainment of the national ambient air quality standard for ozone by the attainment date in 2007. On April 18, 2000, the Department submitted a proposed State Implementation Plan (SIP) revision to EPA which described the State's strategy aimed at achieving the necessary additional NO_x emissions reductions. On February 4, 2002, this enforceable commitment was approved by EPA as part of the State's SIP (67 Fed. Reg. 5170).

Promulgation of these revisions to Subpart 227-2 is intended to reduce NO_x emissions from stationary combustion installations in order to address the emission shortfalls associated with the one-hour ozone NAAQS and make progress towards reducing eight-hour ozone levels. New York State and other states in the New York - Northern New Jersey - Long Island - New Jersey - Connecticut Ozone Non-Attainment Area must reduce the

EPA-identified shortfall for both NO_x and VOCs by the year 2007; for NO_x, that shortfall is seven tons per-day.

The proposed amendments to Subpart 227-2 reduce NO_x emission rate limits for only one of the source categories - stationary internal combustion engines, and will require between 25 and 75 percent NO_x emissions control beyond existing RACT requirements. The proposed revised emission rate limits for these sources are to become effective on April 1, 2005 and will help the New York City metropolitan area achieve attainment with the one-hour ozone NAAQS, as well as reduce eight-hour ozone levels throughout New York State. The applicability threshold in the severe ozone non-attainment area is proposed to be lowered from 225 bhp to 200 bhp. Engine test cells at engine manufacturing facilities that are utilized for research and development, reliability performance testing, quality assurance performance testing are exempted from the proposed requirements. The rule has defined the terms 'actual 1990 baseline emissions' and 'commence commercial operation.' The rule making will allow increased flexibility for sources which utilize CEMS. Sources that utilize CEMS will be allowed to use the monitoring requirements of either 40 CFR 60 or 40 CFR 75.

Industrial boilers, stationary combustion turbines, and cement kilns (all source categories) will not be affected by the proposed revisions to Subpart 227. Emission sources that received alternative emission limits pursuant to existing section 227.2.5(c) will need to reevaluate their alternative emission limit.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 201-3.2(c)(6).

Text of rule and any required statements and analyses may be obtained from: Michael Jennings, Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233, (518) 402-8403, e-mail: mxjennin@gw.dec.state.ny.us

Additional matter required by statute: The department completed a coastal assessment form, short environmental assessment form and a negative declaration.

Revised Summary of Regulatory Impact Statement

The promulgation of revised Subpart 227-2 is authorized by Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, and 19-0311 of the Environmental Conservation Law (ECL). The proposed changes to 6 NYCRR Subpart 227-2 mark the latest in a sustained series of actions undertaken by New York State to control emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOCs), which are precursors to the formation of ozone, so that New York State may attain the national ambient air quality standard (NAAQS) for ozone, an air pollutant. Implementation of the program proposed by the revisions to Subpart 227-2 will, in concert with counterpart programs established by other states and federal implementation plans imposed by the U.S. Environmental Protection Agency (EPA), lower levels of ozone in New York State and decrease the adverse public health and welfare effects described above.

Ozone in the stratosphere is naturally occurring and desirable because it shields the earth from harmful ultraviolet rays from the sun which may cause skin cancer. Ozone at ground level, however, causes throat irritation, congestion, chest pains, nausea and labored breathing. It aggravates respiratory conditions such as chronic lung and heart diseases, allergies, and asthma. Ozone also damages the lungs and may contribute to lung disease. Unlike other pollutants, ozone is a secondary pollutant not emitted directly, but formed in the atmosphere by a variety of photochemical reactions involving VOCs and NO_x in the presence of sunlight. NO_x is a by-product of fossil fuel combustion and is emitted primarily by utilities, motor vehicles and major industrial facilities.

On December 16, 1999, the EPA issued a proposed rule conditionally approving the November 1998 one-hour ozone attainment demonstration for the NYMA/LOCMA (64 Fed. Reg. 70364). Among other things, this conditional approval required the State to adopt sufficient measures to address the required level of reductions identified by EPA as necessary for the State to reach attainment by 2007. On April 18, 2000, the Department submitted a proposed state implementation plan (SIP) revision to EPA which described the State's strategy aimed at achieving the necessary additional VOC and NO_x emissions reductions. On February 4, 2002, this enforceable commitment was approved by EPA as part of the State's SIP (67 Fed. Reg. 5170). The revisions to Subpart 227-2 will enable the State to meet the NO_x reduction target identified by EPA.

