



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2017-0013; FRL 9971-28-Region 2]

### Approval and Revision of Air Quality Implementation Plans; State of New York; Regional Haze State and Federal Implementation Plans

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a source-specific revision to the New York state implementation plan (SIP) that establishes Best Available Retrofit Technology (BART) emission limits for the Danskammer Generating Station (“Danskammer”) Unit 4, owned and operated by Danskammer Energy LLC. The SIP revision establishes BART emission limits for sulfur dioxide, oxides of nitrogen, and particulate matter that are identical to the emission limits established by the EPA’s federal implementation plan (FIP) for Danskammer Unit 4, which was published on August 28, 2012. The EPA finds that the SIP revision fulfills the requirements of the Clean Air Act and the EPA’s Regional Haze Rule for BART at Danskammer Unit 4. In conjunction with this approval, we are withdrawing those portions of the FIP that address BART for Danskammer Unit 4.

**DATES:** This rule is effective on [Insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2017-0013. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web

site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through [www.regulations.gov](http://www.regulations.gov), or please contact the person identified in the "For Further Information Contact" section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Edward J. Linky, Environmental Protection Agency, Air Programs Branch, 290 Broadway New York, New York 10007-1866 at 212-637-3764 or by email at [Linky.Edward @epa.gov](mailto:Linky.Edward@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

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### **I. What action is the EPA taking today?**

The EPA is approving a source-specific SIP revision for Danskammer Unit 4 (the “Danskammer SIP Revision”) that was submitted by the New York State Department of Environmental Conservation (NYSDEC) on August 10, 2015, and supplemented on August 5, 2016. Specifically, the EPA is approving BART emission limits for sulfur dioxide (SO<sub>2</sub>), oxides of nitrogen (NO<sub>x</sub>), and particulate matter (PM) for Danskammer Unit 4 that are equivalent to the emission limits established by the EPA’s FIP that was promulgated on August 28, 2012 (77 FR 51915, 51917).

In its submittal, NYSDEC included the following BART emission limits for Danskammer Unit 4: 0.12 pounds of NO<sub>x</sub> per million British thermal units (lb NO<sub>x</sub>/MMBtu) calculated on a 24-hour average during the ozone season and on a rolling 30-day average during the rest of the year; 0.09 lb SO<sub>2</sub>/MMBtu calculated on a 24-hour average; and 0.06 lb PM/MMBtu calculated on a 1-hour average. NYSDEC also included a condition that restricts Danskammer Unit 4 to combusting only natural gas. As a result of the EPA’s approval, the EPA is withdrawing those portions of the FIP that address BART for Danskammer Unit 4. The reader is referred to EPA’s Proposed Rule, 82 FR 21749 (May 10, 2017), for a detailed discussion of this SIP revision.

## **II. What significant comments were received in response to the EPA’s proposed action ?**

EarthJustice (EJ) submitted the following comments on behalf of the National Parks Conservation Association (NPCA) and Sierra Club.

**Comment 1:** EJ supports the inclusion in the New York SIP of limits that restrict combustion at

Danskammer Unit 4 to natural gas. EJ agrees with the EPA's conclusion that such a restriction will have the effect of reducing visibility-impairing emissions compared to the prior Title V permit and the EPA FIP that allowed combustion of coal, oil, or natural gas in Unit 4. According to the 2012 BART determination study for Danskammer Unit 4 that formed the basis for NYSDEC's and the EPA's BART determinations, 100% firing of natural gas is associated with the highest percent reduction of SO<sub>2</sub> of the controls examined at the time, and the third highest percent reduction of NO<sub>x</sub>. Elimination of coal combustion is consistent with BART and will certainly provide visibility benefits at Class I areas.

**Response:** The EPA acknowledges EJ's support of the natural gas requirement in the Danskammer SIP Revision.

**Comment 2:** The 2012 BART determination for Danskammer Unit 4 formed the basis for NYSDEC's and EPA's prior BART determinations. Since the unit had already been converted to co-fire or exclusively fire natural gas in 1987, the determination included the option of 100% firing of natural gas as a feasible BART technology. Thus, the use of natural gas is not fuel switching for this unit. The prior BART analysis lists an achievable emission rate of 0.08 lbs/MMBtu for NO<sub>x</sub>, and a control efficiency of 99.95% under the 100% natural gas combustion scenario. Since natural gas combustion technology is already installed and operating, the cost of the technology to achieve these emission levels is \$0.