The changes proposed for Subpart 227-2 are one component of several changes proposed for adoption by the member states of the Ozone Transport Commission, which includes New York State. The new requirements are proposed to become effective on April 1, 2005 to help the New York City metropolitan area achieve attainment with the one hour ozone

NAAQS. The changes proposed for Subpart 227-2 would reduce the emission limits for stationary internal combustion engines. The owner or operator of a subject facility must undertake an evaluation of control technologies and/or strategies like fuel switching, selective catalytic reduction, or system-wide averaging as compliance options. Alternative control or emission limits will be granted to those sources which demonstrate that the applicable emission limits are not economically or technically feasible. This alternative RACT emission limit must be approved by the Department and by EPA as a revision to the SIP.

The cost of NO_x abatement associated with the proposed controls is reasonable and cost effective. The annualized costs for the proposed changes to Subpart 227-2 are expected to be below \$3,000 per ton of NO_x removed, with some outlier facilities approaching \$5,000 to \$6,000 per ton of NO_x removed. Capital costs will vary with engine size, but an average cost of \$25 to \$40 per unit of horsepower appears to be a reasonable estimate of those costs, with the per horsepower cost increasing inversely with engine size. A report on alternative control techniques issued by the Emission Standards Division, Office of Air Quality Planning and Standards of the EPA contains cost algorithms for the pollution prevention techniques and control technology applied to internal reciprocating engines. Those algorithms yields costs: which run from \$250 to \$1,700 per ton for engines larger than 1,000 horsepower for the elimination of NO_x. For smaller engines, the cost spans \$400 to \$3,500 per ton. The upper limit for cost effectiveness for the current version of Subpart 227-2 was \$3,000 per ton of NO_x removed in 1994 dollars. Adjusting for inflation, using the Consumer Price Index for the metropolitan area, the cost is \$3,730 per ton. Therefore, the costs for NO_x control associated with the proposed revisions to Subpart 227-2 are reasonable.

The proposed changes to Subpart 227-2 do not duplicate any existing state or federal law, rule or regulation.

No additional recordkeeping or reporting will be required by the proposed revisions to Subpart 227-2.

The Department evaluated both the "no-action" alternative and an alternative which would have implemented the full OTC model rule. Both alternatives were rejected as not meeting the needs, constraints and objectives of the EPA, the regulated community, and the Department.

Regulatory Flexibility Analysis

There were no changes to the previously published Regulatory Flexibility Analysis for Small Business and Local Governments. The effect of the regulations on small businesses and local governments remains the same.

Revised Rural Area Flexibility Analysis

The Department of Environmental Conservation (the Department) proposes to revise 6 NYCRR Part 227, Stationary Combustion Installations, by revising the NO_x emission limits for stationary internal combustion engines in Subpart 227-2, Reasonable Available Control Technology (RACT) for Oxides of Nitrogen (NO_x).

Types and estimated numbers of rural areas:

The Department has estimated that nineteen facilities are in counties with less than 200,000 people and up to four facilities are in towns with average population densities less than 150 persons per square mile. This is based upon a query of conditions in Title V permits which would be affected by the changes. No local governments in rural areas will be affected by the proposed changes.

Reporting, recordkeeping and other compliance requirements, and professional services:

Facilities subject to the proposed Subpart 227-2 revisions will be required to resubmit their original NO_x RACT compliance plans with all necessary changes and updates for approval by the Department. These facilities will also be required to submit a permit application to modify their Title V permit. However, these changes can be made at the time of the facility's renewal application for the Title V permit (which is done every five years). If there are no changes caused by the proposed Subpart 227-2 revisions, no permit action is required. Finally, the affected facilities will be required to perform a compliance stack test to determine compliance with the new NO_x emission limits. Test protocols and test reports will need to be submitted to the Department for approval. However, all of the affected facilities are regulated under the Title V program. These facilities are already required to perform a compliance stack test once during the term of their permit (every five years). The compliance test required for the Subpart 227-2 revisions would also meet the existing Title V requirement. If the facility does not have environmental staff that can complete the requirements of the revisions, they will need to utilize consulting services to prepare compliance plans and design any necessary changes to meet the revised emission limits. Compliance stack testing services will also need to be procured in order to write stack test protocols and conduct testing.

Costs:

NO_x control costs for this sector have been changing rapidly with dramatic reductions in recent years. The control costs vary by control technique, fuel type, grade of fuel, size of engine, type of engine, as well as other factors, and have been documented in recent technical reports.¹ The technical reports support the conclusion that the proposed emission limitations are both technically feasible and cost effective. A report on alternative control techniques issued by the Emission Standards Division, Office of Air Quality Planning and Standards of the U.S. Environmental Protection Agency contains cost algorithms for the pollution prevention techniques and control technology applied to internal reciprocating engines. Costs for NO_x reduction range from \$250 to \$1,700 per ton for engines larger than 1,000 horsepower. For smaller engines, the costs run from \$400 to over \$3,500 per ton.