**Response:** The commenter’s intended point is that because restricting Danskammer Unit 4 to combusting natural gas is not a form of fuel switching, the state must adopt BART emission limits that reflect the low emission rates associated with natural gas combustion. The EPA disagrees that restricting Danskammer Unit 4 to combusting natural gas is not a form of fuel switching. The Danskammer Unit 4 boiler was designed to combust coal, fuel oil, and natural gas, and until recent years, coal was the unit’s primary fuel source. By prohibiting Danskammer Unit 4 from combusting coal or fuel oil going forward, the Danskammer SIP Revision effects a fuel switch from multi-fuel capability to the exclusive use of natural gas. In the BART Guidelines, the EPA stated that “it is not our intent to direct States to switch fuel forms, e.g., from coal to gas.” 70 FR 39104, 39164 (July 6, 2005). As such, NYSDEC’s decision to require fuel switching at Danskammer Unit 4 as a condition in its SIP revision was entirely discretionary. The EPA acknowledges that, by combusting only natural gas, Danskammer Unit 4 can achieve the lower emission limits cited by the commenter without additional cost, but the EPA cannot disapprove the SIP for not including lower limits when the BART Guidelines do not require states to consider fuel switching as a BART option in the first instance. See 70 FR at 39164.

**Comment 3:** As noted by the EPA, the emission limits for SO<sub>2</sub> and NO<sub>x</sub> adopted by NYSDEC for Danskammer Unit 4 are identical to those contained in EPA’s 2012 FIP. However, the rulemaking record for the 2012 FIP clearly demonstrates that these emission limits were designed for a plant that maintained the option to use coal as a fuel. The EPA’s Regional Haze Rule requires that the “determination of BART must be based on an analysis of the best system

of continuous emission control technology available and associated emission reductions achievable.” 40 CFR 51.308(e)(1)(ii)(A). According to the EPA’s own BART Guidelines, “[t]o complete the BART process, you must establish enforceable emission limits that reflect the BART requirements.” 70 FR 39172. The coal-based emission limits in the EPA’s current proposal no longer reflect BART, as the plant is now restricted to burning natural gas. Thus they are not emission reductions “associated” with natural gas combustion under the BART Guidelines. The EPA must instead establish lower limits under BART reflecting the natural gas-only fuel restriction it proposes to incorporate into the SIP.

**Response:** The EPA disagrees that the natural gas requirement in the Danskammer SIP Revision is BART. As explained in the response to comment 2, the BART Guidelines do not require states to consider fuel switching as a BART control option. In its 2012 SIP submittal, NYSDEC included at its discretion a potential control option of 100% combustion of natural gas for Danskammer Unit 4 before rejecting it in favor of other control options. In the Danskammer SIP Revision, however, NYSDEC did not indicate that it was now determining 100% natural gas combustion to be BART. Rather, NYSDEC adopted the BART emission limits that the EPA established in its 2012 FIP, which were based on flue-gas desulfurization (FGD) for SO<sub>2</sub>, various options for reducing NO<sub>x</sub>, and Unit 4’s existing electrostatic precipitator (ESP) for PM. The EPA included a detailed technical justification for its BART determinations in the record for that rulemaking, *see* 77 FR 24793, 24812-15 (April 25, 2012) (proposal); 77 FR 51918-23 (final), and the commenter has not made any effort to rebut that analysis with new information. Nothing in the Clean Air Act (CAA), the Regional Haze Rule, or the BART Guidelines requires the EPA

to disapprove the Danskammer SIP Revision and establish lower emission limits reflecting 100% combustion of natural gas simply because NYSDEC included that condition in addition to its BART emission limits in its SIP revision. In any event, the EPA notes that requiring the lower emission limits favored by the commenter would not achieve an environmental benefit because the natural gas requirement in the Danskammer SIP Revision already has the practical effect of reducing Danskammer Unit 4's emissions to levels that are consistent with those lower emission limits.

**Comment 4:** The EPA claims in its proposal that NYSDEC's proposal is sufficient because it is "more stringent than the EPA's FIP." 82 FR 21750. However, the BART determination cannot simply be more stringent than the EPA's FIP; it must stand alone as a BART determination, which includes requiring an emission limit consistent with the "best system of continuous emission control technology available," in this case, at a minimum, the exclusive use of natural gas. 40 CFR 51.308(e)(1)(ii)(A). In the original BART determination, as the EPA noted in its 2012 proposal, "[a]lthough gas co-firing (and 100% gas firing) appears to be feasible and cost effective, it was ruled out as a control option due to high price volatility of natural gas and potential reliability concerns on the state's electric system." 77 FR 24812. These concerns are no longer valid, if indeed they were in the first place. Thus, based on the original BART determination for the unit, limits associated with the 100% firing of natural gas should be those originally associated with that control, i.e., no higher than 0.08 lbs/MMBtu for NO<sub>x</sub> and 99.95 percent SO<sub>2</sub> control efficiency consistent with the unit's existing limits. The existing NO<sub>x</sub> limit is on a 24-hour average during the ozone season and a 30-day average during the remainder of

the year. This is unjustified and inappropriate for a visibility-specific limit given 100% gas firing and higher impacts from nitrates during the wintertime. Also, the exclusive use of natural gas would reduce PM emissions as well, and so a PM emission limit should be set that reflects 100% natural gas firing, rather than the proposed limit of 0.06 lbs/MMBtu on a 1-hour basis, which was determined based on tests performed when burning coal.

**Response:** The EPA disagrees with this comment for the same reasons described in the EPA’s previous responses. The EPA acknowledges that the Agency stated at proposal that the Danskammer SIP revision was approvable “because it is more stringent than the EPA’s FIP.” 82 FR 21750. More accurately, the SIP revision is approvable because it meets minimum CAA requirements by adopting the emission limits in the EPA’s FIP, and then goes beyond those minimum CAA requirements by including the “more stringent” natural gas requirement. *See* CAA section 116 (“[N]othing in [the CAA] shall preclude or deny the right of any State . . . to adopt or enforce . . . any requirement respecting control or abatement of air pollution . . .”).

**Comment 5:** As noted, NYSDEC has claimed to submit these changes for Danskammer Unit 4 as an “updated” BART determination. The EPA has proposed to approve it as such, simultaneously withdrawing the BART determination in its FIP. However, NYSDEC has not submitted a BART determination, only changes to Unit 4’s Title V permit. Neither the state nor the EPA has offered an actual BART determination, which must include consideration of: the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use at the source, the remaining useful life of the source, and the

degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. 40 CFR 51.308(e)(1)(ii)(A). In this case, any updated BART determination should also include consideration of controls that can be used in addition to 100% firing of natural gas. Because the proposed rulemaking does not include a BART determination, the EPA cannot use it as a replacement for its challenged FIP. To fix this critical shortcoming, the EPA has several options. First, the EPA could include a BART determination with the final rule based on the information submitted with the 2012 New York haze SIP, setting limits based on 100% natural gas combustion and any further controls that it determines to be BART. Second, NYSDEC could immediately supplement its 2012 haze plan as to Danskammer Unit 4, and include a BART determination, again based on the prior BART analysis for 100% natural gas combustion and any additional BART controls. If NYSDEC pursues the second option and it cannot be achieved in a timely manner, EPA must issue a limited approval of the Title V permit restriction as to natural gas combustion and maintain the current FIP, disapproving the current submission as to any purported BART determination and requiring NYSDEC to formally resubmit an actual BART determination that includes at least 100% natural gas combustion at Unit 4.

**Response:** In the 2012 FIP, the EPA “encourage[d] New York at any time to submit a SIP revision to incorporate provisions that match the terms of our FIP, or relevant portion thereof,” explaining that if we approved the SIP revision, it would replace the FIP provisions. 77 FR 51917. NYSDEC responded by submitting the Danskammer SIP Revision, which incorporated provisions that match the terms of our FIP, as well as an additional requirement restricting

Danskammer Unit 4 to combusting natural gas. Because NYSDEC was not required to update its BART determinations beyond incorporating the BART emission limits from the 2012 FIP, the EPA has no basis to disapprove the SIP revision and supplant it with another FIP.

**Comment 6:** The CAA requires that Danskammer procure, install, and operate BART as expeditiously as practicable. “As expeditiously as practicable” is defined as five years after the date of approval of a plan revision or promulgation of a FIP. The FIP here was promulgated on August 28, 2012. Therefore, the EPA must act promptly to respond to the issues identified in this letter and determine BART for gas-only combustion to enable Danskammer to meet this deadline.

**Response:** The 2012 FIP required Danskammer Unit 4 to comply with the BART emission limits by July 1, 2014. As a result of damage to the facility sustained during flooding in 2012, Danskammer Unit 4 was non-operational until the fall of 2014, when it began operating as a natural gas peaking unit. Danskammer Unit 4 has been complying with the BART emission limits in the FIP since it restarted in 2014. The Danskammer SIP Revision adopts the FIP’s BART emission limits, and they will become federally enforceable on the effective date of this final action. Therefore, NYSDEC has satisfied CAA section 169A(g)(4)’s requirement that BART must be installed as expeditiously as practicable, but in no event later than five years after the date of approval of a plan revision (i.e., the Danskammer SIP Revision).