Minimizing adverse impact:

The proposed changes have been developed to minimize the cost burden to rural areas. First, the changes in emission limits affect only the internal combustion engine sector. Boilers and turbines are not impacted with the proposed changes. Second, various control technologies exist for stationary internal combustion engines. These control technologies include low emission combustion, selective catalytic reduction, and non-selective catalytic reduction. Third, sources also have the option of complying by reducing NO_x emissions by 90 percent from their 1990 baseline emissions. If the source can show that they meet the 90 percent control (which is less stringent than the proposed limits) then the source will be required to only meet the 90 percent control option. Fourth, options such as fuel switching and system wide averaging may also be used to comply with the new RACT limits. Fifth, a facility which can show that the proposed limits are not technically or economically feasible can receive a less stringent case-by-case RACT determination from the Department. Sixth, engine manufacturers in rural areas will receive an exemption from the requirements of Subpart 227-2 for engine test cells.

Rural area participation:

Initially, the Department sent a copy of the proposed revisions to every permittee affected by the proposed changes. The original comments received were mostly requests for clarification. Also, the Department held a public outreach session on January 9, 2003. The attendees received a working copy of the revised rule and a draft copy of the Regulatory Impact Statement (RIS). The outreach session included a presentation explaining the proposed changes. The Department solicited comments. The Department evaluated and responded to the comments that were received. Small businesses and local governments will be given other opportunities to participate in the rule making. The proposed revisions will undergo a publication of general notice in both the *Environmental Notice Bulletin* and *State Register*. Finally, public hearings will be held to allow those facilities affected by the rule another chance to comment.

¹ EC/R 2000: Stationary Reciprocating Internal Combustion Engines - Updated Information on NO_x Emissions and Control Techniques - Final Report, prepared for the US Environmental Protection Agency, Ozone Policy and Strategies Group, Air Quality Strategies and Standards Division, MD-15, Office of Air Quality Standards, Research Triangle Park, NC August 29, 2000.

E.H. Pechan & Associates: NO_x Emissions Control Costs for Stationary Reciprocating Internal Combustion Engines in the NO_x SIP Call States, prepared for the US Environmental Protection Agency, Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park NC, August 11, 2000.

E.H. Pechan & Associates: Ozone Transport Rulemaking Non-Electricity Generating Unit Cost Analysis, prepared for the US Environmental Protection Agency. Unknown date.

EPA, 1993: Alternative Control Techniques Document - NO_x Emissions from Stationary Reciprocating Internal Combustion Engines, US Environmental Protection Agency, Research Triangle Park, NC, July, 1993.

EPA, 1999: Technical Bulletin: Nitrogen Oxides (NO_x) - How and Why They Are Controlled, Office of Air Quality Planning and Standards, Research Triangle Park, NC, November, 1999.

Job Impact Statement

There were no changes to the previously published Job Impact Statement. The effect of the regulations remains the same.

Summary of Assessment of Public Comment

The Department of Environmental Conservation (Department) held public hearings on the proposed revisions to 6 NYCRR Subpart 227-2, NO_x RACT, and 6 NYCRR Subpart 201-3, Exemptions and Trivial Activi-

ties, on August 19, 21, and 22, 2003 in Long Island City, Buffalo, and Albany respectively. The Department accepted written comments until close of business September 12, 2003. A summary of the significant comments received and the Department's responses are provided below.

One comment expressed by several of the interested parties was that there would be insufficient time to comply with the regulation based on the proposed compliance dates. The commenters also stated their concern for the Department's ability to permit their facilities in a timely manner. The Department has explained that these dates cannot be "pushed" back because of the required 2007 compliance demonstration to EPA (which will prove that the proposed rule changes meet the required NO_x reductions). The Department is committed to performing this demonstration on time by permitting all affected facilities in a timely manner.

Several of the commenters expressed concerns regarding the financial commitments required by the implementation of the proposed limits. The Department stated that RACT has a limit of 3,750 dollars per ton of NO_x reduced. Also there are several compliance options as well as an alternative RACT option that allows a facility to be permitted above the prescribed RACT limit if it is proven that RACT is infeasible.

Two of the commenters requested that the Department define the term "1990 actual baseline emissions." The Department has added a definition for "actual 1990 baseline emissions."

Several of the commenters stated that the Department has not provided enough flexibility to meet the proposed limits for stationary internal combustion engines. The commenters also state that some of the compliance measures are infeasible for their situation. The Department has added a new compliance option in the proposed rule changes and has maintained all of the existing options.

Two of the commenters expressed the concern that the Department did not look at environmental, economical, or reliability impacts that might be incurred due to the proposed rulemaking. The Department is required by the SAPA regulations to address these concerns as part of a rule analysis. This information was included in the rule's supporting documentation.