### **III. What are the EPA’s conclusions?**

The EPA has evaluated the Danskammer SIP Revision and is determining that it meets the requirements of the CAA and the Regional Haze Rule. Therefore, the EPA is approving the BART emission limits and related administrative requirements (i.e., monitoring, recordkeeping and reporting requirements) for Danskammer Unit 4, which are identical to those contained in the EPA's 2012 FIP: 0.12 lb NO<sub>x</sub>/MMBtu, calculated on a 24-hour average during the ozone season and on a rolling 30-day average during the rest of the year; 0.09 lb SO<sub>2</sub>/MMBtu, calculated on a 24-hour average; and 0.06 lb PM/MMBtu, calculated on a 1-hour average. NYSDEC also included in its SIP revision a condition that restricts Danskammer Unit 4 to combusting only natural gas, which the EPA is approving into the SIP. Consequently, the EPA is withdrawing those portions of the 2012 FIP that address BART for Danskammer Unit 4.

#### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of a single-source SIP revision, dated August 10, 2015, and supplemented on August 5, 2016, from NYSDEC for Danskammer Unit 4 (Facility DEC ID 3334600011), including Title V permit conditions (permit ID 3-3346-00011/00017) with Best Available Retrofit Technology (BART) emission limits for NO<sub>x</sub>, SO<sub>2</sub>, and PM. NYSDEC renewed Danskammer's Title V permit on February 24, 2015. The summary of emission limits and other enforceable requirements for this SIP revision are included in section I of this rulemaking. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 2 Office (please contact the person identified in

the “For Further Information Contact” section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by the Director of the Federal Register in the next update to the SIP compilation.<sup>1</sup>

## **V. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at

<http://www2.epa.gov/laws-regulations/laws-and-executive-orders>

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget (OMB) because it will result in the approval of a SIP submitted by the New York State Department of Environmental Conservation for Danskammer Generation Station Unit No.4. Approval of SIPs falls within a category of Actions that is exempted from review by OMB. It was therefore not submitted to OMB for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

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<sup>1</sup> 62 FR 27968 (May 22, 1997)

This action is not an Executive Order 13771 regulatory action because this action falls within the category of Actions that OMB has exempted from review. This action specifically is an Approval of a State Implementation Plan (SIP).

C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA).<sup>2</sup> Because this final rule has identical recordkeeping and reporting requirements to the EPA's 2012 FIP, the PRA does not apply.

D. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This rule does not impose any requirements or create impacts on small entities as no small entities are subject to the requirements of this rule.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Because this final rule has identical BART emission limits and related administrative requirements (i.e., monitoring, recordkeeping and reporting requirements) to the EPA's 2012 FIP, this final rule is not subject to the requirements of sections 202 or 205 of UMRA. This final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

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<sup>2</sup> 44 U.S.C. 3501 *et seq.*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997). The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). As explained previously, this action provides identical BART emission limits and related administrative requirements (i.e., monitoring, recordkeeping and reporting requirements) to the EPA's 2012 FIP.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

M. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

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

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

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Dated: November 20, 2017.

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E. Scott Pruitt,  
Administrator.

Part 52,chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

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

**Subpart HH—New York**

2. Section 52.1670(d) is amended by adding an entry entitled “Danskammer Energy LLC, Danskammer Generating Station” to the end of the table to read as follows:

**§52. 1670 Identification of plan.**

\* \* \* \* \*

(d) \* \* \*

**EPA-APPROVED NEW YORK SOURCE-SPECIFIC PROVISIONS**

<b>Name of source</b>	<b>Identifier No.</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Comments</b>
**	**	*	*	*

Danskammer Energy LLC, Danskammer Generating Station	NYSDEC Facility No 3334600011	2/25/15	[Insert date of publication in <u>Federal Register</u> ]	Best Available Retrofit Technology (BART) emission limits for NO <sub>x</sub> , SO <sub>2</sub> , and PM pursuant to 6 NYCRR Part 249 for Unit 4 and the requirement to combust only natural gas.
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3. Section 52.1686 is amended by:

- a. Revising paragraph (a); and
- b. Amending paragraph (c)(1) table by removing the entry “Danskammer Generating Station—Dynergy.”

The revision reads as follows:

**§52.1686 Federal Implementation Plan for Regional Haze.**

- (a) *Applicability.* This section applies to each owner and operator of the following electric generating units (EGUs) in the State of New York: Roseton Generating Station, Units 1 and 2;

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[FR Doc. 2017-25945 Filed: 12/1/2017 8:45 am; Publication Date: 12/4/2017]