One commenter stated that the Department failed to properly follow the procedures outlined in both SAPA and the ECL for alternative analysis in the RIS. The Department reviewed this section of the RIS and determined that it had adequately addressed the requirements of the alternative analysis.

One commenter requested that the Department add language for each case-by-case analysis which states that the appropriate emission limit reflects RACT for that specific case. The Department has added this language.

One commenter stated that the proposed revisions exceed the Federal requirements for NO_x. EPA does not have a Federal RACT standard, therefore, the states are required to set RACT. The Department was required to address an EPA cited shortfall in NO_x reductions. These revisions address that shortfall.

One commenter stated that the revisions cannot result in a real or significant reduction in NO_x reductions from gas pipeline compressor engines due to low ozone season utilization. The Department agrees that these reductions from this specific type of engine will not address the entire shortfall. However, these reductions will aid in achieving the Department's NO_x reduction goal.

One commenter requests a clarification be made to the applicability section which states that the regulation only applies to combustion engines greater than or equal to 200 horsepower. The applicability section is written to define what facilities are subject to this rule. The control requirements section lists the affected equipment and the applicable RACT requirements. This change was not made.

One commenter requested that the Department expand the operating limitation of emergency engines from the current limit of 500 hours per year to unlimited. The Department cannot make this change as it would be a "backslide" from our current SIP requirements.

One commenter requested the Department to add a definition for "commerce commercial operation". The Department has added this definition.

One commenter requested the Department to add the following language to the end of the weighted average allowable emission rate definition: "most stringent applicable NO_x emission limit." The department has added this language.

One commenter suggested that the Department should consider the OTC model rule language for emergency generators. The Department decided not to use the OTC model rule language for emergency generators.

One commenter requested language clarifications in the subdivision 227-2.4(c) for "mid-size boilers." The Department has declined to make these changes.

One commenter requested clarification of subdivision 227-2.4(g) for "other combustion sources." The Department reviewed this paragraph and determined that it was sufficient. Therefore, no changes were made.

One commenter has stated that the Department improperly relied upon faulty and outdated analyses in determining the new emission limits for stationary internal combustion engines. The Department used all available resources to develop these new emission limits. These resources included (but were not limited to) EPA studies and reports, the OTC model rule, and actual stack test data from New York facilities.

One commenter stated that the proposed revisions to section 227-2.6 for CEMs is a relaxation of the current regulation. The Department disagrees. The proposed revisions allow flexibility to use monitoring that was not available when the original version of the rule was promulgated. The Department will not be removing the proposed language.

One commenter asked if the provisions of 227-2 would apply if it accepted a cap below 100 tons per year. Once a facility takes enforceable permit conditions to cap below the applicability threshold of the rule, it is no longer subject to the rule.

One commenter asked if a stack test would be required to determine compliance with the new emission limits and when it would need to be conducted. The rule requires an initial stack test be completed to show compliance with these new limits by April 1, 2005.

One commenter states that the regulation could be interpreted as applicable to incinerators and suggests that language be added to clarify that incinerators are not applicable to this regulation. To be subject to this regulation a source must be a stationary combustion installation not an incinerator. The Department will not be adding any new applicability language.

One commenter suggested that the new limits apply only during the ozone season and be incorporated into 6 NYCRR Part 204, NO_x Budget Program. The NO_x Budget Program is a "beyond RACT" requirement implemented to reduce both local ozone and ozone transport, therefore, it has been limited to the ozone season. This regulation will implement RACT which is a year round requirement. The Department has chosen not to add stationary internal combustion engines into the scope of Part 204.

One commenter has stated that the proposed limits are not achievable. The Department has based these proposed emission limits on several sources of data including actual data from the commenter's sources. This data shows compliance with the proposed regulations.

One commenter requested a special exemption which would allow a facility to use alternative type of cap. The Department declined to make the requested revision.

One commenter requested that the Department include an explanation of the proposed CEM monitoring flexibility in the Summary of Express Terms. The Department has added this explanation.

One commenter requested the Department retain the original applicability date of May 31, 1995. The Department declined to make the requested revisions.

One commenter objected to the Department's proposed applicability section. They request that the Department retain the original applicability language. The Department declined to make the requested revisions.

One commenter requested that the Department clarify how the proposed changes require facilities with alternative RACT limits be reevaluated. The Department has added language that clarifies these new requirements in subdivision 227-2.3(d).

Department of Health

EMERGENCY RULE MAKING

Communicable Disease—Arboviral Infection Reporting

I.D. No. HLT-04-04-00010-E

Filing No. 25

Filing date: Jan. 12, 2004

Effective date: Jan. 12, 2004

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action: