

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of Climate Air & Energy

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MAY 14 2020

Mr. Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway, 26th Floor
New York, NY 10007-1866

Dear Administrator Lopez:

On behalf of the Governor of the State of New York, I am submitting for approval by the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision to incorporate the adoption of Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Subpart 227-3.

The New York State Department of Environmental Conservation (DEC) had previously repealed 6 NYCRR Subpart 227-3, "Stationary Combustion Installations, Pre-2003 Nitrogen Oxides Emissions Budget and Allowance Program," which EPA approved into the New York SIP on May 22, 2001, because that program expired. It should therefore be removed from the SIP. A new 6 NYCRR Subpart 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines," was adopted by DEC on December 11, 2019. This regulation will lower allowable NOx emissions from simple cycle and regenerative combustion turbines during the ozone season. The lower emissions from these sources will help to address ozone nonattainment requirements pursuant to the Clean Air Act and protect the health of New York State residents.

A public review process was held for this adoption. A notice of proposed rulemaking and schedule for public hearings was published in the Environmental Notice Bulletin (ENB) and the New York State Register on February 27, 2019. Legislative public hearings on the proposed adoption of the rule and its subsequent submission as a SIP revision were held on May 6, 2019 in Albany; May 13, 2019 in Stony Brook; and May 14, 2019 in Long Island City. A subsequent re-proposal was published in the ENB and State Register on August 21, 2019 (with no associated hearings).

The following documents are enclosed with this SIP revision:

1. Express Terms for 6 NYCRR Subpart 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines," as proposed on February 27, 2019, and Express Terms as re-proposed on August 21, 2019;



Department of
Environmental
Conservation



2. Notice of proposed rulemaking, including public hearing dates, as published in the ENB and State Register on February 27, 2019;
3. Newspaper proofs of publication for the proposed rulemaking;
4. Notice of revised rulemaking as published in the ENB and State Register on August 21, 2019;
5. Transcripts of the public hearings held in Albany on May 6, 2019; in Stony Brook on May 13, 2019; and in Long Island City on May 14, 2019;
6. Assessment of Public Comments for all comments received on the proposal between February 27, 2019 and May 20, 2019, and an associated list of commenters¹;
7. Assessment of Public Comments for all comments received on the re-proposal between August 21, 2019 and October 7, 2019;
8. Certificate of Adoption dated December 11, 2019;
9. Express Terms for 6 NYCRR Subpart 227-3 as adopted on December 11, 2019; and,
10. Notice of Adoption as published in the ENB and State Register on December 31, 2019.

If you have any questions or concerns, please contact Mr. Steven Flint, Director, Division of Air Resources at (518) 402-8452.

Sincerely,



J. Jared Snyder
Deputy Commissioner
Office of Climate, Air & Energy

Enclosures

c: R. Ruvo, EPA Region 2

¹ The actual attached Assessment of Public Comments contains an error indicating that it includes an assessment of comments received on the proposal between February 26, 2019 and May 20, 2019. This letter has been amended to reflect the actual dates during which comments were received on the proposal, February 27, 2019 and May 20, 2019.

6 NYCRR Subpart 227-3, OZONE SEASON OXIDES OF NITROGEN (NOX) EMISSION LIMITS FOR
SIMPLE CYCLE AND REGENERATIVE COMBUSTION TURBINES

Express Terms

227-3.1 Applicability.

- (a) The provisions of this Subpart apply to owners or operators of simple cycle and regenerative combustion turbines (SCCTs) that are electric generating units with a nameplate capacity of 15 megawatts (MW) or greater and that bid into the New York Independent System Operator (NYISO) wholesale market.
- (b) The provisions of this Subpart only apply during the ozone season.

227-3.2 Definitions.

- (a) To the extent that they are not inconsistent with the specific definitions in subdivision (b) of this section, the general definitions of Part 200, Part 201, and Subpart 227-2 of this Title apply.

- (b) For the purposes of this Subpart, the following specific definitions apply:

(1) 'Common control.' Refers to two or more sources that are under the control of a single corporate entity. The corporate entity must:

- (i) have the right to bid an electricity generating asset into the NYISO wholesale markets and/or decide when to operate the plant; or
- (ii) have the right to bid an electricity generating asset into the NYISO wholesale markets through a power purchase agreement or other agreement and the entity that owns the asset provides the necessary paperwork required under subdivision 227-3.3(b) of this Subpart.

- (2) 'Electric storage resource.' A resource capable of receiving electric energy from the grid and storing it for later injection of electric energy back to the grid.
- (3) 'Hydroelectric energy.' The conversion of potential and kinetic energy in the form of falling or fast-flowing water into mechanical energy which drives turbines producing electricity.
- (4) 'MWh.' Megawatt hour of electricity.
- (5) 'NYISO.' New York Independent System Operator.
- (6) 'ORISPL.' Office of Regulatory Information Systems Plant Code assigned by the Energy Information Administration to electric generating units.
- (7) 'Ozone season.' May 1 through October 31 of each calendar year.
- (8) 'Power purchase agreement.' A contract between two entities pursuant to which one entity agrees to produce electricity, or some other power source, for the other entity over a defined period of time.
- (9) 'Renewable generation resources.' Solar photovoltaic energy, wind energy, tidal energy or hydroelectric energy electricity generating systems.
- (10) 'Solar photovoltaic energy.' Technology that directly converts the energy radiated by the sun as electromagnetic waves into electricity by means of solar panels.
- (11) 'Substation.' An area or group of equipment to transform power from one voltage to another or from one system to another.
- (12) 'Tidal energy.' The conversion of kinetic energy in the form of tide movement into mechanical energy which drives turbines producing electricity.
- (13) 'Wholesale market.' The sum of purchases and sales of energy and capacity for resale along with ancillary services needed to maintain reliability and power quality at the transmission level coordinated together through the NYISO and power exchanges. A party that purchases energy,

capacity or ancillary services in the wholesale market to serve its own load is considered to be a participant in the wholesale market.

(14) ‘Wind energy.’ The conversion of kinetic energy in the form of wind or air flows into mechanical energy which drives turbines producing electricity.

227-3.3 Permitting requirements and compliance plan submittal.

(a) Each facility containing an SCCT subject to this Subpart must have or obtain a permit pursuant to Parts 201 and 621 of this Title that reflects the implementation of the compliance plan required in subdivision 227-3.3(b) of this Subpart prior to the May 1, 2023 compliance date of this Subpart in order to operate on and after the applicable compliance date.

(b) Each facility containing an SCCT subject to this Subpart must submit a compliance plan to the Department by March 2, 2020. Each compliance plan must, at minimum, contain:

(1) a list of each SCCT subject to the requirements of this Subpart that includes any identifying numbers such as ORISPL number, source number and nameplate capacity.

(2) a schedule outlining how the owner or operator will comply with the requirements set forth in this Subpart including which SCCTs will install controls, controls to be installed, the expected NOx emission rates, SCCTs to be replaced or repowered, and/or SCCTs to be shut down.

(3) a list of renewable resources to be installed under common control of the permittee to be used in the compliance option described in subdivision 227-3.5 (b) of this Subpart. This list shall include, for each renewable resource:

(i) location;

(ii) nameplate capacity or equivalent; and

(iii) documentation demonstrating common control.

(4) A list of electric storage resources to be installed under common control of the permittee to be used in the compliance option described in subdivision 227-3.5 (b) of this Subpart. This list shall include, for each electric storage source:

- (i) location;
- (ii) nameplate capacity or equivalent;
- (iii) duration of discharge; and
- (iv) documentation demonstrating common control.

(5) Pursuant to subparagraph 227-3.2(b)(1)(ii) the entity that owns the asset must provide a letter, as part of the compliance plan, that the bidding and/or dispatch rights have been provided to the entity asserting common control.

227-3.4 Control Requirements.

(a) The following emission limits on a parts per million dry volume basis (ppmvd), corrected to fifteen percent oxygen must be met as a facility-level average of all SCCTs at a facility:

(1) By May 1, 2023

	Emission Limit (ppmvd)
All SCCTs	100

(2) By May 1, 2025

Fuel Type	Emission Limit (ppmvd)
Gaseous fuels	25
Distillate oil or other liquid fuel	42

(3) Compliance with these emission limits must be determined by conducting stack tests, as set forth in subdivision 227-2.6(c) of Subpart 227-2 of this Title, at a minimum of once per permit term. Alternatively, the owner or operator may choose to use a Continuous Emissions Monitoring System (CEMS) consistent with the provisions of subdivision 227-2.6(b) of Subpart 227-2 of this Title.

227-3.5 Compliance options.

(a) ‘Ozone season stop.’ An owner or operator of an existing SCCT may opt to comply with this Subpart by not operating the SCCT during the ozone season. The ozone season stop provision must be included as an enforceable permit condition in a final permit or permit modification issued prior to the applicable compliance deadline of this Subpart.

(b) ‘Electric storage and renewable energy resources.’ An owner or operator of an SCCT may opt to comply with this Subpart by meeting the following average output-based emission limits on a daily basis pursuant to the following:

(1) Owners and operators must meet the following facility-level daily average emission limits on a pounds of NO_x per megawatt hour (lb/MWh) basis for all SCCTs at a facility.

(i) By May 1, 2023:

	Emission Limit (lb NO _x /MWh)
All SCCTs	3.0

(ii) By May 1, 2025:

Fuel Type	Effective Daily Emission Limit (lb NO _x /MWh)
Gaseous fuels	1.5
Distillate oil or other liquid fuel	2.0

(2) The owner or operator of an SCCT that uses electric storage or renewable energy resources to inject electricity to the grid may demonstrate compliance with the applicable effective daily NO_x emission limits by including the electrical energy, in MWh, injected to the grid from electric storage and/or renewable generation resources in the emission rate calculation provided that:

- (i) The renewable generation resource and/or the electric storage resource must be directly connected to the same physical substation as the SCCT with which it is being averaged; or
- (ii) within one-half mile radius of the SCCT with which it is being averaged.
- (iii) All sources that are averaged under this compliance option must be under common control.

(3) The effective emission rate may be calculated by:

(i) $Effective\ Rate = \frac{MassNO_x}{MWh_{CT} + MWh_{ST} + MWh_{RE}}$, where:

(‘a’) MassNO_x = NO_x emissions (pounds) each day from all SCCTs at the permitted facility.

(‘b’) MWh_{CT} = electrical energy delivered to the grid (in MWh) from SCCTs at the permitted facility each day.

(‘c’) MWh_{ST} = electrical energy delivered to the grid (in MWh) from storage resources over each day.

(‘d’) MWh_{RE} = electrical energy delivered to the grid (in MWh) from renewable generation each day.

(4) If the owner or operator burns both gaseous fuel and liquid fuel during the same day, a facility electrical energy (MWh) weighted average must be calculated to determine a resultant mix fuel emission rate. The mix fuel rate must first be calculated to determine the allowable emission rate and then calculated again to determine the actual mix fuel emission rate.

(i) Allowable Mix Fuel Rate = $\frac{RateG \times GenG + RateO \times GenO}{GenG + GenO}$ where:

(‘a’) RateG = Effective daily emission limit (lb NO_x/MWh) burning gas as defined in 227-3.5(b) of this Subpart.

(‘b’) RateO = Effective daily emission limit (lb NO_x/MWh) burning oil as defined in 227-3.5(b) of this Subpart.

(‘c’) GenG = electrical energy (MWh) generated burning gas each day

(‘d’) GenO = electrical energy (MWh) generated burning oil each day

(ii) Actual Mix Fuel Rate = $\frac{RateG \times GenG + RateO \times GenO}{GenG + GenO + GenR + GenS}$ where:

(‘a’) RateG = lb NO_x/MWh burning gas

(‘b’) RateO = lb NO_x/MWh burning oil

(‘c’) GenG = electrical energy (MWh) generated burning gas each day

(‘d’) GenO = electrical energy (MWh) generated burning oil each day

(‘e’) GenR = electrical energy (MWh) injected to the grid from renewable energy resources each day

(‘f’) GenS = electrical energy (MWh) injected to the grid from electric storage resources each day

227-3.6 Electric System Reliability

(a) An SCCT may continue to operate after the compliance deadline if:

(1) that SCCT is designated as a reliability source, to temporarily resolve a reliability need, by the NYISO, through its generator deactivation process, or by the local transmission/distribution owner.

(2) a designated reliability source may continue to operate until one of the following provisions are met:

- (i) a permanent solution is placed online as determined by the NYISO, the local transmission/distribution owner or the New York State Public Service Commission; or
- (ii) two years after the designated compliance date under this Subpart has lapsed.

(b) A designated reliability source may operate an additional two years if:

(1) the NYISO determines that the reliability need still exists,

(2) the source is designated by the NYISO or the transmission/distribution owner as a reliability source, and

(3) a permanent solution has been selected by NYISO, the transmission/distribution owner or the New York State Public Service Commission and that solution is in the process of permitting or construction but not yet online.

227-3.7 Testing, monitoring, and reporting requirements

(a) The owner or operator of each SCCT must measure or monitor daily NO_x emissions in accordance with paragraphs (1) or (2) below.

- (1) Measure in accordance with the emission test requirements described in subdivision 227-2.6(c) of Subpart 227-2 of this Title, or
 - (2) Monitor with a CEMS as described in subdivision 227-2.6(b) of Subpart 227-2 of this Title or with an equivalent monitoring system acceptable to the Department.
- (b) The owner or operator of each SCCT must report operational data to the Department by November 30 of each year. The report must be in a form prescribed by the Department. The operational data must include:

- (1) NO_x emissions from each SCCT for each compliance period.
- (2) If the electric storage and renewable resources compliance option is used, report daily electrical generation in MWh injected into the grid from each SCCT and each electric storage and/or renewable resource.
- (3) In the event that emissions of air contaminants in excess of any emission standard in this Subpart occur the facility owner or operator shall compile and maintain records of the exceedance and notify the Department as soon as possible during normal working hours, but not later than two working days after becoming aware that the exceedance occurred. When requested by the Department, the facility owner or operator shall submit a written report to the department describing the malfunction, the corrective action taken, identification of air contaminants, and an estimate of the emission rates.

227-3.8 Severability

Each provision of this Subpart shall be deemed severable, and in the event that any provision of this Subpart is held to be invalid, the remainder of this Subpart shall continue in full force and effect.

6 NYCRR Subpart 227-3, OZONE SEASON OXIDES OF NITROGEN (NOX) EMISSION LIMITS FOR
SIMPLE CYCLE AND REGENERATIVE COMBUSTION TURBINES

Express Terms

227-3.1 Applicability.

- (a) The provisions of this Subpart apply to owners or operators of simple cycle and regenerative combustion turbines (SCCTs) that are electric generating units with a nameplate capacity of 15 megawatts (MW) or greater and that inject power into the transmission or distribution systems.
- (b) The provisions of this Subpart only apply during the ozone season.
- (c) The provisions of this Subpart do not apply to ‘black start resources.’

227-3.2 Definitions.

- (a) To the extent that they are not inconsistent with the specific definitions in subdivision (b) of this section, the general definitions of Part 200, Part 201, and Subpart 227-2 of this Title apply.
- (b) For the purposes of this Subpart, the following specific definitions apply:
 - (1) ‘Black start resource.’ An electric generating unit used to bring a facility from shutdown to operational without reliance on external supplies or the electrical system.
 - (2) ‘Common control.’ Refers to two or more emission sources and/or electric storage and/or renewable generation resources that are under the control of a single corporate entity. The corporate entity must:
 - (i) have the right to decide when to operate the plant; or

- (ii) have the right to enter into a power purchase agreement or other agreement with the entity that owns the emission source and/or electric storage and/or renewable generation resources and provides the necessary paperwork required under subdivision 227-3.3(b) of this Subpart.
- (3) ‘Electric storage resource.’ A resource capable of receiving electric energy from the grid and storing it for later injection of electric energy back to the grid.
- (4) ‘Hydroelectric energy.’ The conversion of potential and kinetic energy in the form of falling or fast-flowing water into mechanical energy which drives turbines producing electricity.
- (5) ‘MWh.’ Megawatt hour of electricity.
- (6) ‘NYISO.’ New York Independent System Operator.
- (7) ‘ORISPL.’ Office of Regulatory Information Systems Plant Code assigned by the Energy Information Administration to electric generating units.
- (8) ‘Ozone season.’ May 1 through September 30 of each calendar year.
- (9) ‘Power purchase agreement.’ A contract between two entities pursuant to which one entity agrees to produce electricity, or some other power source, for the other entity over a defined period of time.
- (10) ‘Renewable generation resources.’ Solar photovoltaic energy, wind energy, tidal energy or hydroelectric energy electricity generating systems.
- (11) ‘Solar photovoltaic energy.’ Technology that directly converts the energy radiated by the sun as electromagnetic waves into electricity by means of solar panels.
- (12) ‘Substation.’ An area or group of equipment to transform power from one voltage to another or from one system to another.

(13) ‘Tidal energy.’ The conversion of kinetic energy in the form of tide movement into mechanical energy which drives turbines connected to a generator to produce electricity.

(14) ‘Wind energy.’ The conversion of kinetic energy in the form of wind or air flows into mechanical energy which drives turbines connected to a generator to produce electricity.

227-3.3 Permitting requirements and compliance plan submittal.

(a) Each facility containing an SCCT subject to this Subpart must have or obtain a permit pursuant to Parts 201 and 621 of this Title that reflects the implementation of the compliance plan required in subdivision 227-3.3(b) of this Subpart prior to the May 1, 2023 compliance date of this Subpart in order to operate on and after the applicable compliance date.

(b) Each facility containing an SCCT subject to this Subpart must submit a compliance plan to the Department by March 2, 2020. Each compliance plan must, at minimum, contain:

(1) a list of each SCCT subject to the requirements of this Subpart that includes any identifying numbers such as ORISPL number, emission source number and nameplate capacity.

(2) a schedule outlining how the owner or operator will comply with the requirements set forth in this Subpart including which SCCTs will install controls, controls to be installed, the expected NOx emission rates, SCCTs to be replaced or repowered, and/or SCCTs to be shut down.

(3) a list of renewable resources to be installed under common control of the permittee to be used in the compliance option described in subdivision 227-3.5 (b) of this Subpart. This list shall include, for each renewable resource:

(i) location;

(ii) nameplate capacity or equivalent; and

(iii) documentation demonstrating common control.

(4) A list of electric storage resources to be installed under common control of the permittee to be used in the compliance option described in subdivision 227-3.5 (b) of this Subpart. This list shall include, for each electric storage resource:

- (i) location;
- (ii) nameplate capacity or equivalent;
- (iii) duration of discharge; and
- (iv) documentation demonstrating common control.

(5) Pursuant to subparagraph 227-3.2(b)(2)(ii) the entity that owns the emission source asserting control over an electric storage and/or renewable generation resource must provide a letter, as part of a compliance plan or permit modification application, that the bidding and/or dispatch rights have been provided to the entity asserting common control.

227-3.4 Control Requirements.

(a) The following NO_x emission limits on a parts per million dry volume basis (ppmvd), corrected to fifteen percent oxygen must be met as a facility-level weighted average of all applicable SCCTs at a facility:

(1) By May 1, 2023

	NO _x Emission Limit (ppmvd)
All SCCTs	100

(2) By May 1, 2025

Fuel Type	NOx Emission Limit (ppmvd)
Gaseous fuels	25
Distillate oil or other liquid fuel	42

(3) Compliance with these emission limits must be determined by conducting stack tests, as set forth in subdivision 227-2.6(c) of Subpart 227-2 of this Title, at a minimum of once per permit term. Alternatively, the owner or operator may choose to use a Continuous Emissions Monitoring System (CEMS) consistent with the provisions of subdivision 227-2.6(b) of Subpart 227-2 of this Title.

227-3.5 Compliance options.

(a) ‘Ozone season stop.’ An owner or operator of an existing SCCT may opt to comply with this Subpart by not operating the SCCT during the ozone season. The ozone season stop provision must be included as an enforceable permit condition in a final permit or permit modification issued prior to the applicable compliance deadline of this Subpart.

(b) ‘Electric storage and renewable energy resources.’ An owner or operator of an SCCT may opt to comply with this Subpart by meeting the following weighted average output-based emission limits on a daily basis pursuant to the following:

(1) Owners and operators must meet the following facility-level daily weighted average emission limits on a pounds of NOx per megawatt hour (lb/MWh) basis for all applicable SCCTs, electric storage resources and/or renewable generation resources at a facility.

(i) By May 1, 2023:

	Emission Limit (lb NO _x /MWh)
All SCCTs	3.0

(ii) By May 1, 2025:

Fuel Type	Effective Daily Emission Limit (lb NO _x /MWh)
Gaseous fuels	1.5
Distillate oil or other liquid fuel	2.0

(2) The owner or operator of an SCCT that uses electric storage or renewable energy resources to inject electricity to the transmission and distribution system may demonstrate compliance with the applicable effective daily NO_x emission limits by including the electrical energy, in MWh, injected to the transmission and distribution system from electric storage and/or renewable generation resources in the emission rate calculation provided that:

- (i) The renewable generation resource and/or the electric storage resource must be directly connected to the same physical substation as the SCCT with which it is being averaged; or
- (ii) within one-half mile radius of the SCCT with which it is being averaged.
- (iii) All sources that are averaged under this compliance option must be under common control.

(3) The effective emission rate may be calculated by:

(i) $Effective\ Rate = \frac{MassNO_x}{MWh_{CT} + MWh_{ST} + MWh_{RE}}$, where:

(‘a’) MassNO_x = NO_x emissions (pounds) each day from all applicable SCCTs at the permitted facility.

(‘b’) MWh_{CT} = electrical energy delivered to the transmission and distribution system (in MWh) from applicable SCCTs at the permitted facility each day.

(‘c’) MWh_{ST} = electrical energy delivered to the transmission and distribution system (in MWh) from storage resources over each day.

(‘d’) MWh_{RE} = electrical energy delivered to the transmission and distribution system (in MWh) from renewable generation each day.

(4) If the owner or operator burns both gaseous fuel and liquid fuel during the same day, a facility electrical energy (MWh) weighted average must be calculated to determine a resultant mix fuel emission rate. The mix fuel rate must first be calculated to determine the allowable emission rate and then calculated again to determine the actual mix fuel emission rate.

(i) $Allowable\ Mix\ Fuel\ Rate = \frac{RateG \times GenG + RateO \times GenO}{GenG + GenO}$ where:

(‘a’) RateG = Effective daily emission limit (lb NO_x/MWh) burning gas as defined in 227-3.5(b) of this Subpart.

(‘b’) RateO = Effective daily emission limit (lb NO_x/MWh) burning oil as defined in 227-3.5(b) of this Subpart.

(‘c’) GenG = electrical energy (MWh) generated burning gas each day

(‘d’) GenO = electrical energy (MWh) generated burning oil each day

(ii) $Actual\ Mix\ Fuel\ Rate = \frac{RateG \times GenG + RateO \times GenO}{GenG + GenO + GenR + GenS}$ where:

(‘a’) RateG = lb NO_x/MWh burning gas

(‘b’) RateO = lb NO_x/MWh burning oil

(‘c’) GenG = electrical energy (MWh) generated burning gas each day

(‘d’) GenO = electrical energy (MWh) generated burning oil each day

(‘e’) GenR = electrical energy (MWh) injected to the transmission and distribution system from renewable energy resources each day

(‘f’) GenS = electrical energy (MWh) injected to the transmission and distribution system from electric storage resources each day

227-3.6 Electric System Reliability

(a) An SCCT may be designated as a reliability source by the NYISO or by the local transmission/distribution owner to temporarily resolve a reliability need.

(b) A designated reliability source may continue to operate without complying with the applicable emissions limits of this Subpart until one of the following provisions are met:

(1) a permanent solution is placed online as determined by the NYISO, the local transmission/distribution owner or the New York State Public Service Commission; or

(2) two years after the designated compliance date under this Subpart has lapsed.

(c) A designated reliability source may operate an additional two years without complying with the applicable emissions limits of this Subpart if:

(1) the NYISO or transmission/distribution owner determines that the reliability need still exists,

(2) the source is designated by the NYISO or the transmission/distribution owner as a reliability source, and

(3) a permanent solution has been selected by the NYISO, the transmission/distribution owner or the New York State Public Service Commission and that solution is in the process of permitting or construction but not yet online.

227-3.7 Testing, monitoring, and reporting requirements

(a) The owner or operator of each SCCT must measure or monitor daily NO_x emissions in accordance with paragraphs (1) or (2) below.

(1) Measure in accordance with the emission test requirements described in subdivision 227-2.6(c) of Subpart 227-2 of this Title, or

(2) Monitor with a CEMS as described in subdivision 227-2.6(b) of Subpart 227-2 of this Title or with an equivalent monitoring system acceptable to the Department.

(b) The owner or operator of each SCCT must report operational data to the Department as part of their annual compliance report. The report must be in a form prescribed by the Department. The operational data must include:

(1) NO_x emissions from each SCCT for each compliance period.

(2) If the electric storage and renewable resources compliance option is used:

(i) daily electrical generation in MWh injected into the transmission or distribution system from each SCCT, electric storage resource, renewable generation resource,

(ii) each hour of the 24-hour period which the electric storage resource is charged,

(iii) each hour of the 24-hour period which the electric storage resource injects power into the transmission or distribution system, and

(iv) each hour of the 24-hour period when a renewable generation resource injects power into the transmission or distribution system.

(3) In the event that emissions of air contaminants in excess of any emission standard in this Subpart occur, the facility owner or operator shall compile and maintain records of the exceedance and notify the Department as soon as possible during normal working hours, but not later than two working days after becoming aware that the exceedance occurred. When requested

by the Department, the facility owner or operator shall submit a written report to the Department describing the malfunction, the corrective action taken, and an estimate of the emission rates.

227-3.8 Severability

Each provision of this Subpart shall be deemed severable, and in the event that any provision of this Subpart is held to be invalid, the remainder of this Subpart shall continue in full force and effect.

Notice of Proposed Rulemaking

New York State Department of Environmental Conservation

6 NYCRR Subpart 227-3,

Pursuant to Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105 of the Environmental Conservation Law (ECL), the New York State Department of Environmental Conservation (Department) hereby gives notice of the following:

The Department is proposing the addition of 6 NYCRR Subpart 227-3, “Ozone Season Oxides of Nitrogen (NO_x) Emission Limits for Simple Cycle and Regenerative Combustion Turbines.” The primary goal of this proposal is to lower allowable NO_x emissions from simple cycle and regenerative combustion turbines during the ozone season. The lower emissions from these sources will help to address Clean Air Act (CAA) requirements, ozone nonattainment and protect the health New York State residents. This proposal is only applicable to simple cycle and regenerative combustion turbines. This is not a mandate on local governments. It applies to any entity that owns or operates a subject source. Further, the Department proposes to submit Subpart 227-3 to the United States Environmental Protection Agency as a revision to the State Implementation Plan (SIP) for New York State.

Written comments on the proposed rule may be submitted until 5 p.m. on May 20, 2019. For further information, contact Ona Papageorgiou, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone (518) 402-8396, E-mail: air.regs@dec.ny.gov.

Requests for information and comments related to the SIP revision may be obtained from Robert D. Bielawa, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: air.regs@dec.ny.gov. Written statements may be

submitted until 5 pm May 20, 2019.

Hearings for the proposed rule and attendant revisions to existing rules described above will be held as follows and are scheduled in places that are reasonably accessible to persons with impaired mobility:

Date: 5/6/2019

Time: 11:00 am

Location: NYSDEC, 625 Broadway, Public Assembly Room 129A/B, Albany, NY 12233

Date: 5/13/2019

Time: 11:00 am

Location: SUNY @ Stony Brook, 50 Circle Road, Room B02, Stony Brook, NY 11790

Date: 5/14/2019

Time: 11:00 am

Location: 1 Hunter's Point Plaza, 47-40 21st Street, Room 834 NYSDOT, Long Island City, NY 11101

The Department will provide interpreter services for deaf persons at no charge. Written requests for interpreter services are required and should be submitted by April 29, 2019, to Richard

McAuley, NYSDEC, 625 Broadway, Albany NY 12233-3250, (518) 402-8438,

air.regs@dec.ny.gov.

NOTICE OF ADOPTION

Addition of Certificate Titles Eligible for Grade Level Extensions, Limited Extensions, and a Statement of Continued Eligibility**I.D. No.** EDU-44-18-00007-A**Filing No.** 125**Filing Date:** 2019-02-12**Effective Date:** 2019-02-27

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

Action taken: Amendment of sections 80-3.15 and 80-4.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 210, 215, 305, 3001, 3004 and 3009

Subject: Addition of Certificate Titles Eligible for Grade Level Extensions, Limited Extensions, and a Statement of Continued Eligibility.

Purpose: Creates limited extensions and continued eligibility in the core subject areas for teachers of students with disabilities.

Text or summary was published in the October 31, 2018 issue of the Register, I.D. No. EDU-44-18-00007-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 473-2183, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

English Language Learner Grade Span Requirement**I.D. No.** EDU-47-18-00010-A**Filing No.** 131**Filing Date:** 2019-02-12**Effective Date:** 2019-02-27

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

Action taken: Amendment of section 154-2.3(i) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 208, 315, 305, 2117, 2854(1)(b) and 3204

Subject: English Language Learner Grade Span Requirement.

Purpose: To provide a one-year renewable waiver to expand the allowable grade span for ENL and BE classes to three contiguous grades.

Text or summary was published in the November 21, 2018 issue of the Register, I.D. No. EDU-47-18-00010-EP.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 473-2183, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Following the public comment period required under the State Administrative Procedure Act, the Department received the following comments:

1. COMMENT:

One commenter expressed the position that the regulation puts students at a disadvantage by grouping them in more than two continuous grades, on account of both developmental and instructional appropriateness. The commenter felt that the skills covered across three grade spans would be too broad to cover in a single classroom.

DEPARTMENT RESPONSE:

The Department agrees that it is critical to provide instruction that is both developmentally and instructionally appropriate. The Department has limited the waiver's availability to districts with low English Language Learner enrollment of thirty or less students district-wide. Districts seeking the waiver will be required to provide key demographic information such as the total number and percentage of ELLs in the district as well as in particular schools, and the number of available certified BE and English for speakers of other languages ("ESOL") teachers to serve them. Districts will also be required to submit a justification explaining how they will ensure that all ELLs receive appropriate support if a waiver is granted, as well as the efforts the district has made to comply with the two grade span requirement of section 154-2.3(i) given its current staffing.

The Department also issued an accompanying guidance document entitled "School District Justification to Expand the Maximum Allowable Grade Span to Three Contiguous Grades in 1-12 English as a New Language (ENL) or Bilingual Education (BE) Classes." Contained in this guidance are questions and answers regarding which districts qualify for the waiver, best practices and guidance regarding instructional grouping practices, and recommended solutions for common challenges. The Department is also available for technical assistance and support as districts implement this temporary waiver.

2. COMMENT:

Two commenters expressed support for the regulation, on account of benefits to smaller districts and schools. One commenter expressed that the regulation will help smaller schools which may not have sufficient resources to meet the two grade span requirement. The commenter further expressed that developmental differences may not be as great in higher grades and that differences in instructional needs can be accommodated by differentiation of lesson plans. Another commenter observed that in small districts, English as a New Language teachers often have to work in more than one school or even more than one district and across many grades, in which case it can be instructionally beneficial to group students based on proficiency across multiple grades.

DEPARTMENT RESPONSE:

It is not necessary for the Department to respond as these comments are in support of the proposed regulation.

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Set Nitrogen Oxide (NOx) Emission Rate Limits for Simple Cycle and Regenerative Combustion Turbines**I.D. No.** ENV-09-19-00015-P

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

Proposed Action: Addition of Subpart 227-3 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105

Subject: Set nitrogen oxide (NOx) emission rate limits for simple cycle and regenerative combustion turbines.

Purpose: Reduction of nitrogen oxide (NOx) emissions from simple cycle and regenerative combustion turbines.

Public hearing(s) will be held at: 11:00 a.m., May 6, 2019 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A/B, Albany, NY; 11:00 a.m., May 13, 2019 at SUNY Stony Brook, 50 Circle Rd., Rm. B02, Stony Brook, NY; 11:00 a.m., May 14, 2019 at Department of Transportation, One Hunter's Point Plaza, 47-40 21st St., Rm. 834, Long Island City, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: The full text for this rule appears in the Appendix of this issue.

Text of proposed rule and any required statements and analyses may be obtained from: Ona Papageorgiou, NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: air.regs@dec.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: May 20, 2019.

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file.

Summary of Regulatory Impact Statement (Full text is posted at the following State website: <http://www.dec.ny.gov/regulations/propregulations.html#public>): The New York State Department of Environmental Conservation (DEC) is proposing 6 NYCRR Part 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NOx emissions from simple cycle and regenerative combustion turbines during the ozone season. The lower emissions from these sources will help to address Clean Air Act (CAA) requirements, ozone nonattainment and protect the health of New York State residents. This proposal is only applicable to simple cycle and regenerative combustion turbines. This is not a mandate on local governments. It applies to any entity that owns or operates a subject source.

STATUTORY AUTHORITY

The statutory authority for the promulgation of Subpart 227-3 is found in the New York State Environmental Conservation Law (ECL), Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105.

LEGISLATIVE OBJECTIVES

Article 19 of the ECL was enacted to safeguard the air resources of New York from pollution and ensure the protection of the public health and welfare, the natural resources of the State, physical property, and integrating industrial development with sound environmental practices.

NEEDS AND BENEFITS

In March of 2008, the United States Environmental Protection Agency (EPA) lowered the eight-hour ozone National Ambient Air Quality Standard (NAAQS) from 0.08 parts per million (ppm) to 0.075 ppm.¹ Subsequently, on October 1, 2015, the EPA signed a rule that lowered this standard to 0.070 ppm.² Ozone NAAQS attainment status is demonstrated by measurements recorded from a monitoring network set up across the United States.

EPA designated the New York-Northern New Jersey-Long Island metropolitan area (New York metropolitan area, or NYMA) as a "marginal" nonattainment area for the 2008 ozone NAAQS effective July 20, 2012. On November 14, 2018 EPA proposed to reclassify the NYMA to "serious" nonattainment.³ The area was designated as "moderate" nonattainment for the 2015 ozone NAAQS.⁴ NYMA monitors are currently reporting ozone concentrations of 0.083 ppm, well above the standard.

Simple cycle and regenerative combustion turbines (SCCTs) sometimes referred to as peaking units, run to meet electric load during periods of peak electricity demand. They typically run on hot summer days when there is a strong likelihood of high ozone readings. Many peaking units in New York have high NOx emission rates, are inefficient and are approaching 50 years of age. It is difficult to install after-market controls on most of these units because of their age and site limitations.

New York must fulfill its CAA "good neighbor" obligations which require states to include adequate measures in its state implementation plans (SIPs) prohibiting emissions of air pollutants "in amounts which will...contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to" a NAAQS. In addition, New York must meet the 2008 and 2015 ozone NAAQS, for which the New York-Northern New Jersey-Long Island, NY-NJ-CT area is in nonattainment.

Because high ozone days significantly impact human health in the NYMA and because older units significantly contribute on these days, DEC assessed the 99 high ozone days between 2011 and 2017. Analysis shown in Table 1.

	NOx (tons)	Heat Input (MMBtu)	Gross Load (MWh)
Pre-1986 SCCT*	1,849	7,193,633	580,109
Post-1986 SCCT*	73	6,908,887	1,040,831

*Values are the sum of high ozone days 2011 - 2017

Table 1: NOx emissions from NY SCCTs.⁵

As demonstrated in Table 1, on high ozone days newer SCCTs produced 64 percent of the electricity generated from SCCTs while emitting only 4 percent of NOx emissions from these sources.⁶

If the older sources were replaced with newer sources, the total NOx emissions from those older sources on the 99 high ozone days assessed would drop from the reported 1,849 tons to between 40 and 60 tons depending on efficiency. This would result in an approximate 1,800-ton reduction of NOx emissions over those high ozone days. A reduction of 18 tons of NOx emissions on an ozone season day would represent a reduction of over 10 percent of NYMA NOx emissions from the electricity generation sector and an overall reduction of 3.5 percent from all sources.⁷

Electric grid reliability:

To adequately assess future reliability needs associated with this rule making is proposing that affected facilities submit compliance plans by March 2, 2020 so that the NYISO may include the compliance solutions selected by facilities in its 2020 Reliability Needs Assessment (RNA).

Proposal:

To address NOx emissions from SCCTs on high ozone days, DEC is proposing to develop a new regulation, Subpart 227-3, that will apply to SCCTs with a nameplate capacity of 15 megawatts or greater that bid into the NYISO wholesale market. This regulation will phase in lower emission limits for NOx during the ozone season and will limit the current averaging provision found in Subpart 227-2.⁸ The sources subject to this proposal will continue to be subject to the requirements of Subpart 227-2 outside of the ozone season. This rulemaking proposes additional requirements for SCCTs during the ozone season allowing more flexibility outside of the ozone season. The requirements are expanded on in the following paragraphs.

Control Requirements:

The NOx emission limits for SCCTs will be phased in as shown in Tables 2 and 3 below. These limits may be met by averaging only SCCTs on a facility-wide basis.

By May 1, 2023

	NOx Emission Limit (ppmvd ⁹)
All SCCTs	100

Table 2: NOx emission limits for SCCTs beginning 5/1/2023

By May 1, 2025

Fuel Type	NOx Emission Limit (ppmvd)
Gaseous fuels	25
Distillate oil or other liquid fuel	42

Table 3: NOx emission limits for SCCTs beginning 5/1/2025

Also beginning May 1, 2023, SCCTs will only be able to average emissions with other SCCTs at the facility or, if the facility opts to utilize one of the offered compliance options, then those SCCTs may average with approved electricity storage or renewable energy resources during the ozone season.

Compliance Options:

Owners and operators may elect to meet the limits as proposed. To offer flexibility, this rule is proposing two additional compliance options:

1) Owners and operators may elect an ozone season stop where it is recorded in the operating permit that the source may not operate during the ozone season.

2) Owners and operators may elect to adhere to an output-based NOx daily emission rate that includes electric storage and renewable energy under common control with the SCCTs with which they are averaging.

COSTS

Older SCCTs are typically not conducive to the addition of retrofit control technology. DEC expects that most impacted facilities will choose to replace or shutdown the non-compliant older SCCTs. To estimate replacement costs DEC looked to information provided by the NYISO and Department of Energy's Energy Information Administration (EIA).

Table 4 presents costs developed by EIA and NYISO for full replacement of an SCCT.

Source	Overnight Cost (\$/kW)	Notes
EIA	\$1,054 - \$1,558 ¹⁰	Range is specific for the Long Island and New York City area and includes conventional and advanced combustion turbines.
NYISO	\$1,314 - \$1,357 ¹¹	Range is specific for the Long Island and New York City area and represents replacement with a dual fuel peaking turbine.

Table 4: Estimated range of overnight costs for full replacement of an SCCT

Most SCCTs have a capacity factor of less than 5 percent, meaning that they are used less than 5 percent of the time. In addition, with the implementation of several New York State initiatives,¹² demand for these units should continue to decline so the entire SCCT fleet would likely not need to be replaced.

Owners and operators may opt to install after-market emission control devices such as water injection technology. While costs vary widely depending on location, operation and siting, it has been reported to DEC, anecdotally, that the cost of adding after-market water injection to these older sources is approximately \$2,000,000. Other sources report costs of \$10,000 - \$15,000 per megawatt,¹³ however, this data does not include installation and other associated costs.

Cost of Nonattainment:

This proposal is part of a suite of New York State efforts to bring the NYMA into attainment for ozone, in order to protect human health. EPA projected a wide array of benefits that would be realized on a national level, excluding California, if ozone attainment is achieved.¹⁴ The human cost of nonattainment to New York State residents is presented in Table 5.

Attainment Provides Prevention of:

Deaths from effects of ozone	13 - 22
Deaths from effects of PM _{2.5}	31 - 70
Nonfatal heart attacks	4 - 36
Hospital admissions & emergency room visits	134
Acute bronchitis	48
Upper & lower respiratory symptoms	1,540
Exacerbated asthma	32,200
Missed work & school	26,320
Restricted activity days	86,800

Table 5: Summary of Total Number of Annual Ozone and PM-Related Premature Mortalities and Premature Morbidity: 2025 National Benefits (adapted from EPA, 2015 RIA, p. ES-16)

LOCAL GOVERNMENT MANDATES

The proposed regulation does not contain a mandate on local governments.

PAPERWORK

This proposal will require each affected facility to submit a compliance plan to DEC. The compliance plan will state how each facility plans to comply with the new requirements.

Those facilities required to meet new emission limits will be required to submit permit applications to modify its Title V permits to incorporate the newly applicable requirements by the May 1, 2023 compliance date.

Subject facilities that do not use a continuous emissions monitoring system (CEMS) will be required to perform an emissions test to assure compliance with the applicable NOx emission limits. Every subject facility will be required to submit test protocols and test reports to the Department for approval.

DUPLICATION

The proposed Subpart 227-3 does not duplicate or conflict with any other state or federal requirements.

ALTERNATIVES

DEC considered two alternatives in assessing this proposal, leave the emission rates as they are and just lowering emission rate requirements. The first option would leave New York open to CAA Section 126 petitions and if acted upon by EPA could require controls within three years. The second option does not allow for the compliance flexibility and reliability considerations included in the proposal that were developed during the stakeholder process.

FEDERAL STANDARDS

The proposed rule does not exceed any minimum federal standards.

COMPLIANCE SCHEDULE

March 2, 2020: All impacted sources must submit a compliance plan that must contain minimum data to demonstrate compliance will be achieved.

¹ 73 FR 16436 (March 27, 2008), codified at 40 CFR section 50.15. Attainment of the 2008 ozone NAAQS is determined when the fourth highest daily maximum 8-hour average ambient air quality ozone concentration, averaged over three year, is less than or equal to 0.075 ppm.

² 80 FR 65292 (October 26, 2015).

³ 83 FR 56781 (November 14, 2018).

⁴ 83 FR 25776 (June 4, 2018).

⁵ EPA Air Markets Program Data. <https://ampd.epa.gov/ampd/>.

⁶ Percentages calculated from EPA Air Markets Program Data for days which exceeded the ozone NAAQS. <https://ampd.epa.gov/ampd/>.

⁷ "New York State implementation plan for the 2008 ozone national ambient air quality standards." <http://www.dec.ny.gov/chemical/110727.html>.

⁸ May 1 – October 31 of each year.

⁹ Parts per million on a dry volume basis at fifteen percent oxygen.

¹⁰ EIA, Capital Cost Estimates for Utility Scale Electricity Generating Plants, November 2016.

¹¹ NYISO, Demand Curve Model – 2019-2020.xlsm. Retrieved (1/3/2019) from: <https://www.nyiso.com/search?time=last-year&sortField=score&resultsLayout=list&q=Demand%20Curve%20Model%202016>.

¹² Including energy efficiency and energy storage targets, Reforming the Energy Vision and the Clean Energy Standard.

¹³ The data provided only includes capital cost. "Gas Turbine Combustion." Lefebvre & Ballal. CRC Press, April 26, 2010.

¹⁴ Regulatory Impact Analysis (RIA) for the 2015 ozone NAAQS.

Regulatory Flexibility Analysis

The New York State Department of Environmental Conservation (DEC) is proposing new 6 NYCRR Part 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NOx emission rates from simple cycle and regenerative combustion turbines (SCCTs) during the ozone season.

EFFECT OF RULE

DEC does not expect the requirements of this proposal to adversely impact employment opportunities with small businesses. Businesses and local governments subject to this proposed rule generate electricity that is injected into the electrical grid and those facilities are required to maintain generation compliant with reliability rules at the federal and state level. The facilities subject to the proposed rule are large businesses and corporations.

The proposed regulation does not contain a mandate on local governments. Local governments have no additional compliance obligations. There are two SCCTs that are owned by local governments that are listed in the table below. While these sources will be subject to the requirements of this proposal, they already comply with the lower NOx rates and so no changes will be required by the facilities. While the two sources will be required to submit compliance plans, as outlined below, their plan requirements are simplified because they already comply with the emissions limits.

Facility	Local Government
Freeport	Village of Freeport
SA Carlson	Town of Jamestown

Table 1: Local Governments Subject to the Proposed Rule COMPLIANCE REQUIREMENTS

On or before March 2, 2020: All impacted sources must submit a compliance plan that must, at minimum, contain:

- Nameplate capacity.
- Ownership.
- A list of each emission source that includes identifying numbers such as facility number, source number and name.
- A schedule outlining how the owner or operator will comply with the requirements set forth in the rule.
- Which emission sources will install controls and what those controls will be.
- Which emission sources will be replaced or repowered.

Effective May 1, 2023: The first phase of NOx emission limits will be implemented during the ozone season and SCCTs will be limited to averaging with other SCCTs, storage or renewable energy resources. The first phase of emission limits will be:

By May 1, 2023

	NOx Emission Limit (ppmvd ¹)
All simple cycle and regenerative combustion turbines	100

Table 2: NOx emission limits for SCCTs beginning 5/1/2023

Effective May 1, 2025: The second and final phase of NOx emission limits will be implemented during the ozone season as follows:

Beginning May 1, 2025

Fuel Type	NOx Emission Limit (ppmvd)
Gaseous fuels	25
Distillate oil or other liquid fuel	42

Table 3: NOx emission limits for SCCTs beginning 5/1/2025

PROFESSIONAL SERVICES

It is not expected that small businesses or local governments are likely to need professional services to comply with this rule. If an affected source currently utilizes professional services, such as consulting engineers, to comply with 6 NYCRR Subpart 227-2, they may continue to use those services to comply with the requirements of this proposal.

COMPLIANCE COSTS

Compliance costs discussed below are expected to impact larger power generation businesses, not small businesses or local governments. Discussion on the compliance costs to large generation businesses follows.

DEC is proposing to require each source owner to develop a compliance plan to demonstrate how they intend to comply with the proposed rule. The SCCTs installed prior to 1986 are typically not conducive to the addition of retrofit control technology. Furthermore, forty-eight of these sources are located on barges that may not offer the space necessary for controls. As a result, DEC expects that most impacted SCCT owners will choose to replace or shutdown the non-compliant SCCTs. To estimate replacement costs DEC looked to information provided by the NYISO and Department of Energy (DOE), Energy Information Administration (EIA).

The EIA describes overnight costs for electricity generating facilities as including²:

- Civil and structural costs: allowance for site preparation, drainage, installation of underground utilities, structural steel supply, and construction of buildings on the site;
- Mechanical equipment supply and installation: major equipment, including but not limited to, boilers, fuel gas desulfurization scrubbers, cooling towers, steam turbine generators, condensers, photovoltaic modules, combustion turbines, and other auxiliary equipment;
- Electrical and instrumentation and control: electrical transformers, switchgear, motor control centers, switchyards, distributed control systems, and other electrical commodities;
- Project indirect costs: engineering, distributable labor and materials, craft labor overtime and incentives, scaffolding costs, construction management start up and commissioning, and contingency fees; and
- Owners costs: development costs, preliminary feasibility and engineering studies, environmental studies and permitting, legal fees, insurance costs, property taxes during construction, and the electrical interconnection costs, including a tie-in to a nearby electrical transmission system.³

Table 4 presents the full overnight costs developed by EIA and NYISO for full replacement of an SCCT.

Source	Overnight Cost (\$/kW)	Notes
EIA	\$1,054 - \$1,558 ⁴	Range is specific for the Long Island and New York City area and includes conventional and advanced combustion turbines.
NYISO	\$1,314 - \$1,357 ⁵	Range is specific for the Long Island and New York City area and represents replacement with a dual fuel peaking turbine.

Table 4: Estimated range of overnight costs for full replacement of an SCCT

DEC believes that the entire capacity of generation will likely not need to be replaced. Most SCCTs have a capacity factor of less than 5 percent, meaning that they are used less than 5 percent of the time on an annual basis. In addition, with the implementation of several New York State initiatives, including the State's recently announced energy efficiency and energy storage targets, Reforming the Energy Vision and the Clean Energy Standard, demand for these units should continue to decline. There are over 3,400 MW of SCCT capacity listed in the NYISO Gold Book⁶ that are older, pre-1986 SCCTs.

Owners and operators may opt to install after-market emission control devices on sources that are unable to comply. Water injection technology is the after-market technology that a facility owner would likely consider for these older sources. The costs of adding after-market emission control devices varies widely depending on location, operation and land space availability. It has been reported to DEC, anecdotally, that the cost of adding after-market water injection to one of these older sources is ap-

proximately two million dollars. Other sources discuss a cost of \$10,000 - \$15,000 per megawatt,⁷ and many of the sources that would be impacted are 15 to 20 megawatts each. However, this data does not include installation and other associated costs.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY

It is not expected that small businesses will need to comply with this proposed rule. As noted above, the two local governments subject to the emission limits already comply. This is not a mandate on small businesses or local government.

MINIMIZING ADVERSE IMPACTS

To minimize any adverse impacts DEC is proposing a phase-in of requirements as well as a reliability provision. The phase-in of requirements allows for power companies, with affected sources, to plan over a longer term. In addition, DEC is proposing several compliance options to offer compliance flexibility:

1) Owners and operators may elect an ozone season stop where it is recorded in their operating permit that the source may not operate during the ozone season.

2) Owners and operators may elect to adhere to an output-based NOx daily emission rate that includes electric storage and renewable energy under common control with the SCCTs with which they are averaging.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

DEC participated in several stakeholder meetings including those for impacted facilities and local environmental justice groups over a period of eighteen months. In addition, DEC posted a stakeholder outline on the DEC website to encourage stakeholder participation and comment.⁸

CURE PERIOD OR AMELIORATIVE ACTION

No additional cure period or other opportunity for ameliorative action is included in Subpart 227-3. This proposal will not result in immediate violations or impositions of penalties for existing facilities. To help reduce immediate impacts on affected sources, Subpart 227-3 requires a compliance plan due on March 2, 2020 followed by reduced NOx emission limits phased-in first on May 1, 2023 and later on May 1, 2025. This will allow owners and operators of affected sources time to comply with the proposed Subpart 227-3.

INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

¹ Parts per million on a dry volume basis at fifteen percent oxygen.

² Overnight costs include the costs for the physical power plant assuming it can be built overnight. As a result, interest on loans are not factored into the cost estimates.

³ EIA, Capital Cost Estimates for Utility Scale Electricity Generating Plants, November 2016.

⁴ EIA, Capital Cost Estimates for Utility Scale Electricity Generating Plants, November 2016.

⁵ NYISO, The New York Installed Capacity (ICAP) market Working Group. Available here: http://www.nyiso.com/public/markets_operations/market_data/icap/index.jsp.

⁶ NYISO, 2017 Load and Capacity Data.

⁷ The data provided only includes capital cost. "Gas Turbine Combustion." Lefebvre & Ballal. CRC Press, April 26, 2010.

⁸ <https://www.dec.ny.gov/chemical/113887.html>.

Rural Area Flexibility Analysis

The New York State Department of Environmental Conservation (DEC) is proposing new 6 NYCRR Part 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NOx emission rates from simple cycle and regenerative combustion turbines (SCCTs) during the ozone season.

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS AFFECTED

Only one facility located in a rural area is affected by this regulation – the Samuel A. Carlson Generating Station located in Jamestown, Chautauque County.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

Reporting & Recordkeeping:

This proposal will require each affected facility to submit a compliance plan to DEC. The compliance plan will state how each facility plans to comply with the new requirements.

Those facilities required to meet new emission limits will be required to submit permit applications to modify their Title V permits to incorporate the newly applicable requirements by the May 1, 2023 compliance date. These changes can be incorporated into the renewal application for the facility's Title V permit (Title V permits must be renewed at five-year

intervals). If there are no changes caused by the proposed Subpart 227-3 no permit action is required.

Subject facilities that do not use a continuous emissions monitoring system (CEMS) will be required to perform an emissions test to assure compliance with the applicable NOx emission limits. Every subject facility will be required to submit test protocols and test reports to DEC for approval.

An owner or operator that elects to use the Electric Storage and Renewable Energy Resources compliance option must submit annual electricity generation and NOx emissions data to DEC.

Compliance Requirements:

On or before March 2, 2020: All impacted sources must submit a compliance plan that must, at minimum, contain:

- Nameplate capacity.
- Ownership.
- A list of each emission source that includes identifying numbers such as facility number, source number and name.
- A schedule outlining how the owner or operator will comply with the requirements set forth in the rule.
- Which emission sources will install controls and what those controls will be.
- Which emission sources will be replaced or repowered.

Effective May 1, 2023: The first phase of NOx emission limits will be implemented during the ozone season and SCCTs will be limited to averaging with other SCCTs, storage or renewable energy resources. The first phase of emission limits will be:

By May 1, 2023

	NOx Emission Limit (ppmvd ¹)
All SCCTs	100

Table 1: NOx emission limits for SCCTs beginning 5/1/2023

Effective May 1, 2025: The second and final phase of NOx emission limits will be implemented during the ozone season as follows:

Beginning May 1,
2025

Fuel Type	NOx Emission Limit (ppmvd)
Gaseous fuels	25
Distillate oil or other liquid fuel	42

Table 2: NOx emission limits for SCCTs beginning 5/1/2025

Professional Services:

If an affected source currently utilizes professional services, such as consulting engineers, to comply with 6 NYCRR Subpart 227-2, they may continue to use those services to comply with the requirements of this proposal.

COSTS

The Samuel A. Carlson Generating Station already complies with the NOx rates in the proposed rule. Therefore, no changes will be required by the facility. A compliance plan is still required by March 2, 2020. The costs of preparing the compliance plan should be minimal.

MINIMIZING ADVERSE IMPACT

Since the Samuel A. Carlson Generating Station already complies with the NOx rates in the proposed rule, there are no adverse impacts to that facility.

RURAL AREA PARTICIPATION

DEC participated in several stakeholder meetings including those for impacted facilities and local environmental justice groups over a period of eighteen months. In addition, DEC posted a stakeholder outline on the DEC website to encourage stakeholder participation and comment.²

INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

¹ Parts per million on a dry volume basis at fifteen percent oxygen.

² <https://www.dec.ny.gov/chemical/113887.html>.

Job Impact Statement

The New York State Department of Environmental Conservation (DEC) is proposing new 6 NYCRR Part 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NOx emission rates from simple cycle and regenerative combustion turbines during the ozone season.

NATURE OF IMPACT

DEC does not expect the requirements of this proposal to adversely

impact employment opportunities at the affected sources. The affected sources generate electricity that is injected into the electrical grid and those facilities are required to maintain generation compliant with reliability rules at the federal and state level.

CATEGORIES AND NUMBERS AFFECTED

This proposal will affect facilities that use older simple cycle and regenerative combustion turbines (SCCTs) to generate electricity for the electrical grid. Newer SCCTs are expected to already meet the requirements set forth in this proposal. At least 18 facilities utilizing older SCCTs will be affected by this proposal.

REGIONS OF ADVERSE IMPACT

This is a statewide proposal, so all SCCTs will be subject to the requirements of a final rule. However, most SCCTs are located in New York City and on Long Island.

MINIMIZING ADVERSE IMPACT

The proposed rule contains several compliance options that owners and operators may utilize in order to comply with the proposed requirements. The first is to meet the limits as proposed. Owners and operators may also opt to shut down or not run non-compliant SCCTs during the ozone season. If an owner or operator elects to not run an SCCT during the ozone season, it must be recorded in the operating permit. Another compliance option offered in this proposal allows an owner or operator of an existing source to comply with applicable limits by meeting an average output-based emission limit (that includes renewables and storage) as a daily average emission rate. Under this option, the storage or renewable energy resource must be under common control with the SCCTs to be included in the averaging calculation.

These compliance options will allow existing SCCTs that cannot meet the proposed emission limits to operate for a few additional years while new SCCTs or other electricity generating resources are constructed. As a result, the Department does not anticipate adverse impacts to employment opportunities at a company subject to the rule.

SELF EMPLOYMENT OPPORTUNITIES

It is not expected that the proposed Subpart 227-3 will have a measurable impact on opportunities for self-employment.

INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

BEACH Act Standards and Reclassification Rule

I.D. No. ENV-12-18-00043-RP

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

Proposed Action: Amendment of Parts 700, 703 and 890 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 17-0301

Subject: BEACH Act Standards and Reclassification Rule.

Purpose: To comply with the Federal BEACH Act of 2000 (P.L. 106-284) and protect coastal recreation waters for recreation.

Text of revised rule:

Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 700, entitled "Definitions, Samples and Tests," is amended as follows.

Subdivision (a) of Section 700.1 is amended by adding the following definitions:

(73) *Coastal recreation waters mean the Great Lakes and marine coastal waters (including coastal estuaries) that are designated under section 303(c) of the federal Clean Water Act by the State for use for swimming, bathing, surfing, or similar water contact activities. Coastal recreation waters do not include inland waters or waters upstream of the mouth of a river or stream having an unimpeded natural connection with the Great Lakes or open marine waters.*

(74) *Primary contact recreation season means the time period of the year beginning May 1 and ending October 31 or as determined by the Department on a case-specific basis in order to protect the best usages of the waters.*

Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 703, entitled "Surface Water and Groundwater Quality Standards and Groundwater Effluent Limitations," is amended as follows:

Section 703.4 is amended as follows:

§ 703.4 Water quality standards for coliforms, *enterococci*, and *E. coli*.

Total and fecal coliform, *enterococci*, and *E. coli* standards for specific classes are provided in this section.

(a) Total coliforms (number per 100 [ml] mL (colony-forming units or most probable number)).

State of New York
COUNTY OF NEW YORK

SS:

0000137682-01

Rubilda Gonzalez being duly sworn,
says that he/she is the principal Clerk of the Publisher of the

New York Post

a daily newspaper of general circulation printed and published in the English language, in the County of New York, State of New York; that advertisement hereto annexed has been regularly published in the said "New York Post" once,

on the 27th of February, 2019

Sworn to before me on this 27 day of February, 2019

[Signature]
Notary Public

[Signature]
RICHARD C SAVIN
NOTARY PUBLIC - STATE OF NEW YORK
No. 01SA6304152
Qualified in Dutchess County
My Commission Expires May 27, 2022

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Pursuant to Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105 of the Environmental Conservation Law, notice is hereby given that the New York State Department of Environmental Conservation (Department) will hold the following legislative public hearings on the proposed addition of 6 NYCRR Subpart 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NOx emissions from simple cycle and regenerative combustion turbines during the ozone season. The lower emissions from these sources will help to address Clean Air Act (CAA) requirements, ozone nonattainment and protect the health New York State residents. This proposal is only applicable to simple cycle and regenerative combustion turbines. This is not a mandate on local governments. It applies to any entity that owns or operates a subject source. Further, the Department proposes to submit Subpart 227-3 to the United States Environmental Protection Agency as a revision to the State Implementation Plan (SIP) for New York State.

Hearings for the proposed rule and attendant revisions to existing rules described above will be held as follows and are scheduled in places that are reasonably accessible to persons with impaired mobility:

Date	Time	Location
5/6/2019	11:00 am	NYSDEC, 625 Broadway, Public Assembly Room, 129A/B, Albany, NY 12233
5/13/2019	11:00 am	SUNY @ Stony Brook, 50 Circle Road, Room B02, Stony Brook, NY 11790
5/14/2019	11:00 am	1 Hunter's Point Plaza, 47-40 21st Street, Room 834 NYSDOT, Long Island City, NY 11101

The Department will provide interpreter services for deaf persons at no charge. Written requests for interpreter services are required and should be submitted by April 29, 2019, to Richard McAuley, NYSDEC, 625 Broadway, Albany NY 12233-3250, (518) 402-8438, air.regs@dec.ny.gov.

Pursuant to Part 617 of the implementing regulations for the State Environmental Quality Review Act, the Department has prepared a Negative Declaration stating that the proposed actions will not have a significant effect on the environment.

The Department invites all persons, organizations, corporations, and government agencies that may be affected by the proposed revisions to attend the hearings. At each hearing, persons who wish to make a statement will be invited to speak. It is requested that oral statements also be submitted in writing. The Department will give equal weight to written and oral statements, and since a cumulative record will be compiled it is not necessary for interested parties to attend each hearing.

Information for Subpart 227-3, may be obtained from Ona Papageorgiou P. E., NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3251, telephone, (518) 402-8396; email, air.regs@dec.ny.gov. Written statements may be submitted until 5 pm, May 20, 2019.

Requests for information and comments related to the SIP revision identified above may be obtained from Robert D. Bielawa, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: air.regs@dec.ny.gov. Written statements may be submitted until 5 pm, May 20, 2019.

The proposed regulations may be found on the NYSDEC's website at: <http://www.dec.ny.gov/regulations/proprotegrations.html#public> or may be obtained from any of the following Department offices:

REGION 1 - NYSDEC Region One Headquarters, SUNY Stony Brook, 50 Circle Road, Stony Brook, NY 11790-3409, Attention: Shaun Snee

REGION 2 - Hunters Point Plaza, 47-40 21st Street, Long Island City, NY 11101, Attention: Sam Lieblich

REGION 3 - 21 South Pitt Corners Road, New Paltz, NY 12561, Attention: George Sweikert

REGION 4 - 1130 North Westcott Rd., Schenectady, NY 12306, Attention: Victoria Schmitt

REGION 5 - Hudson Street Extension, Box 220, Warrensburg NY 12885, Attention: James Coutant

REGION 6 - Watertown State Office Bldg, 317 Washington St., Watertown, NY 13601, Attention: Robert Jacobs

REGION 7 - 615 Erie Boulevard West, Syracuse, NY 13204-2400, Attention: Thomas Elter

REGION 8 - 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Yuan Zeng

REGION 9 - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emery

NEWSDAY AFFIDAVIT OF PUBLICATION

MILLER ADVERTISING
220 WEST 42ND STREET, 12TH FLOOR
NEW YORK, NY 10036

STATE OF NEW YORK)

Legal Notice No.

0021470065

:SS.:

COUNTY OF SUFFOLK)

Darryl Murphy of Newsday Media Group., Suffolk County, N.Y., being duly sworn, says that such person is, and at the time of publication of the annexed Notice was a duly authorized custodian of records of Newsday Media Group, the publisher of NEWSDAY, a newspaper published in the County of Suffolk, County of Nassau, County of Queens, and elsewhere in the State of New York and other places, and that the Notice of which the annexed is a true copy, was published in the following editions/counties of said newspaper on the following dates:

Wednesday

February 27, 2019

Nassau, Suffolk and Queens

SWORN to before me this

27 Day of February, 2019.



CHRISTOPHER LAWSON
Notary Public – State of New York
No. 01LA6348406
Qualified in Suffolk County
My Commission Expires September 26, 2020



Announcements

Lost/Found
Personals
Ticket brokers
Professional Services
Legal Services

PERSONALS

NOVENA TO ST. JUDE
 May the Sacred Heart of Jesus be adored, glorified, loved and preserved throughout the world now and forever. Sacred Heart of Jesus, pray for us. St. Jude Worker of Miracles, pray for us. St. Jude helper of the hopeless, pray for us. Say 9 times for 9 days. Promise publication by the 8th day and your prayers will be answered. Thank-you.

Thank You St. Jude
 for prayers Answered. AME

LEGAL NOTICES

Legal Notice # 21462016
NOTICE OF SALE
SUPREME COURT COUNTY OF QUEENS, WILMINGTON SAVINGS FUND SOCIETY, FSB, D/B/A CHRISTIANA TRUST, NOT INDIVIDUALLY BUT AS TRUSTEES OF PRETIUM MORTGAGE ACQUISITION TRUST, Plaintiff, vs. ANER RAMALES, ET AL., Defendants.
 Pursuant to an Order Confirming Referee's Report, Appointment of Referee and Judgment of Foreclosure and Sale filed on December 10, 2018, the undersigned Referee will sell at public auction at the Queens County Supreme Court, Courtroom 25, 88-11 Sutphin Boulevard, Jamaica, NY on March 8, 2019 at 10:00 a.m., premises known as 88-22 Avenue, Rego Park, NY. All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situated, lying and being in the Borough of Queens, County of Queens, City and State of New York, Block 3076 and Lot 10. Approximate amount of Judgment is \$663,410.65 plus interest and costs. Premises will be sold subject to provisions of filed Judgment Index # 711591/2016.
 Jerry Merola, Esq., Referee
 Knuckles, Komosinski & Manfro, LLP, 365 Tuxedo Road, Suite 590, Elmsford, NY 10523, Attorneys for Plaintiff

Legal Notice # 21466730
NOTICE OF SALE
SUPREME COURT COUNTY OF QUEENS, MTGLOINVESTORS, LP, Plaintiff, vs. CLARISSA BURTON, ET AL., Defendants.
 Pursuant to a Judgment of Foreclosure and Sale filed on September 20, 2018, the undersigned Referee will sell at public auction at the Queens County Supreme Court, Courtroom 25, 88-11 Sutphin Boulevard, Jamaica, NY on March 29, 2019 at 10:00 a.m., premises known as 109-17 205th Street, Hollis, NY. All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situated, lying and being in the Borough of Queens, County of Queens, City and State of New York, Block 10911 and Lot 50. Premises will be sold subject to provisions of filed Judgment Index # 17824/12.
 Christina Cline, Esq., Referee
 Bergman, Henoch, Peterson, Paddy & Fenchel, P.C., 100 Garden City Plaza, Garden City, NY 11530, Attorneys for Plaintiff

Legal Notice # 21461895
NOTICE OF FORMATION OF VICTA INVESTMENT COMPANY, LLC. Articles of Organization filed with the Secretary of State of NY on 10/11/2016. Office located in Queens, SSNY has been designated for service of process. SSNY shall mail copy of any process served against the LLC, 208-41 100th Ave, Hollis, NY 11423. Purpose: any lawful purpose.

Legal Notice # 21465909
NOTICE OF SALE
SUPREME COURT COUNTY OF QUEENS, WELLS FARGO DELAWARE TRUST COMPANY, N.A. AS TRUSTEE FOR VERICREST OPPORTUNITY LOAN TRUST 2011-NPLI, Plaintiff, vs. CARLOS RODRIGUEZ, ET AL., Defendants.
 Pursuant to a Final Judgment of Foreclosure and Sale filed on March 24, 2017, the undersigned Referee will sell at public auction at the Queens County Supreme Court, Courtroom 25, 88-11 Sutphin Boulevard, Jamaica, NY on March 15, 2019 at 10:00 a.m., premises known as 140-36 169th Street, Jamaica, NY. All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situated, lying and being in the Borough of Queens, County of Queens, City and State of New York, Block 11544 and Lot 1015 to 1017, with an undivided 2.327 percent interest in the Common Elements. Approximate amount of Judgment is \$459,024.66 plus interest and costs. Premises will be sold subject to provisions of filed Judgment Index # 2010-25039.
 If the sale is set aside for any reason, the Purchaser at the sale shall be entitled only to a return of the deposit paid. The Purchaser shall have no further recourse against the Mortgagee, the Mortgagee's attorney, or the Referee. For sale information, please visit www.auction.com or call (800) 280-2832.
 Barry Goldstein, Esq., Referee
 Roach & Lin, P.C., 6901 Jericho Turnpike, Suite 240, Syosset, New York 11791, Attorneys for Plaintiff

Legal Notice # 21468087
SUPREME COURT COUNTY OF QUEENS, WILMINGTON SAVINGS FUND SOCIETY, FSB, DOING BUSINESS AS CHRISTIANA TRUST, NOT IN ITS INDIVIDUAL CAPACITY, SOLELY AS TRUSTEES OF PRETIUM MORTGAGE ACQUISITION TRUST, Plaintiff, vs. ROMAN MAVASHEV, MICHAEL MAVASHEV, ET AL., Defendants.
 Pursuant to a Judgment of Foreclosure and Sale and Order to Amend Caption filed on January 18, 2019, the undersigned Referee will sell at public auction at the Queens County Supreme Court, Courtroom 25, 88-11 Sutphin Boulevard, Jamaica, NY on March 29, 2019 at 10:00 a.m., premises known as 117-06 Park Lane South, Richmond Hill, NY. All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situated, lying and being in the Borough of Queens, County of Queens, City and State of New York, Block 3323 and Lot 31. Approximate amount of Judgment is \$971,857.26 plus interest and costs. Premises will be sold subject to provisions of filed Judgment Index # 13291/2018.
 Jerry Merola, Esq., Referee
 Knuckles, Komosinski & Manfro, LLP, 365 Tuxedo Road, Suite 590, Elmsford, NY 10523, Attorneys for Plaintiff

Legal Notice # 21469753
NOTICE OF SALE
SUPREME COURT COUNTY OF QUEENS, MTGLOINVESTORS, LP, Plaintiff, vs. CLARISSA BURTON, ET AL., Defendants.
 Pursuant to a Judgment of Foreclosure and Sale filed on September 20, 2018, the undersigned Referee will sell at public auction at the Queens County Supreme Court, Courtroom 25, 88-11 Sutphin Boulevard, Jamaica, NY on March 29, 2019 at 10:00 a.m., premises known as 109-17 205th Street, Hollis, NY. All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situated, lying and being in the Borough of Queens, County of Queens, City and State of New York, Block 10911 and Lot 50. Premises will be sold subject to provisions of filed Judgment Index # 17824/12.
 Christina Cline, Esq., Referee
 Bergman, Henoch, Peterson, Paddy & Fenchel, P.C., 100 Garden City Plaza, Garden City, NY 11530, Attorneys for Plaintiff

Legal Notice # 21465918
NOTICE OF SALE
SUPREME COURT COUNTY OF QUEENS, WELLS FARGO DELAWARE TRUST COMPANY, N.A. AS TRUSTEE FOR VERICREST OPPORTUNITY LOAN TRUST 2011-NPLI, Plaintiff, vs. CARLOS RODRIGUEZ, ET AL., Defendants.
 Pursuant to a Final Judgment of Foreclosure and Sale filed on March 24, 2017, the undersigned Referee will sell at public auction at the Queens County Supreme Court, Courtroom 25, 88-11 Sutphin Boulevard, Jamaica, NY on March 15, 2019 at 10:00 a.m., premises known as 140-36 169th Street, Jamaica, NY. All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situated, lying and being in the Borough of Queens, County of Queens, City and State of New York, Block 11544 and Lot 1015 to 1017, with an undivided 2.327 percent interest in the Common Elements. Approximate amount of Judgment is \$459,024.66 plus interest and costs. Premises will be sold subject to provisions of filed Judgment Index # 2010-25039.
 If the sale is set aside for any reason, the Purchaser at the sale shall be entitled only to a return of the deposit paid. The Purchaser shall have no further recourse against the Mortgagee, the Mortgagee's attorney, or the Referee. For sale information, please visit www.auction.com or call (800) 280-2832.
 Barry Goldstein, Esq., Referee
 Roach & Lin, P.C., 6901 Jericho Turnpike, Suite 240, Syosset, New York 11791, Attorneys for Plaintiff

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 Roach & Lin, P.C., 6901 Jericho Turnpike, Suite 240, Syosset, New York 11791, Attorneys for Plaintiff

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 Roach & Lin, P.C., 6901 Jericho Turnpike, Suite 240, Syosset, New York 11791, Attorneys for Plaintiff

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SUPREME COURT COUNTY OF QUEENS, WELLS FARGO DELAWARE TRUST COMPANY, N.A. AS TRUSTEE FOR VERICREST OPPORTUNITY LOAN TRUST 2011-NPLI, Plaintiff, vs. CARLOS RODRIGUEZ, ET AL., Defendants.
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 If the sale is set aside for any reason, the Purchaser at the sale shall be entitled only to a return of the deposit paid. The Purchaser shall have no further recourse against the Mortgagee, the Mortgagee's attorney, or the Referee. For sale information, please visit www.auction.com or call (800) 280-2832.
 Barry Goldstein, Esq., Referee
 Roach & Lin, P.C., 6901 Jericho Turnpike, Suite 240, Syosset, New York 11791, Attorneys for Plaintiff

Legal Notice # 21465918
NOTICE OF SALE
SUPREME COURT COUNTY OF QUEENS, WELLS FARGO DELAWARE TRUST COMPANY, N.A. AS TRUSTEE FOR VERICREST OPPORTUNITY LOAN TRUST 2011-NPLI, Plaintiff, vs. CARLOS RODRIGUEZ, ET AL., Defendants.
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 Barry Goldstein, Esq., Referee
 Roach & Lin, P.C., 6901 Jericho Turnpike, Suite 240, Syosset, New York 11791, Attorneys for Plaintiff

LEGAL NOTICES

Legal Notice # 21462086
JA Corona Realty LLC. Articles of Org. filed with the NY Sec. of State (SSNY) 1/06/2019. Office in Queens Co. SSNY designated as agent of the LLC upon whom process against it may be served. SSNY shall mail copy of process to the LLC, 43-31 45th Street, Apartment 5M, Sunnyside, NY 11377. Purpose: Any lawful purpose.

Legal Notice # 21467739
NOTICE OF FORMATION OF Lawdell, LLC. Articles of Organization filed with the Secretary of State of New York (SSNY) on 11/30/2018. Office located in Queens County, SSNY has been designated as agent of the LLC upon whom process against it may be served. SSNY shall mail a copy of any process served against the LLC to Seema Rambaran, 57-35 134th Street, Flushing, NY 11355. Purpose: any lawful purpose.

Legal Notice # 21470044
Notice of Formation of 131-47 Fowler Ave Owner LLC. Arts of Org. filed with NY Secy of State (SSNY) on 2/12/19. Office located in Queens County. SSNY is designated as agent of the LLC upon whom process against it may be served. SSNY shall mail process to: 28 Liberty St, NY, NY 10005. The name and address of the Agent is CT Corporation System, 28 Liberty St, NY, NY 10005. Purpose: any lawful activity.

Legal Notice # 21470366
AGENCY: U.S. Army Corps of Engineers, New York District. ACTION: Public Meetings for New York New Jersey Harbor & Tribuaries Coastal Storm Risk Management Feasibility Study (NYNJHAT). SUMMARY: Historical Storms have severely impacted the NY/NJ Harbor region. The study is assessing the feasibility of coastal storm risk management alternatives that can be implemented within the authorized study area. The public meetings will present information on the study results to date and to receive public questions. MEETING DATES/TIMES/LOCATIONS: Eight meetings are scheduled throughout the study area. Meeting details and comment submittal information is available at the project website (www.usace.army.mil/NYHAT), and a webinar summarizing the report will be posted shortly.

Legal Notice # 21467219
 • Tues, March 12th, 2019, 5-7pm at Westchester County Center, 191 Central Avenue, White Plains, NY 10606, in the Little Theater.
 • Wed, March 13th, 2019, 5:30-7:30pm at South Shore Educational Center, 6505 Flatlands Avenue, Brooklyn, NY 11236, in the Auditorium.
 • Tues, March 19th, 2019, 5-7pm at Snug Harbor Cultural Center, 1000 Richmond Terrace, Staten Island, NY 10310, in the Historic Music Hall.
 • Wed, March 27th, 2019, 5-7pm at Middletown Arts Center, 36 Church St, Middletown, NY 07748.
 • Wed, April 3rd, 2019, 5-7pm. Location: Hudson Valley Community Center, 110 Grand Avenue, Poughkeepsie, NY 12603.
 • Tues, April 9th, 2019, 5-7pm at Alexander Hamilton U.S. Custom House, 1 Bowling Green, New York, NY 10004. Session is in the Auditorium.
 • Thurs, April 11th, 2019, 5-7pm at Meadows Environmental Center, 2 DeKorte Park Plaza, Lyndhurst, NJ 07037.
 • Wed, April 17th, 2019, 5-7pm at Hostos Community College, Building 5, 230 East 149th St, Ft. Bronx, NY 10451, in the Savoy Room FOR FURTHER INFORMATION: You may find additional information about this event at the project website: <http://www.usace.army.mil/NYHAT>.

Legal Notice # 21462135
FARHAN TAXI LLC. Arts. of Org. filed with the SSNY on 01/04/19. Office: Queens County. SSNY designated as agent of the LLC upon whom process against it may be served. SSNY shall mail copy of process to the LLC, 43-31 45th Street, Apartment 5M, Sunnyside, NY 11377. Purpose: Any lawful purpose.

Legal Notice # 21466689
NOTICE OF SALE
SUPREME COURT COUNTY OF QUEENS, CTF ASSET MANAGEMENT, LLC, Plaintiff, vs. ADEWATTIE PARAG, ET AL., Defendants.
 Pursuant to an Order Confirming Referee Report and Judgment of Foreclosure and Sale filed on January 6, 2019, the undersigned Referee will sell at public auction at the Queens County Supreme Court, Courtroom 25, 88-11 Sutphin Boulevard, Jamaica, NY on March 29, 2019 at 10:00 a.m., premises known as 132-15 87th Avenue, Richmond Hill, NY 11418. All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situated, lying and being in the Borough of Queens, County of Queens, City and State of New York, Block 9630 and Lot 11. Approximate amount of Judgment is \$185,761.31 plus interest and costs. Premises will be sold subject to provisions of filed Judgment Index # 71193/2017.
 Irene M. Matrone, Esq., Referee
 Scher, Knapp, Lebowitz & Hertzel, LLP, 200 John James Audubon Parkway, Suite 212, Amherst, New York 14228, Attorneys for Plaintiff

Legal Notice # 21462190
AZAD ELMAN LLC. Arts. of Org. filed with the SSNY on 11/21/18. Office: Queens County. SSNY designated as agent of the LLC upon whom process against it may be served. SSNY shall mail copy of process to the LLC, 43-31 45th Street, Apartment 5M, Sunnyside, NY 11377. Purpose: Any lawful purpose.

Legal Notice # 21462196
T AND S FLUSHING LLC. Arts. of Org. Filed Sec. of State of NY 11/21/2018. Off. Loc.: Queens Co. SSNY designated as agent upon whom process against it may be served. SSNY to mail copy of process to the LLC, 1666 16th Street, Suite 2C, Flushing, NY 11354. Purpose: Any lawful act or activity.

Legal Notice # 21470034
Notice of Formation of Beef House Partner II LLC. Arts of Org. filed with NY Secy of State (SSNY) on 12/12/19. Office location: Queens County. SSNY is designated as agent of the LLC upon whom process against it may be served. SSNY shall mail process to: 28 Liberty St, NY, NY 10005. The name and address of the Reg. Agent is CT Corporation System, 28 Liberty St, NY, NY 10005. Purpose: any lawful activity.

Legal Notice # 21470259
The Mid-Atlantic Fishery Management Council will hold a meeting March 6-7, 2019. The meeting will be held at the Hyatt Regency Oceanfront, 3001 Atlantic Ave., Virginia Beach, VA 23451. Telephone (757) 213-3000. For further information, please contact: John James Audubon Parkway, Suite 212, Amherst, New York 14228, Attorneys for Plaintiff

Legal Notice # 21464170
Notice of Formation (LLC). Name: SHK, LLC. Articles of Organization filed with the Secretary of State of New York SSNY on 6/14/2018. Office located in Queens County. SSNY has been designated for service of process. SSNY shall mail copy of any process served against the LLC, 1 Bay Club Dr. 845 Bayside, NY 11360. Purpose: any lawful purpose.

Legal Notice # 21464170
Notice of Formation (LLC). Name: SHK, LLC. Articles of Organization filed with the Secretary of State of New York SSNY on 6/14/2018. Office located in Queens County. SSNY has been designated for service of process. SSNY shall mail copy of any process served against the LLC, 1 Bay Club Dr. 845 Bayside, NY 11360. Purpose: any lawful purpose.

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TIMES UNION

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A Loveridge / T Tomes / S Rawling / R Bernard / T Duquette of the city of Albany, being duly sworn, says that he/she is principal Clerk of THE TIMES UNION, a daily newspaper printed in the county of Albany, Town of Colonie, and Published in the County of Albany, Town of Colonie and the city of Albany, aforesaid and that notice of which a printed copy is annexed has been regularly published in the said ALBANY TIMES UNION on the following dates

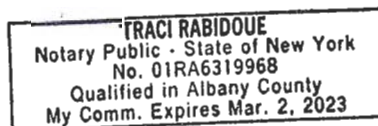
02-27-2019



Sworn to before me, this 28 day of February 2019.



Notary Public
Albany County



NOTICE OF PUBLIC HEARING
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Pursuant to Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105 of the Environmental Conservation Law, notice is hereby given that the New York State Department of Environmental Conservation (Department) will hold the following legislative public hearings on the proposed addition of 6 NYCRR Subpart 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NOx emissions from simple cycle and regenerative combustion turbines during the ozone season. The lower emissions from these sources will help to address Clean Air Act (CAA) requirements, ozone nonattainment and protect the health New York State residents. This proposal is only applicable to simple cycle and regenerative combustion turbines. This is not a mandate on local governments. It applies to any entity that owns or operates a subject source. Further, the Department proposes to submit Subpart 227-3 to the United States Environmental Protection Agency as a revision to the State Implementation Plan (SIP) for New York State.

Hearings for the proposed rule and attendant revisions to existing rules described above will be held as follows and are scheduled in places that are reasonably accessible to persons with impaired mobility:

Date	Time	Location
5/6/2019	11:00 am	NYSDEC, 625 Broadway, Public Assembly Room 129A/B, Albany, NY 12233
5/13/2019	11:00 am	SONY @ Stony Brook, 50 Circle Road, Room B02, Stony Brook, NY 11790
5/14/2019	11:00 am	1 Hunter's Point Plaza, 47-40 21st Street, Room 834 NYSDOT, Long Island City, NY 11101

The Department will provide interpreter services for deaf persons at no charge. Written requests for interpreter services are required and should be submitted by April 29, 2019, to Richard McAuley, NYSDEC, 625 Broadway, Albany NY 12233-3250, (518) 402-8438, air.regs@dec.ny.gov.

Pursuant to Part 617 of the implementing regulations for the State Environmental Quality Review Act, the Department has prepared a Negative Declaration stating that the proposed actions will not have a significant effect on the environment.

The Department invites all persons, organizations, corporations, and government agencies that may be affected by the proposed revisions to attend the hearings. At each hearing, persons who wish to make a statement will be invited to speak. It is requested that oral statements also be submitted in writing. The Department will give equal weight to written and oral statements, and since a cumulative record will be compiled it is not necessary for interested parties to attend each hearing.

Information for Subpart 227-3, may be obtained from Ona Papageorgiou P. E., NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3251, telephone, (518) 402-8396; email, air.regs@dec.ny.gov. Written statements may be submitted until 5 pm, May 20, 2019.

Requests for information and comments related to the SIP revision identified above may be obtained from Robert D. Bielawa, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: air.regs@dec.ny.gov. Written statements may be submitted until 5 pm, May 20, 2019.

The proposed regulations may be found on the NYSDEC's website at: <http://www.dec.ny.gov/regulations/propregulations.html#public> or may be obtained from any of the following Department offices:

REGION 1 - NYSDEC Region One Headquarters, SUNY Stony Brook, 50 Circle Road, Stony Brook, NY 11790-3409, Attention: Shaun Snee

REGION 2 - Hunters Point Plaza, 47-40 21st Street, Long Island City, NY 11101, Attention: Sam Lieblich

REGION 3 - 21 South Putt Corners Road, New Paltz, NY 12561, Attention: George Sweikert

REGION 4 - 1130 North Westcott Rd., Schenectady, NY 12306, Attention: Victoria Schmitt

REGION 5 - Hudson Street Extension, Box 220, Warrensburg NY 12885, Attention: James Coutant

REGION 6 - Watertown State Office Bldg, 317 Washington St., Watertown, NY 13601, Attention: Robert Jacobs

REGION 7 - 615 Erie Boulevard West, Syracuse, NY 13204-2400, Attention: Thomas Elter

REGION 8 - 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Yuan Zeng

REGION 9 - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emery

WARREN COUNTY AFFIDAVIT

STATE OF NEW YORK:

County of Warren, ss:

Debbie Kerr being duly sworn,

says that (s)he is an authorized designee for Lee Enterprises, publishers of THE POST-STAR, a daily newspaper published in Glens Falls, Warren County, State of New York, and that the printed notice attached hereto was cut from the said POST-STAR, and that the said notice was published therein, namely

Public Hearing

Feb. 27

, 2019

MILLER ADVERTISING-LEGAL

220 WEST 42ND STREET, 12TH FLOOR
NEW YORK NY 10036

ORDER NUMBER 69667

Signed this 27th day of Feb., 2019

Debbie Kerr

Sworn to before me this 27 day of Feb, 2019

Section: Legals

Category: 001 Legal Notices - Warren County

PUBLISHED ON: 02/27/2019

TOTAL AD COST: 83.68

FILED ON: 2/27/2019

NOTICE OF PUBLIC HEARING		
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION		
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5/14/2019	11:00 am	1 Hunter's Point Plaza, 47-40 21st Street, Room 834 NYSDOT, Long Island City, NY 11101
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REGION 3 - 21 South Putt Corners Road, New Paltz, NY 12561, Attention: George Sweikert		
REGION 4 - 1130 North Westcott Rd., Schenectady, NY 12306, Attention: Victoria Schmitt		
REGION 5 - Hudson Street Extension, Box 220, Warrensburg NY 12885, Attention: James Coutant		
REGION 6 - Watertown State Office Bldg, 317 Washington St., Watertown, NY 13601, Attention: Robert Jacobs		
REGION 7 - 615 Erie Boulevard West, Syracuse, NY 13204-2400, Attention: Thomas Elter		
REGION 8 - 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Yuan Zeng		
REGION 9 - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emery		

BRIAN J. CORCORAN
Notary Public - State of New York
No. 01006133976
Qualified in Saratoga County
My Commission Expires September 19, 2021

THE POST-STANDARD

LEGAL AFFIDAVIT

INV#: 0009041288

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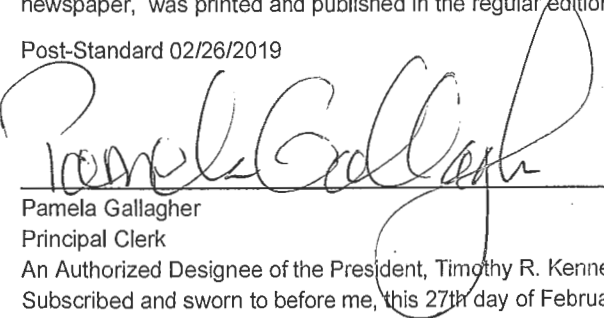
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Date	Position	Description	P.O. Number	Ad Size
02/26/2019	Other Legals NY		IO# R2200150	3 x 77 L

State of New York, County of Onondaga ss. Pamela Gallagher, of the City of Syracuse, in said County, being duly sworn, doth depose and says: this person is the Principal Clerk in the office of THE POST-STANDARD, a public newspaper, published in the City of Syracuse, Onondaga County, New York and that the notice, is an accurate and true copy of the ad as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following days, viz.:

Post-Standard 02/26/2019


Pamela Gallagher
Principal Clerk

An Authorized Designee of the President, Timothy R. Kennedy
Subscribed and sworn to before me, this 27th day of February
2019


Anne Petro

NOTARY PUBLIC

FOR QUESTIONS CONCERNING THIS AFFIDAVIT,
PLEASE CONTACT PAMELA GALLAGHER AT
(315) 470-2051 OR Legals@Syracuse.com

ANNE PETRO
Notary Public - State of New York
No. 01PE6366489
Qualified in Onondaga County
Commission Expires: 10-30-2021

Date	Position	Description	P.O. Number	Ad Size
02/26/2019	Other Legals NY		IO# R2200150	3 x 77 L

NOTICE OF PUBLIC HEARING**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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REGION 3 - 21 South Putt Corners Road, New Paltz, NY 12561, Attention: George Sweikert

REGION 4 - 1130 North Westcott Rd., Schenectady, NY 12306, Attention: Victoria Schmitt

REGION 5 - Hudson Street Extension, Box 220, Warrensburg NY 12885, Attention: James Coutant

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REGION 8 - 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Yuan Zeng

REGION 9 - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emery

S9041288-01

AFFIDAVIT OF PUBLICATION

STATE OF NEW YORK
COUNTY OF NEW YORK

Ambika Mohan being duly sworn hereby declares and says, that she is the Advertising Account Executive responsible for placing the attached advertisement for publication in Rochester Democrat & Chronicle for Miller Advertising Agency, Inc; located in New York, NY, and that the NYSDEC Notice of Complete Application advertisement, of which the annexed is a true copy, has been published in the said publication on the following issue date(s):

Feb. 27, 2019

Ambika Mohan
Ambika Mohan

Subscribed to and Sworn before me

This 18th day of April, 2019

Donna Perez
Notary Public

Donna Perez
Notary Public State Of New York
No. 01PE6151365
Qualified In New York County
Commission Expires August, 14th - 2022

NOTICE OF PUBLIC HEARING

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Pursuant to Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105 of the Environmental Conservation Law, notice is hereby given that the New York State Department of Environmental Conservation (Department) will hold the following legislative public hearings on the proposed addition of 6 NYCRR Subpart 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NOx emissions from simple cycle and regenerative combustion turbines during the ozone season. The lower emissions from these sources will help to address Clean Air Act (CAA) requirements, ozone nonattainment and protect the health New York State residents. This proposal is only applicable to simple cycle and regenerative combustion turbines. This is not a mandate on local governments. It applies to any entity that owns or operates a subject source. Further, the Department proposes to submit Subpart 227-3 to the United States Environmental Protection Agency as a revision to the State Implementation Plan (SIP) for New York State.

Hearings for the proposed rule and attendant revisions to existing rules described above will be held as follows and are scheduled in places that are reasonably accessible to persons with impaired mobility:

Date	Time	Location
5/6/2019	11:00 am	NYSDEC, 625 Broadway, Public Assembly Room 129A/B, Albany, NY 12233
5/13/2019	11:00 am	SUNY @ Stony Brook, 50 Circle Road, Room B02, Stony Brook, NY 11790
5/14/2019	11:00 am	1 Hunter's Point Plaza, 47-40 21st Street, Room 834 NYSDOT, Long Island City, NY 11101

The Department will provide interpreter services for deaf persons at no charge. Written requests for interpreter services are required and should be submitted by April 29, 2019, to Richard McAuley, NYSDEC, 625 Broadway, Albany NY 12233-3250, (518) 402-8438, air.regs@dec.ny.gov.

Pursuant to Part 617 of the implementing regulations for the State Environmental Quality Review Act, the Department has prepared a Negative Declaration stating that the proposed actions will not have a significant effect on the environment.

The Department invites all persons, organizations, corporations, and government agencies that may be affected by the proposed revisions to attend the hearings. At each hearing, persons who wish to make a statement will be invited to speak. It is requested that oral statements also be submitted in writing. The Department will give equal weight to written and oral statements, and since a cumulative record will be compiled it is not necessary for interested parties to attend each hearing.

Information for Subpart 227-3, may be obtained from Ona Papageorgiou P. E., NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3251, telephone, (518) 402-8396; email, air.regs@dec.ny.gov. Written statements may be submitted until 5 pm, May 20, 2019.

Requests for information and comments related to the SIP revision identified above may be obtained from Robert D. Bielawa, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: air.regs@dec.ny.gov. Written statements may be submitted until 5 pm, May 20, 2019.

The proposed regulations may be found on the NYSDEC's website at: <http://www.dec.ny.gov/regulations/proprotegrations.html#public> or may be obtained from any of the following Department offices:

REGION 1 - NYSDEC Region One Headquarters, SUNY Stony Brook, 50 Circle Road, Stony Brook, NY 11790-3409, Attention: Shaun Snee

REGION 2 - Hunters Point Plaza, 47-40 21st Street, Long Island City, NY 11101, Attention: Sam Lieblich

REGION 3 - 21 South Putt Corners Road, New Paltz, NY 12561, Attention: George Swelkert

REGION 4 - 1130 North Westcott Rd., Schenectady, NY 12306, Attention: Victoria Schmitt

REGION 5 - Hudson Street Extension, Box 220, Warrensburg NY 12885, Attention: James Coutant

REGION 6 - Watertown State Office Bldg, 317 Washington St., Watertown, NY 13601, Attention: Robert Jacobs

REGION 7 - 615 Erie Boulevard West, Syracuse, NY 13204-2400, Attention: Thomas Eiter

REGION 8 - 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Yuan Zeng

REGION 9 - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emery

Rochester Democrat
and Chronicle

THE BUFFALO NEWS

-Affidavit-

Matthew Donnelly of the City of Buffalo, New York, being duly sworn, deposes and says that he/she is Principal Clerk of THE BUFFALO NEWS INC., Publisher of THE BUFFALO NEWS, a newspaper published in said city, that the notice of which the annexed printed slip taken from said newspaper is a copy, was inserted and published therein 1 times, the first insertion being on **02/27/2019** and the last insertion being on **02/27/2019**

Matthew Donnelly

Dates Ad Ran:

Buffalo News (P1) 02/27/19

Sworn to before me this 25 day of March 2019

Barbara Anne Juzwiak
Notary Public, Erie County, New York

BARBARA ANNE JUZWIAK
Notary Public, State of New York
Appointed in Niagara County
My Commission Expires 03/31/2021

NOTICE OF PUBLIC HEARING		
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION		
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<p>"The Department will provide interpreter services for deaf persons at no charge. Written requests for interpreter services are required and should be submitted by April 29, 2019, to Richard McAuley, NYSDEC, 625 Broadway, Albany NY 12233-3250, (518) 402-8438, air.regs@dec.ny.gov.</p> <p>Pursuant to Part 617 of the implementing regulations for the State Environmental Quality Review Act, the Department has prepared a Negative Declaration stating that the proposed actions will not have a significant effect on the environment.</p> <p>The Department invites all persons, organizations, corporations, and government agencies that may be affected by the proposed revisions to attend the hearings. At each hearing, persons who wish to make a statement will be invited to speak. It is requested that oral statements also be submitted in writing. The Department will give equal weight to written and oral statements, and since a cumulative record will be compiled it is not necessary for interested parties to attend each hearing.</p> <p>Information for Subpart 227-3, may be obtained from Ona Papageorgiou P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3251, telephone, (518) 402-8396; email, air.regs@dec.ny.gov. Written statements may be submitted until 5 pm, May 20, 2019.</p> <p>Requests for information and comments related to the SIP revision identified above may be obtained from Robert D. Belawa, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: air.regs@dec.ny.gov. Written statements may be submitted until 5 pm, May 20, 2019.</p> <p>The proposed regulations may be found on the NYSDEC's website at: http://www.dec.ny.gov/regulations/proproregulations.html#public or may be obtained from any of the following Department offices:</p> <p>REGION 1 - NYSDEC Region One Headquarters, SUNY Stony Brook, 50 Circle Road, Stony Brook, NY 11790-3409, Attention: Shaun Snee</p> <p>REGION 2 - Hunters Point Plaza, 47-40 21st Street, Long Island City, NY 11101, Attention: Sam Lieblich</p> <p>REGION 3 - 21 South Platt Corners Road, New Paltz, NY 12561, Attention: George Sweikert</p> <p>REGION 4 - 1130 North Westcott Rd., Schenectady, NY 12306, Attention: Victoria Schmitt</p> <p>REGION 5 - Hudson Street Extension, Box 220, Warrensburg NY 12885, Attention: James Coutant</p> <p>REGION 6 - Watertown State Office Bldg, 317 Washington St., Watertown, NY 13601, Attention: Robert Jacobs</p> <p>REGION 7 - 615 Erie Boulevard West, Syracuse, NY 13204-2400, Attention: Thomas Elter</p> <p>REGION 8 - 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Yuan Zeng</p> <p>REGION 9 - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emery</p>		

Notice of Proposed Rulemaking

New York State Department of Environmental Conservation

6 NYCRR Subpart 227-3, Ozone Season Oxides of Nitrogen (NO_x) Emission Limits for Simple Cycle and Regenerative Combustion Turbines

Pursuant to Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105 of the Environmental Conservation Law (ECL), the New York State Department of Environmental Conservation (Department) hereby gives notice of the following:

The Department is releasing a revised proposal for new 6 NYCRR Subpart 227-3, “Ozone Season Oxides of Nitrogen (NO_x) Emission Limits for Simple Cycle and Regenerative Combustion Turbines,” for public review and comment. The primary goal of this proposal is to lower allowable NO_x emissions from simple cycle and regenerative combustion turbines during the ozone season. The lower emissions from these sources will help to address Clean Air Act (CAA) requirements, ozone nonattainment and protect the health of New York State residents. This proposal is only applicable to simple cycle and regenerative combustion turbines during the ozone season. This revised proposal includes changes resulting from comments submitted in regards to the original proposed rule. This is not a mandate on local governments. It applies to any entity that owns or operates a subject source. Further, the Department proposes to submit Subpart 227-3 to the United States Environmental Protection Agency as a revision to the State Implementation Plan (SIP) for New York State.

Documents pertaining to this rulemaking can be found on the Department’s website at <http://www.dec.ny.gov/regulations/propregulations.html#public>.

Written comments on revisions to the proposed rule may be submitted until 5 p.m. on October 7, 2019. For further information, contact Ona Papageorgiou, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone (518) 402-8396, E-mail: air.regs@dec.ny.gov.

Requests for information and comments related to the SIP revision may be obtained from Robert D. Bielawa, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: air.regs@dec.ny.gov. Written statements may be submitted until 5 pm October 7, 2019. No hearings are scheduled regarding the revised proposed rule.

sistent with the requirements for new landfills, while appropriately preserving the provisions of Subpart Cf that are specifically designed for existing sources, such as the applicability provisions and the provisions governing closed landfills. We support the Agency's efforts to maintain that consistency by incorporating Subpart Cf by reference. (Commenter 2)

Response to Comment 2: The Department appreciates the commenter's support for the new regulation and agrees with the commenter that incorporation of 40 CFR Part 60, Subpart Cf (Subpart Cf) by reference into revised Part 208 provides the regulatory consistency for existing landfills and/or landfill operators transitioning from Subpart Cf to 40 CFR Part 60, Subpart XXX (Subpart XXX).

Comment 3. Since NYDEC proposes to incorporate Subpart Cf provisions by reference, the agency should adopt language stating that future amendments to Subpart Cf carry through to the state rule. To ensure consistency with any aspect of Subpart Cf that is incorporated by reference, NYSDEC should specify that such incorporation encompasses any future changes, additions, or revisions to the federal rule. Where statute may prevent such future incorporation, the agency should consider streamlining mechanisms that would allow for expedited revisions to Part 208 if and when changes are promulgated to Subpart Cf pursuant to the recently proposed changes or changes arising from industry reconsideration petitions. (Commenter 2)

Response to Comment 3: As the commenter indicated, the Department is prohibited by the State Administrative Procedures Act (SAPA) from adopting rules on a prospective basis, including the automatic incorporation by reference of future federal law changes. Rather, the Department is required to comply with SAPA's rulemaking requirements, including providing the public with notice of all proposed rulemakings as well as an opportunity for review and comment, for each proposed rule. While the adoption of new Part 208 primarily consists of the incorporation by reference of federal emission guideline (EG) requirements under Subpart Cf, any future changes to federal law will require the Department to adhere to state rulemaking requirements in order to adopt those changes into state law.

Comment 4. Any new state regulation and State Plan under Subpart Cf should not take effect until EPA has approved the State Plan. NYSDEC must also leave the current regulations and State Plan "on-the-books," instead of overwriting them with the new Subpart Cf requirements, so that the current requirements can remain effective while the state awaits EPA approval of the state's new Subpart Cf rule and Plan. Accordingly, NYSDEC should likewise confirm in its revised regulations and new State Plan that Subpart Cf requirements will not take effect until EPA approves the State Plan. Doing so will eliminate the gap in time between the date that new state and federal regulatory requirements become effective, which would otherwise arise while the State Plan is under review at EPA. Subpart Cf itself confirms that compliance is not required until EPA approval. See 40 CFR § 60.32f, 60.38f(c) (requiring compliance within 30 months after the report that is due 90 days after EPA approval). NYSDEC should align the deadline for compliance with its new Subpart Cf rules and State Plan with the effective date of the EPA approval needed to make those requirements federally enforceable. (Commenter 2)

Response to Comment 4: The rulemaking process requires that new Part 208 be adopted prior to submitting a State Plan to EPA. New Part 208 will become effective and enforceable in New York regardless of whether EPA approves the State Plan. New York plans to submit a State Plan to EPA which includes identifying new Part 208 as the enforceable mechanism to implement the EG.

Comment 5. The state regulations should specify an approval process for design plans. Subpart Cf requires each existing landfill to operate pursuant to a state-approved site-specific design plan for the landfill's unique gas collection and control system (GCCS). However, Subpart Cf does not dictate the process through which states must approve those design plans. Since the lack of timely GCCS design plan approval can leave a landfill in an untenable position, we ask NYSDEC to include a more definite procedure in its state regulations for ensuring the review and response to all design plan submittals will be timely. For example, where NYSDEC staff may be unable to review a submitted design plan within a prescribed period of time, we ask NYSDEC to rely upon the required Professional Engineer certification of the design plan as a sufficient basis for approving it. We also ask NYSDEC to expressly indicate in its regulations that any alternatives approved under the prior version of the standards (Subparts Cc and WWW) will also be approved under the new regulations and Subpart Cf state plan, including alternative timelines and higher operating values, so that landfills do not need to seek re-approval of every alternative. (Commenter 2)

Response to Comment 5: In 2002, the Division of Air Resources (DAR) and the Division of Solid and Hazardous Materials (DS&HM) – now called the Division of Materials Management (DMM) – entered into a Memorandum of Responsibilities (MOR) which outlines the responsibilities of each Division in the evaluation and approval of designs submitted

to the Department for Part 208. Technical staff in the DMM have historically been responsible for landfill engineering, including the review of GCCS's, while technical staff in the DAR have expertise in the assessment and modeling of landfill gas emission generation and treatment system designs, including the evaluation of monitoring systems associated with such. DAR and DMM will continue to work together to ensure compliance with the requirements of 6 NYCRR Parts 208 and 360, while maintaining the timely evaluation and approval of design plans according to the MOR.

Comment 6. NYSDEC should include an Automatic Rescission Clause. In light of the petitions, court order and pending changes to Subparts AAAA and Cf referenced above, there remains some chance that Subpart Cf could be rescinded by EPA or vacated by a court. In similar circumstances, several states have adopted a provision to confirm that federal rules adopted into a state code will no longer be effective under state law if the rules cease to be effective under federal law, and EPA has approved such provisions if written properly. See 81 Fed. Reg. 42,587 (June 30, 2016) (Oklahoma); 81 Fed. Reg. 27,382 (May 6, 2016) (Louisiana); 79 Fed. Reg. 22,772 (Apr. 24, 2014) (Colorado). Specifically, EPA has approved "automatic rescission clauses" if they (1) ensure the public will receive reasonable notice of the rescission, and (2) the rescission will be consistent with EPA's interpretation of the triggering action. Based on EPA's prior approvals of automatic rescission clauses, we ask NYSDEC to include the following provision in its new Subpart Cf rule: If federal legislation, a federal court, or a subsequent final agency action renders the EPA's Subpart Cf emission guidelines unenforceable in whole or in part, this rule shall become void to the same extent. (Commenter 2)

Response to Comment 6: An "automatic rescission clause" would directly conflict with the rulemaking requirements under New York's SAPA. See Response to Comments 3 and 4.

List of Commentors:

1. Paul Lappano (Lockwood, Kessler & Bartlett, Inc.)
2. Steve Changaris / David Biderman (National Waste & Recycling Association/ Solid Waste Association of North America)

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Set Nitrogen Oxide (NOx) Emission Rate Limits for Simple Cycle and Regenerative Combustion Turbines During the Ozone Season

I.D. No. ENV-09-19-00015-RP

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

Proposed Action: Addition of Subpart 227-3 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105

Subject: Set nitrogen oxide (NOx) emission rate limits for simple cycle and regenerative combustion turbines during the ozone season.

Purpose: Reduction of nitrogen oxide (NOx) emissions from simple cycle and regenerative combustion turbines during the ozone season.

Text of revised rule: See Appendix in the back of this issue.

Revised rule compared with proposed rule: Substantial revisions were made in sections 227-3.1 and 227-3.7.

Text of revised proposed rule and any required statements and analyses may be obtained from Ona Papageorgiou, NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: air.regs@dec.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: October 7, 2019.

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file.

Summary of Revised Regulatory Impact Statement (Full text is posted at the following State website: <http://www.dec.ny.gov/regulations/propregulations.html#public>):

The New York State Department of Environmental Conservation (DEC) is proposing 6 NYCRR Subpart 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NOx emissions from simple cycle and regenerative combustion turbines during the ozone season. The lower emissions from these sources will help to ad-

dress Clean Air Act (CAA) requirements, ozone nonattainment and protect the health of New York State residents. This proposal is only applicable to simple cycle and regenerative combustion turbines. This is not a mandate on local governments. It applies to any entity that owns or operates a subject source.

STATUTORY AUTHORITY

The statutory authority for the promulgation of Subpart 227-3 is found in the New York State Environmental Conservation Law (ECL), Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105.

LEGISLATIVE OBJECTIVES

Article 19 of the ECL was enacted to safeguard the air resources of New York from pollution and ensure the protection of the public health and welfare, the natural resources of the State, physical property, and integrating industrial development with sound environmental practices.

NEEDS AND BENEFITS

In March of 2008, the United States Environmental Protection Agency (EPA) lowered the eight-hour ozone National Ambient Air Quality Standard (NAAQS) from 0.08 parts per million (ppm) to 0.075 ppm.¹ Subsequently, on October 1, 2015, the EPA signed a rule that lowered this standard to 0.070 ppm.² Ozone NAAQS attainment status is demonstrated by measurements recorded from a monitoring network set up across the United States.

EPA designated the New York-Northern New Jersey-Long Island-Connecticut metropolitan area (New York metropolitan area, or NYMA) as a "marginal" nonattainment area for the 2008 ozone NAAQS effective July 20, 2012. On November 14, 2018 EPA proposed to reclassify the NYMA to "serious" nonattainment.³ The area was designated as "moderate" nonattainment for the 2015 ozone NAAQS.⁴ NYMA monitors are currently reporting ozone concentrations of 0.082 ppm, well above the standard.

Simple cycle and regenerative combustion turbines (SCCTs) sometimes referred to as peaking units, run to meet electric load during periods of peak electricity demand. They typically run on hot summer days when there is a strong likelihood of high ozone readings. Many peaking units in New York have high NOx emission rates, are inefficient and are approaching 50 years of age. It is difficult to install after-market controls on most of these units because of their age and site limitations.

New York must fulfill its CAA "good neighbor" obligations which require states to include adequate measures in its state implementation plans (SIPs) prohibiting emissions of air pollutants "in amounts which will... contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to" a NAAQS. In addition, New York must meet the 2008 and 2015 ozone NAAQS, for which the New York-Northern New Jersey-Long Island, NY-NJ-CT area is in nonattainment.

Because high ozone days significantly impact human health in the NYMA and because older units significantly contribute on these days, DEC assessed the 99 high ozone days between 2011 and 2017. Analysis shown in Table 1.

	NOx (tons)	Heat Input (MMBtu)	Gross Load (MWh)
Pre-1986 SCCT*	1,849	7,193,633	580,109
Post-1986 SCCT*	73	6,908,887	1,040,831

*Values are the sum of high ozone days 2011 - 2017

Table 1: NOx emissions from NY SCCTs.⁵

As demonstrated in Table 1, on high ozone days newer SCCTs produced 64 percent of the electricity generated from SCCTs while emitting only 4 percent of NOx emissions from these sources.⁶

If the older sources were replaced with newer sources, the total NOx emissions from those older sources on the 99 high ozone days assessed would drop from the reported 1,849 tons to between 40 and 60 tons depending on efficiency. This would result in an approximate 1,800-ton reduction of NOx emissions over those high ozone days. A reduction of 18 tons of NOx emissions on an ozone season day would represent a reduction of over 10 percent of NYMA NOx emissions from the electricity generation sector and an overall reduction of 3.5 percent from all sources.⁷

Electric grid reliability:

To adequately assess future reliability needs associated with this rule making the Department is proposing that affected facilities submit compliance plans by March 2, 2020 so that the New York Independent System Operator (NYISO) may include the compliance solutions selected by facilities in its 2020 Reliability Needs Assessment (RNA).

Proposal:

To address NOx emissions on high ozone days from SCCTs, DEC is proposing to develop a new regulation, Subpart 227-3, that will apply to

SCCTs with a nameplate capacity of 15 megawatts or greater that inject power into the transmission or distribution systems. This regulation will phase in lower emission limits for NOx and will limit the current averaging provision found in Subpart 227-2 during the ozone season. The sources subject to this proposal will continue to be subject to the requirements of Subpart 227-3 year-round. This rulemaking proposes additional requirements for SCCTs during the ozone season while allowing more flexibility outside of the ozone season. Black start resources, defined in paragraph 227-3.2(b)(1) of Subpart 227-3 as electric generating units used to bring a facility from shutdown to operational without reliance on external supplies or the electrical system, will not be subject to Subpart 227-2. The requirements of the proposed rule are presented in the following paragraphs.

Control Requirements:

The NOx emission limits for SCCTs will be phased in as shown in Tables 2 and 3 below. These limits may be met by averaging SCCTs, electric storage resources and/or renewable generation resources on a facility-wide basis.

By May 1, 2023

	NOx Emission Limit (ppmvd ⁸)
All SCCTs	100

Table 2: NOx emission limits for SCCTs beginning 5/1/2023

By May 1, 2025

Fuel Type	NOx Emission Limit (ppmvd)
Gaseous fuels	25
Distillate oil or other liquid fuel	42

Table 3: NOx emission limits for SCCTs beginning 5/1/2025

Also beginning May 1, 2023, SCCTs will only be able to average emissions with other SCCTs at the facility or, if the facility opts to utilize the electric storage and renewable energy resources compliance option, then those SCCTs may average with approved electricity storage or renewable energy resources during the ozone season.

Compliance Options:

Owners and operators may elect to meet the limits as proposed. To offer flexibility, this rule is proposing two additional compliance options:

1) Owners and operators may elect an ozone season stop where it is recorded in the operating permit that the source may not operate during the ozone season.

2) Owners and operators may elect to adhere to an output-based NOx daily emission rate that includes electric storage and renewable energy under common control with the SCCTs with which they are averaging.

COSTS

Older SCCTs are typically not conducive to the addition of retrofit control technology. DEC expects that most impacted facilities will choose to replace or shutdown the non-compliant older SCCTs. To estimate replacement costs DEC looked to information provided by the NYISO and Department of Energy's Energy Information Administration (EIA).

Table 4 presents costs developed by EIA and NYISO for full replacement of an SCCT.

Source	Overnight Cost (\$/kW)	Notes
EIA	\$1,054 - \$1,558 ⁹	Range is specific for the Long Island and New York City area and includes conventional and advanced combustion turbines.
NYISO	\$1,314 - \$1,357 ¹⁰	Range is specific for the Long Island and New York City area and represents replacement with a dual fuel peaking turbine.

Table 4: Estimated range of overnight costs for full replacement of an SCCT

Most SCCTs have a capacity factor of less than 5 percent, meaning that they generate less than 5 percent of the electricity output that it is capable of generating. In addition, with the implementation of several New York State initiatives,¹¹ demand for these units should continue to decline so the entire SCCT fleet would likely not need to be replaced.

Owners and operators may opt to install after-market emission control devices such as water injection technology. While costs vary widely

depending on location, operation and siting, it has been reported to DEC, anecdotally, that the cost of adding after-market water injection to these older sources is approximately \$2,000,000. Other sources report costs of \$10,000 - \$15,000 per megawatt,¹² however, this data does not include installation and other associated costs.

Cost of Nonattainment:

This proposal is part of a suite of New York State efforts to bring the NYMA into attainment of the ozone NAAQS, in order to protect human health. EPA projected a wide array of benefits that would be realized on a national level, excluding California, if ozone attainment is achieved.¹³ The human cost of nonattainment to New York State residents is presented in Table 5.

Attainment Provides Prevention of:

Deaths from effects of ozone	13 - 22
Deaths from effects of PM _{2.5}	31 - 70
Nonfatal heart attacks	4 - 36
Hospital admissions & emergency room visits	134
Acute bronchitis events	48
Upper & lower respiratory symptom events	1,540
Exacerbated asthma events	32,200
Missed work & school days	26,320
Restricted activity days	86,800

Table 5: Summary of Total Number of Annual Ozone and PM-Related Premature Mortalities and Premature Morbidity: 2025 National Benefits (adapted from EPA, 2015 RIA, p. ES-16)

LOCAL GOVERNMENT MANDATES

The proposed regulation does not contain a mandate on local governments.

PAPERWORK

This proposal will require each affected facility to submit a compliance plan to DEC. The compliance plan will state how each facility plans to comply with the new requirements.

Those facilities required to meet new emission limits will be required to submit permit applications to modify their Title V or State Facility permits to incorporate the newly applicable requirements by the May 1, 2023 compliance date.

Subject facilities that do not use a continuous emissions monitoring system (CEMS) will be required to perform an emissions test to assure compliance with the applicable NOx emission limits. Every subject facility will be required to submit test protocols and test reports to the Department for approval.

DUPLICATION

The proposed Subpart 227-3 does not duplicate or conflict with any other state or federal requirements.

ALTERNATIVES

DEC considered two alternatives in assessing this proposal, leave the emission rates as they are and just lowering emission rate requirements. The first option would leave New York open to CAA Section 126 petitions and if acted upon by EPA could require controls within three years. The second option does not allow for the compliance flexibility and reliability considerations included in the proposal that were developed during the stakeholder process.

FEDERAL STANDARDS

The proposed rule does not exceed any minimum federal standards.

COMPLIANCE SCHEDULE

March 2, 2020: All impacted sources must submit a compliance plan that must contain minimum data to demonstrate compliance will be achieved.

May 1, 2023: First phase of NOx emission limit set at 100 ppmvd¹⁴ for all SCCTs.

May 1, 2025: Second phase of NOx emission limits set at 25 ppmvd for gaseous fuels and 42 ppmvd for liquid fuels.

¹ 73 FR 16436 (March 27, 2008), codified at 40 CFR section 50.15. Attainment of the 2008 ozone NAAQS is determined when the fourth highest daily maximum 8-hour average ambient air quality ozone concentration, averaged over three year, is less than or equal to 0.075 ppm.

² 80 FR 65292 (October 26, 2015).

³ 83 FR 56781 (November 14, 2018).

⁴ 83 FR 25776 (June 4, 2018).

⁵ EPA Air Markets Program Data. <https://ampd.epa.gov/ampd/>.

⁶ Percentages calculated from EPA Air Markets Program Data for days which exceeded the ozone NAAQS. <https://ampd.epa.gov/ampd/>.

⁷ "New York State implementation plan for the 2008 ozone national ambient air quality standards." <http://www.dec.ny.gov/chemical/110727.html>.

⁸ Parts per million on a dry volume basis at fifteen percent oxygen.

⁹ EIA, Capital Cost Estimates for Utility Scale Electricity Generating Plants, November 2016.

¹⁰ NYISO, Demand Curve Model – 2019-2020.xlsm. Retrieved (1/3/2019) from: <https://www.nyiso.com/search?time=last-year&sortField=score&resultsLayout=list&q=Demand%20Curve%20Model%202016>.

¹¹ Including energy efficiency and energy storage targets, Reforming the Energy Vision and the Clean Energy Standard.

¹² The data provided only includes capital cost. "Gas Turbine Combustion." Lefebvre & Ballal. CRC Press, April 26, 2010.

¹³ Regulatory Impact Analysis (RIA) for the 2015 ozone NAAQS.

¹⁴ Parts per million on a dry volume basis at fifteen percent oxygen.

Revised Regulatory Flexibility Analysis

The New York State Department of Environmental Conservation (DEC) is proposing new 6 NYCRR Subpart 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NOx emission rates from simple cycle and regenerative combustion turbines (SCCTs) during the ozone season.

EFFECT OF RULE

DEC does not expect the requirements of this proposal to adversely impact employment opportunities with small businesses. Businesses and local governments subject to this proposed rule generate electricity that is injected into the electrical grid and those facilities are required to maintain generation compliant with reliability rules at the federal and state level. The facilities subject to the proposed rule are mostly large businesses and corporations.

The proposed regulation does not contain a mandate on local governments. Local governments have no additional compliance obligations. There are two SCCTs that are owned by local governments that are listed in the table below. While these sources will be subject to the requirements of this proposal, they already comply with the lower NOx rates and so no changes will be required of the facilities. While the two sources will be required to submit compliance plans, as outlined below, their plan requirements are simplified because they already comply with the emissions limits.

Facility	Local Government
Freeport	Village of Freeport
SA Carlson	Town of Jamestown

Table 1: Local Governments Subject to the Proposed Rule COMPLIANCE REQUIREMENTS

On or before March 2, 2020: All impacted sources must submit a compliance plan that must, at minimum, contain:

- Nameplate capacity;
- Ownership;
- A list of each emission source that includes identifying numbers such as facility number, source number and name;
- A schedule outlining how the owner or operator will comply with the requirements set forth in the rule;
- Which emission sources will install controls and what those controls will be; and
- Which emission sources will be replaced or repowered.

Effective May 1, 2023: The first phase of NOx emission limits will be implemented during the ozone season and SCCTs will be limited to averaging with other SCCTs, storage or renewable energy resources. The first phase of emission limits will be:

By May 1, 2023	NOx Emission Limit (ppmvd ¹)
All simple cycle and regenerative combustion turbines	100

Table 2: NOx emission limits for SCCTs beginning 5/1/2023 Effective May 1, 2025: The second and final phase of NOx emission limits will be implemented during the ozone season as follows:

Beginning May 1, 2025	NOx Emission Limit (ppmvd)
Fuel Type	

Gaseous fuels	25
Distillate oil or other liquid fuel	42

Table 3: NOx emission limits for SCCTs beginning 5/1/2025

PROFESSIONAL SERVICES

It is not expected that small businesses or local governments are likely to need professional services to comply with this rule. If an affected source currently utilizes professional services, such as consulting engineers, to comply with 6 NYCRR Subpart 227-2, they may continue to use those services to comply with the requirements of this proposal.

COMPLIANCE COSTS

Compliance costs discussed below are expected to impact larger power generation businesses, not small businesses or local governments. Discussion on the compliance costs to large generation businesses follows.

DEC is proposing to require each source owner to develop a compliance plan to demonstrate how they intend to comply with the proposed rule. The SCCTs installed prior to 1986 are typically not conducive to the addition of retrofit control technology. As a result, DEC expects that most impacted SCCT owners will choose to replace or shutdown the non-compliant SCCTs. To estimate replacement costs DEC looked to information provided by the NYISO and Department of Energy (DOE), Energy Information Administration (EIA).

The EIA describes overnight costs for electricity generating facilities as including²:

- Civil and structural costs: allowance for site preparation, drainage, installation of underground utilities, structural steel supply, and construction of buildings on the site;
- Mechanical equipment supply and installation: major equipment, including but not limited to, boilers, fuel gas desulfurization scrubbers, cooling towers, steam turbine generators, condensers, photovoltaic modules, combustion turbines, and other auxiliary equipment;
- Electrical and instrumentation and control: electrical transformers, switchgear, motor control centers, switchyards, distributed control systems, and other electrical commodities;
- Project indirect costs: engineering, distributable labor and materials, craft labor overtime and incentives, scaffolding costs, construction management start up and commissioning, and contingency fees; and
- Owners costs: development costs, preliminary feasibility and engineering studies, environmental studies and permitting, legal fees, insurance costs, property taxes during construction, and the electrical interconnection costs, including a tie-in to a nearby electrical transmission system.³

Table 4 presents the full overnight costs developed by EIA and NYISO for full replacement of an SCCT.

Source	Overnight Cost (\$/kW)	Notes
EIA	\$1,054 - \$1,558 ⁴	Range is specific for the Long Island and New York City area and includes conventional and advanced combustion turbines.
NYISO	\$1,314 - \$1,357 ⁵	Range is specific for the Long Island and New York City area and represents replacement with a dual fuel peaking turbine.

Table 4: Estimated range of overnight costs for full replacement of an SCCT

DEC believes that the entire capacity of generation will likely not need to be replaced. Most SCCTs have a capacity factor of less than 5 percent, meaning that they generate less than 5 percent of the electricity output that they are capable of generating. In addition, with the implementation of several New York State initiatives, including the State's recently announced energy efficiency and energy storage targets, Reforming the Energy Vision and the Clean Energy Standard, demand for these units should continue to decline. There are over 3,400 MW of SCCT capacity listed in the NYISO Gold Book⁶ that are older, pre-1986 SCCTs.

Owners and operators may opt to install after-market emission control devices on sources that are unable to comply. Water injection technology is the after-market technology that a facility owner would likely consider for these older sources. The costs of adding after-market emission control devices varies widely depending on location, operation and land space availability. It has been reported to DEC, anecdotally, that the cost of adding after-market water injection to one of these older sources is approximately two million dollars. Other sources discuss a cost of \$10,000 -

\$15,000 per megawatt,⁷ and many of the sources that would be impacted are 15 to 20 megawatts each. However, this data does not include installation and other associated costs.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY

It is not expected that small businesses will need to comply with this proposed rule. As noted above, the two local governments subject to the emission limits already comply. This is not a mandate on small businesses or local government.

MINIMIZING ADVERSE IMPACT

To minimize any adverse impacts DEC is proposing a phase-in of requirements as well as a reliability provision. The phase-in of requirements allows for power companies, with affected sources, to plan over a longer term. In addition, DEC is proposing several compliance options to offer compliance flexibility:

1) Owners and operators may elect an ozone season stop where it is recorded in their operating permit that the source may not operate during the ozone season.

2) Owners and operators may elect to adhere to an output-based NOx daily emission rate that includes electric storage and renewable energy under common control with the SCCTs with which they are averaging.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

DEC participated in several stakeholder meetings including those for impacted facilities and local environmental justice groups over a period of eighteen months. In addition, DEC posted a stakeholder outline on the DEC website to encourage stakeholder participation and comment.⁸ SCCTs, as applicable in this regulation, are electric generating sources and not considered small businesses. Sources identified to be government owned already comply with the proposed standard and had the opportunity to participate in the stakeholder process.

CURE PERIOD OR AMELIORATIVE ACTION

No additional cure period or other opportunity for ameliorative action is included in Subpart 227-3. This proposal will not result in immediate violations or impositions of penalties for existing facilities. To help reduce immediate impacts on affected sources, Subpart 227-3 requires a compliance plan due on March 2, 2020 followed by reduced NOx emission limits phased-in first on May 1, 2023 and later on May 1, 2025. This will allow owners and operators of affected sources time to comply with the proposed Subpart 227-3.

INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

¹ Parts per million on a dry volume basis at 15 percent oxygen.

² Overnight costs include the costs for the physical power plant assuming it can be built overnight. As a result, interest on loans are not factored into the cost estimates.

³ EIA, Capital Cost Estimates for Utility Scale Electricity Generating Plants, November 2016.

⁴ EIA, Capital Cost Estimates for Utility Scale Electricity Generating Plants, November 2016.

⁵ NYISO, The New York Installed Capacity (ICAP) market Working Group. Available here: http://www.nyiso.com/public/markets_operations/market_data/icap/index.jsp.

⁶ NYISO, 2017 Load and Capacity Data.

⁷ The data provided only includes capital cost. "Gas Turbine Combustion." Lefebvre & Ballal. CRC Press, April 26, 2010.

⁸ <https://www.dec.ny.gov/chemical/113887.html>.

Revised Rural Area Flexibility Analysis

The New York State Department of Environmental Conservation (DEC) is proposing new 6 NYCRR Subpart 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NOx emission rates from simple cycle and regenerative combustion turbines (SCCTs) during the ozone season.

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

Only one facility located in a rural area is affected by this regulation – the Samuel A. Carlson Generating Station located in Jamestown, Chautauque County.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES**Reporting & Recordkeeping:**

This proposal will require each affected facility to submit a compliance plan to DEC. The compliance plan will state how each facility plans to comply with the new requirements.

Those facilities required to meet new emission limits will be required to submit permit applications to modify their permits to incorporate the newly applicable requirements by the May 1, 2023 compliance date. If the

facility operates under a Title V permit, these changes can be incorporated into the renewal application (Title V permits must be renewed at five-year intervals). If there are no changes caused by the proposed Subpart 227-3 no permit action is required.

Subject facilities that do not use a continuous emissions monitoring system (CEMS) will be required to perform an emissions test to assure compliance with the applicable NOx emission limits. Every subject facility will be required to submit test protocols and test reports to DEC for approval.

An owner or operator that elects to use the Electric Storage and Renewable Energy Resources compliance option must submit annual electricity generation and NOx emissions data to DEC.

Compliance Requirements:

On or before March 2, 2020: All impacted sources must submit a compliance plan that must, at minimum, contain:

- Nameplate capacity;
- Ownership;
- A list of each emission source that includes identifying numbers such as facility number, source number and name;
- A schedule outlining how the owner or operator will comply with the requirements set forth in the rule;
- Which emission sources will install controls and what those controls will be; and
- Which emission sources will be replaced or repowered.

Effective May 1, 2023: The first phase of NOx emission limits will be implemented during the ozone season and SCCTs will be limited to averaging with other SCCTs, storage or renewable energy resources. The first phase of emission limits will be:

By May 1, 2023

	NOx Emission Limit (ppmvd ¹)
All SCCTs	100

Table 1: NOx emission limits for SCCTs beginning 5/1/2023

Effective May 1, 2025: The second and final phase of NOx emission limits will be implemented during the ozone season as follows:

Beginning May 1, 2025

Fuel Type	NOx Emission Limit (ppmvd)
Gaseous fuels	25
Distillate oil or other liquid fuel	42

Table 2: NOx emission limits for SCCTs beginning 5/1/2025

Professional Services:

If an affected source currently utilizes professional services, such as consulting engineers, to comply with 6 NYCRR Subpart 227-2, they may continue to use those services to comply with the requirements of this proposal.

COSTS

The Samuel A. Carlson Generating Station already complies with the NOx rates in the proposed rule. Therefore, no changes will be required of the facility. A compliance plan is still required by March 2, 2020. The costs of preparing the compliance plan should be minimal.

MINIMIZING ADVERSE IMPACT

Since the Samuel A. Carlson Generating Station already complies with the NOx rates in the proposed rule, there are no adverse impacts to that facility.

RURAL AREA PARTICIPATION

DEC participated in several stakeholder meetings including those for impacted facilities and local environmental justice groups over a period of eighteen months. In addition, DEC posted a stakeholder outline on the DEC website to encourage stakeholder participation and comment.² Samuel A. Carlson Generating Station already complies the proposed NOx rates and had the opportunity to participate in the stakeholder process.

INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

¹ Parts per million on a dry volume basis at fifteen percent oxygen.

² <https://www.dec.ny.gov/chemical/113887.html>.

Revised Job Impact Statement

The New York State Department of Environmental Conservation (DEC) is proposing new 6 NYCRR Subpart 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower al-

lowable NOx emission rates from simple cycle and regenerative combustion turbines during the ozone season.

NATURE OF IMPACT

DEC does not expect the requirements of this proposal to adversely impact employment opportunities at the affected sources. The affected sources generate electricity that is injected into the electrical grid and those facilities are required to maintain generation compliant with reliability rules at the federal and state level.

CATEGORIES AND NUMBERS AFFECTED

This proposal will affect facilities that use older simple cycle and regenerative combustion turbines (SCCTs) to generate electricity for the electrical grid. Newer SCCTs are expected to already meet the requirements set forth in this proposal. At least 18 facilities utilizing older SCCTs will be affected by this proposal.

REGIONS OF ADVERSE IMPACT

This is a statewide proposal, so all SCCTs will be subject to the requirements of a final rule. However, most SCCTs are located in New York City and on Long Island.

MINIMIZING ADVERSE IMPACT

The proposed rule contains several compliance options that owners and operators may utilize in order to comply with the proposed requirements. The first is to meet the limits as proposed. Owners and operators may also opt to shut down or not run non-compliant SCCTs during the ozone season. If an owner or operator elects to not run an SCCT during the ozone season, it must be recorded in the operating permit. Another compliance option offered in this proposal allows an owner or operator of an existing source to comply with applicable limits by meeting an average output-based emission limit (that includes renewables and storage) as a daily average emission rate. Under this option, the storage or renewable energy resource must be under common control with the SCCTs to be included in the averaging calculation.

These compliance options will allow existing SCCTs that cannot meet the proposed emission limits to operate for a few additional years while new SCCTs or other electricity generating resources are constructed. As a result, the Department does not anticipate adverse impacts to employment opportunities at a company subject to the rule.

SELF EMPLOYMENT OPPORTUNITIES

It is not expected that the proposed Subpart 227-3 will have a measurable impact on opportunities for self-employment.

INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

Assessment of Public Comment

A total of 143 distinct comments were submitted by the public in response to the Department's proposed rule for regulating simple cycle and regenerative combustion turbines, often referred to as "peakers" (Subpart 227-3). The purpose of this summary is to highlight the key issues raised by the public and the Department's response to those issues. This summary is divided into eight sections, each summarizing a different highlighted topic from comments received.

1. General Comments

The Department received general comments in support of the regulation and clean air in New York State and responded by thanking those commenters for their support of lowering nitrogen oxide (NOx) emission rates from simple cycle and regenerative combustion turbines (SCCTs). One commenter also noted that even if the Environmental Protection Agency (EPA) does not ultimately reclassify the New York City metropolitan area as a "serious" nonattainment area, the DEC should still enact the regulation. The Department agrees.

2. Applicability

The Department received several comments seeking an applicability exemption for "black start" SCCTs. Black start sources help re-start a facility after an outage. Commenters also suggested that SCCTs be exempt from this regulation if they provide second-order contingency support. The Department agrees that black start sources should remain exempt as their use is infrequent when they are used to re-start a facility after an outage. However, the Department does not agree that contingency or other ancillary services where black start units inject electricity to the electricity grid should be exempt from these requirements. To address the black start source exemption, the Department has revised the applicability section and added a definition of black start source to the definitions section of the revised proposed rule.

The applicability section of the initial proposal required that sources must bid into the New York Independent System Operator (NYISO) Wholesale Market to be applicable to the regulation. The Department received comments suggesting that this language created a potential loophole allowing sources to pull out of the NYISO Wholesale Market and sell power separately. To address this potential loophole, the Department's revised proposed rule states that the requirements apply to those sources which inject power to the grid instead of bid into the NYISO Wholesale Market.

3. Definitions

In the proposal, the Department defined the ozone season as May 1 – October 31 which corresponds to the monitoring requirements for the ozone season. Commenters suggest that this was confusing as the existing emissions reporting ozone season is May 1 – September 30. The Department agrees and has changed this definition.

The Department received comment asking for clarification whether sources covered under the definition of common control include renewable or electric storage resources. The Department's original intent was to include renewable and electric storage resources under that definition of common control and revised the definition in the revised proposed regulation to ensure that this was clear.

4. Control Requirements

There was some question about how Subpart 227-2 and Subpart 227-3 interact as both apply to SCCTs. The proposed Subpart 227-3 requirements are applicable only during the ozone season while the requirements of Subpart 227-2 apply year-round. There was also a question about whether averaging is on a weighted basis. The Department intended for the control requirements to be on a weighted average basis and the revised proposed rule clarifies this intention.

5. Compliance Options

The Department received numerous comments regarding the compliance options which allow averaging with renewable and storage resources. Many commenters were in favor of this compliance option. Two commenters suggested averaging times shorter than 24 hours. The Department considered this option, reviewed available data and consulted with the New York State Department of Public Service (DPS) and the New York Energy Research and Development Authority (NYSERDA) with respect to the operation of the SCCTs and what is expected with the averaging option. Based on the information gathered and the newly released Peak Study Analysis¹ developed by NYSERDA and filed by DPS, the Department believes that a 24-hour time frame is reasonable. However, the regulation requires the submission of data on the operation of renewable energy and energy storage resources be submitted to the Department annually. The Department will monitor how the averaging option is being utilized to ensure that emission reductions are being realized. If the Department finds that this option allows for circumvention of the rule, the Department may propose future changes following the requirements of the State Administrative Procedures Act.

6. Reliability & Compliance Plans

The regulation allows for the NYISO and transmission/distribution owners to assess whether a source may be needed for the reliability of the electricity grid. If a reliability need is determined by the NYISO or transmission/distribution owner, then an extension to comply may be granted to the source. This provision was developed as a result of the stakeholder process. There was general support for this provision with some exceptions. For the NYISO or transmission/distribution owners to determine if a source is needed for reliability, they must first be notified that the source is planning to shut down. This will be realized, in part, through a required compliance plan which must be submitted to the Department by March 2, 2020. Some commenters suggested that the rule should allow for compliance plans to be modified or changed. The Department disagrees as the basis for determining whether a source is needed for reliability is determined by the degree of confidence in the compliance plan. The Department expects the NYISO or transmission/distribution owners to use the compliance plans in their 2020 Reliability Needs Assessment to determine if and where reliability needs exist.

7. Permitting

The Department received comments regarding timing with respect to permitting as well as reliability assessments and interconnection to the grid. The compliance schedules in the regulation were developed in consultation with multiple stakeholders, including DPS, and offers implementation flexibility. The Department believes that there is sufficient time to comply with the regulatory requirements even when considering the current Article 10 process. The Department believes that the provisions set forth in paragraph 227-3.5(b) reflect the outcome of the stakeholder process and allows multiple options for compliance without the need for additional extensions and delayed compliance. Subpart 227-3 requires the submittal of compliance plans in 2020 and NOx emission limit requirements beginning in 2023 and 2025. With an up to four-year reliability extension, this would result in compliance in 2027 and 2029 and the Department believes that this gives affected sources enough time to comply.

8. Environmental Justice

Some comments were received stating that environmental justice organizations should be allowed to participate in the siting decisions with respect to new electricity generation. The Department intends to continue to collect stakeholder input, including from environmental justice groups. In addition, the NYISO's Comprehensive Reliability Plan (CRP) is developed through an open stakeholder process where environmental

justice groups may participate. During the CRP process, the issues which the commenters raised are typically addressed.

¹ NYSDPS website: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7BFDE2C318-277F-4701-B7D6-C70FCE0C6266%7D>

Department of Financial Services

NOTICE OF ADOPTION

Security at Automated Teller Facilities

I.D. No. DFS-20-19-00005-A

Filing No. 729

Filing Date: 2019-08-02

Effective Date: 2019-08-21

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

Action taken: Amendment of section 301.6 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 10, 14, 75-g, 75-n, art. II-AA; Financial Services Law, sections 102, 201, 202, 301 and 302

Subject: Security at Automated Teller Facilities.

Purpose: To ensure the removal of obsolete language from the reporting requirements under Part 301 of 3 NYCRR.

Text or summary was published in the May 15, 2019 issue of the Register, I.D. No. DFS-20-19-00005-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Eamon G. Rock, Department of Financial Services, One Commerce Plaza, Albany, NY 12203, (518) 474-4567, email: Eamon.Rock@dfs.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Department of Health

NOTICE OF ADOPTION

Nursing Home Weekly Bed Census Survey

I.D. No. HLT-51-18-00016-A

Filing No. 734

Filing Date: 2019-08-05

Effective Date: 2019-08-21

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

Action taken: Addition of section 415.32 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)

Subject: Nursing Home Weekly Bed Census Survey.

Purpose: To require nursing homes to electronically submit weekly bed census data to the DOH through the Health Commerce System.

Text or summary was published in the December 19, 2018 issue of the Register, I.D. No. HLT-51-18-00016-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of Program Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqa@health.ny.gov

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PROCEEDINGS: May 6, 2019

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter

- of -

A Public Hearing regarding Proposed 6 NYCRR 227-3 Ozone
Season Oxides of Nitrogen Emission Limits for Simple
Cycle Regenerative Combustion Turbines and Revisions to
Part 205 Architectural and Industrial Maintenance
coatings and Part 200, General Provisions

May 6, 2019
11:01 a.m.

625 Broadway
Albany, New York

P R E S E N T:

MOLLY McBRIDE
Administrative Law Judge

ONA PAPAGEORGIOU
Engineer

A L S O P R E S E N T:

Members of the Public

REPORTED BY: MICHELE AMBROSINO

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1 Street, Room 834, Long Island City, New York. Notice
2 of the proposed rulemaking was published in the state's
3 register on February 27th, 2019 as well as posted on
4 the Department's website and published in the
5 Department's environmental notice bulletin. The notice
6 was also published in the New York Post, Newsday, the
7 Albany Times Union, Buffalo News, Syracuse Post
8 Standard, Post-Star, and the Rochester Democrat.

9 Notice of this public comment hearing was
10 also published in the Department's environmental notice
11 bulletin on March 6th, 2019, and on the publications
12 that I mentioned for the February 27th notice. Public
13 comment session is an opportunity for the public to
14 comment on the proposed rulemaking and proposed
15 revision. This is not a question-and-answer session.

16 Again, the public comment period closes at
17 5 p.m. on May 20th, 2019. Both written comments and
18 all comments made at the public, comments are given
19 equal rights. The mailing address again is available
20 in the hallway here today if you would like to get that
21 before you leave here today.

22 Anyone who wishes to make any comments on
23 the record today must fill out a speaker card. The
24 speaker cards are available in the hallway. If you
25 have not yet completed the card and wish to make a

1 comment please go out into the hallway and fill out a
2 speaker card for us. We will call the speakers in the
3 order that they submitted their card here today. If
4 you are speaking on behalf of a group I would ask that
5 you please identify the group that you are
6 representing. When you make your comment please come
7 forward to the podium and speak into the microphone.
8 Please speak loudly, slowly, and clearly for the court
9 reporter's purposes so she can make an accurate record
10 of today's hearing.

11 If you are reading from prepared remarks I
12 would ask you that you please give them to the court
13 reporter after you have completed your comments to
14 assist her with the transcript. If I mispronounce your
15 name I apologize, please correct me when you come
16 forward here. If you did not wish to make a comment on
17 the record here today you may submit your written
18 comments again by May 20th, 2019. Before we begin with
19 the public comments we'll hear from Ona Papageorgiou
20 from the Department's Division of Air.

21 MS. PAPAGEORGIOU: Thank you, Judge
22 McBride. Good morning. My name is Ona Papageorgiou.
23 I am a professional engineer with the Division of Air
24 Resources. The Department is proposing to revise Part
25 205, Architectural and Industrial Maintenance Coatings

1 also known as AIM coatings. And Part 200 General
2 Provisions of Title 6 of the Official Compilation of
3 Codes, Rules, and Regulations of the State of New York.

4 This public hearing is one of three
5 scheduled for the purposes of receiving statements and
6 comments on Department of Environmental Conservation's
7 proposal to revise Part 205 and Part 200.

8 The purpose of this proposal is to lower
9 volatile organic compound emissions from this source
10 category. This proposal will address Clean Air Act
11 requirements including ozone nonattainment and protect
12 the health of New York State residents. The Department
13 plans to submit Part 205 to the United States
14 Environmental Protection Agency as a revision to the
15 State's implementation Plan for New York State.

16 AIM coatings, such as paint, are applied
17 to stationary structures for their appurtenances at the
18 site of installation, portable buildings at the site of
19 installation, pavements, or curbs. While AIM coatings
20 are often referred to as paint there are over 50
21 categories of coatings regulated under Part 205. These
22 products may contain volatile organic compound as part
23 of their formulation.

24 The stakeholder process of this rulemaking
25 began with a stakeholder meeting on May 12th, 2010

1 sponsored by the Ozone Transport Commission. This was
2 followed up by multiple presentations at professional
3 meetings for both national and New York based coatings
4 associations. The comments received during the
5 stakeholder outreach process were considered in
6 developing this proposal.

7 This proposal is applicable to any person
8 who supplies, sells, offers for sale, or manufactures
9 any architectural coating for use within New York State
10 as well as any person who applies or solicits the
11 application of any architectural coating within New
12 York State.

13 The Part 205 proposal eliminates 15
14 coating categories, adds 12 new coating categories,
15 lowers the VOC limits on 12 coating categories,
16 broadens the scope of DEC's data collecting authority
17 and eliminates the quart exemption. The proposed
18 effective date is January 1, 2021 with a two-year
19 sell-through allowance.

20 The Department is also proposing to adopt
21 a new Subpart 227-3, Ozone Season Oxides of Nitrogen
22 Emission Limits for Simple Cycle and Regenerative
23 Combustion Turbines of Title 6 of the Official
24 Compilation of Codes, Rules, and Regulations of the
25 State of New York.

1 Again, this public hearing is one of the
2 three scheduled for the purposes of receiving
3 statements and comments on the Department of
4 Environmental Conservation's proposal to adopt the
5 Subpart 227-3.

6 The Department is proposing to adopt this
7 ozone season regulation to lower allowable NOX
8 emissions from simple cycle and regenerative combustion
9 turbines. The proposal will address Clean Air Act
10 requirements, including ozone nonattainment and protect
11 the health of New York State residents. The Department
12 plans to submit Subpart 227-3 to the United States
13 Environmental Protection Agency as a revision to the
14 State Implementation Plan for New York State.

15 During the development of the current
16 proposal the Department held stakeholder meetings on
17 January 20th and 26th of 2017. The Department released
18 a stakeholder draft outline on June 7th, 2018 to
19 present more detailed elements of the proposed rule.
20 Throughout the stakeholder process, the Department also
21 met with the New York State Independent System
22 Operator, the New York State Department of Public
23 Service, and the New York State Energy Research and
24 Development Authority to discuss the likely element of
25 the proposed rule and to obtain feedback. The comments

1 received during the stakeholder outreach process were
2 instrumental in developing this proposal.

3 This proposal is applicable to simple
4 cycle and regenerative combustion turbines that are
5 electric generating units with a nameplate capacity of
6 15 megawatts or greater and that bid into the New York
7 State Independent System Operator wholesale market.

8 Subpart 227-3 is proposed to be phased-in
9 with a compliance plan due on March 2nd, 2020. Initial
10 emission rate limits of 100 parts per million on a dry
11 volume basis at 15 percent oxygen, which I'll call
12 PPMVD from here on out, will go into effect on May 1st,
13 2023. Then on May 1st, 2025 the emission limits will
14 be reduced to 25 PPMVDs when burning gas and 42 PPMVDs
15 when burning oil.

16 Sources subject to Subpart 227-3 are
17 offered several compliance options under this proposal
18 including emissions averaging with renewable and energy
19 storage resources, not operating an affected source
20 during the ozone season and permanently shutting down
21 an affected source.

22 In addition to providing statements at
23 this hearing of today, anyone may also submit written
24 comments related to the proposed Subpart 227-3, Part
25 205, or Part 200. Any statement made at this hearing

1 today, as well as all written comments received during
2 the public comment period will be given equal weight
3 and will become part of the administrative record for
4 this rulemaking.

5 Anyone who wishes to obtain information or
6 submit comments related to the proposed Part 205, Part
7 200, or Subpart 227-3 may contact me, Ona Papageorgiou
8 at NYS DEC Division of Air Resources, 625 Broadway,
9 Albany, New York 12233-3250, telephone number
10 518-402-8396; email air.regs@dec.ny.gov, or visit the
11 Department's website at
12 dec.ny.gov/regulations/propregulations.html.

13 Written comments will be accepted through
14 5:00 p.m., Monday, May 20th, 2019. Thank you for
15 attending this hearing.

16 ALJ McBRIDE: Thank you, Ona. We'll start
17 with our first speaker, Barrett Cupp.

18 MR. CUPP: Thank you. Good morning. I'm
19 Barrett Cupp. I'm with Sherwin-Williams Company. I'm
20 the director of product compliance, and I appreciate
21 the opportunity to speak here today in regards proposed
22 rule Part 205 AIM coatings. Sherwin-Williams Company
23 understands support of zero quality goals in the State
24 of New York on behalf of its citizens including the
25 current revision of proposed Part 205 AIM coatings rule

1 with the following comments.

2 Sherwin-Williams concern primarily about
3 the short sell-through period of proposed what appear
4 to be two years in actuality, and we believe that three
5 years is more appropriate. One of the primary reasons
6 that we have for that is during the three-year period
7 it allows for the sell to complete sell-through from
8 the shelves from all types of vendors including small
9 vendors within the state. To not allow for that
10 opportunity actually creates unintended consequence
11 where you might have environmental impacts having
12 removed the products of the shelf, and ultimately
13 perhaps even declaring them to be wastes, which is a
14 sacrifice of the raw materials that were either mined
15 or extracted from the year prior and that it created a
16 value added opportunity that we would then be
17 determining.

18 At that point it just becomes waste and we
19 all understand the environmental lifecycle assessment
20 and the tradeoffs involved with that sort of process.
21 That's the primary comment that I have today. There's
22 confusion on my part with respect to the rule and
23 whether the court small container exemption would exist
24 moving forward, and I believe when I read the rule I
25 don't see that there's any elimination of that, but I

1 heard Ona say that there was. So I remain confused
2 about that particular issue and hope to pursue that
3 before this is finalized removal. Submit written
4 comments appropriate about that. Thank you.

5 ALJ McBRIDE: Thank you. Our next speaker
6 is David Darling.

7 MR. DARLING: Good morning. I'm David
8 Darling, Vice President, Health, Safety, and
9 Environmental Affairs for the American Coatings
10 Association. ACA is a nonprofit trade organization
11 that represents paint and coatings manufacturers, raw
12 material suppliers, and distributors.

13 Today I will discuss ACA concerns with the
14 proposed DEC AIM rule, specifically the possible
15 changes to the small container exemption and the
16 proposed two-year sell-through period. I will also
17 follow-up with substantive written comments on May
18 20th. ACA is surprised to see that the New York State
19 DEC is not adopting the OCT Phase II model rule small
20 container exemption assuming that's the -- again, the
21 word "barrier" is commencing this confusion. The rule
22 has a small container exemption in it, whereas the
23 language in the regular quart background mentions
24 removing the language as Ona said earlier. So we're
25 confused. But we're here to -- we're wondering if New

1 York is following the Phase II model rule why the
2 exemption is not in there, and we are also wondering
3 why New York State DEC did not include the three-year
4 sell-through period. We work with New York State DEC
5 and the OTC states to develop the model rule language
6 with the hope that New York and other OTC states adopt
7 consistent rules.

8 As documented in our April 1st, 2019
9 letter, it is very difficult for ACA or other
10 stakeholders to develop substantive comments without
11 additional information from New York State DEC. In our
12 letter we've detailed several questions with regard to
13 the small container exemption to better understand the
14 extent of circumvention as well as the proposed
15 two-year sell-through provision. In addition we've
16 requested a conference call or meeting to discuss our
17 concerns. Unfortunately, to date New York DEC has not
18 provided any answers to our questions, nor have we had
19 DEC agree to any conference call and/or meeting.

20 With regard to economic feasibility, DEC
21 mentions in the regulatory flexibility analysis for
22 small businesses and local governments that DEC staff
23 did not conduct an independent cost analysis, rather
24 DEC depended upon the CARB 2007 analysis to assess the
25 economic feasibility of the proposed rule. However,

1 the 2007 CARB analysis includes the small container
2 exemption as well as the three-year sell-through. As a
3 result if DEC proceeds with any of these changes we
4 believe that DEC must redo the regulatory flexibility
5 analysis because they're not accounted for.

6 With regard to small container exemption
7 from an administrative procedure perspective the
8 rulemaking is confusing. Again, as I mentioned earlier
9 the actual proposed rule language has a small container
10 exemption in there where the impact statement discusses
11 the elimination of the exemption. So from a
12 stakeholder perspective we're not quite clear which way
13 New York State is going on this. Specifically, in the
14 impact statement DEC talks about potentially removing
15 the quart exemption for floor coatings. Second option
16 is removing the quart exemption for large projects, and
17 the third option for completely removing the quart
18 exemption all together.

19 It's important to note that the small
20 container exemption is a critical compliance option
21 that we feel the New York State DEC should retain for
22 all categories. A small container exemption is really
23 the only remaining alternative compliance mechanisms in
24 the rule. We considered it a safety valve, and it's
25 continued to be a critical to the paint and coating

1 industry since it allows use of traditional products in
2 challenging application scenarios in the field, and
3 this is especially important given the cold and wet
4 climate of New York State. This exemption is very
5 helpful as limits and categories become more stringent
6 and/or categories are eliminated which is the case of
7 OTC rules.

8 It's important to keep in context that the
9 limits of the OTC Phase II rule were developed knowing
10 that the small container exemption would be available.
11 If you look at the SCAQMD and CARB, historically in
12 California, you know, many of its districts where these
13 limits came from disregarded industry concern about
14 lower limits. They continually kept on saying, you
15 know, you can always continue to use the small
16 container exemption. If the ACA knew at the time when
17 these limits were being developed that New York State
18 DEC would not have included this monthly exemption we
19 would have fought much harder to retain higher limits
20 for many categories. As a result, if New York State
21 does continue forward with removing the exemption we're
22 going to need higher limits for many categories.

23 ACA was also surprised that New York State
24 DEC did not adopt the OTC Phase II model rule small
25 container exemption aggregation language. During the

1 development of the Ozone Transport Phase II rule back
2 in 2010, we worked with OTC states including New York.
3 We know that the state raised concerns about the
4 bundling of small containers together. We've partnered
5 with OTC and New York State DEC to develop so-called
6 anti-bundling language and that was incorporated in the
7 OTC Phase II model rule. Several California Air
8 Districts: Utah, Ohio, Delaware, Maryland,
9 Connecticut, as well as Rhode Island have adopted this
10 aggregation language that was developed. And the
11 California Air Resources Board it has included its
12 aggregation language in the new CARB SCM that is to be
13 adopted very soon.

14 Bottom line, we recommend retaining the
15 small container exemption and as was found in the OCT
16 Phase II rule and that New York State includes the
17 aggregation language. Since then DEC could bring
18 enforcement against companies that are here preventing
19 the language of the rule. It should also address any
20 kind of issue with floor coatings and the five-gallon
21 bucket product that was mentioned in the background
22 report.

23 Today I want to discuss quickly a couple
24 of examples of why the small container exemption is
25 still important to our industry. One example, the

1 original manufacturing equipment or OEM touchup. You
2 could have a situation where a product including
3 construction equipment building exterior cladding,
4 structural steel, or industrial equipment that goes
5 into the field, you commonly have a small amount of
6 coating that is shipped along with that product under
7 the small container exemption in case that substrate is
8 scratched. If this small container exemption is not
9 available many times you're going to have to use the
10 product -- a different type of product, you're going to
11 have a patchy appearance. You're going to have a
12 potential for increased corrosion of the touched up
13 areas, you may even find that maybe that entire piece
14 of product needs to be recoated from a lifecycle
15 perspective you're really not saving any type of
16 emissions. So the small container is very handy in
17 that regard.

18 Rust preventatives, solvent-borne rust
19 preventatives are very important and are very useful in
20 the cold and wet seasons found in New York. Rust
21 preventatives are effective, durable, single component
22 products that prevent the corrosion of metal substrates
23 including doors, fences, lighting fixtures, and
24 exterior furniture. Homeowners and contractors find
25 the solvent-borne rust preventatives very useful

1 because they can be applied directly to metal
2 substrates including rusty or previously coated
3 surfaces without the need for surface preparation like
4 sanding or a primer coat and provide a long lasting
5 durable finish. As compared to waterborne products
6 solvent-borne dry faster and be applied in colder
7 weather. Painting projects using waterborne product
8 tend to take longer time to cure and need additional
9 surface preparation as well as a prime coat and don't
10 perform as well.

11 We know that companies are working on an
12 exempt compound base products, however these products
13 are going to be more expensive and will dry slower than
14 current products available via the small container
15 exemption. Another example for the need for the small
16 container exemption is the Historical Building
17 Preservation. New York State has a very large
18 inventory of natural stone buildings that are need of
19 protection and/or restoration. Higher VOC
20 consolidation treatment products are only available in
21 New York State via the small container exemption and
22 are critical to restoring and protecting natural stone
23 buildings, especially again given the wet and the cold
24 climate of New York State. Historical preservationists
25 use these products to replace the natural binding

1 materials of the deteriorated stone while protecting
2 the treated subsurface from further water-related
3 damage.

4 Two more quick examples. Stains, wood
5 stains, are not only enhance the beauty of wood
6 products including floors, trim, kitchen cabinets, but
7 prevent wood from absorbing water, protect the wood
8 from decay, discoloration, and insect attack.
9 Solvent-borne stains penetrate the surface of the wood.
10 They don't form a film that's placed over time, and can
11 be reapplied without extensive surface preparation.
12 Water-borne stains, on the other hand, may not
13 penetrate the surface of the wood as well as
14 solvent-borne products. They form a thin film on the
15 surface that provides less durability and tends to
16 degrade and flake over time, and also cause appearance
17 issues with regard to depth, blocking, and grain
18 raising.

19 And finally just one last example extreme
20 high gloss products. Many architectural design
21 professionals demand an extreme high gloss coating to
22 execute their style concepts when they design or
23 redesign a kitchen or other spaces in apartments,
24 homes, or commercial establishments. Extreme high
25 gloss coatings are frequently used on exterior doors

1 and windows to provide durable finishes that can stand
2 up to New York's diverse climate. And these are
3 typically sold in small containers because they really
4 don't need, you know, a lot of products to do say a
5 door or window. These products are also used in many
6 historic restoration projects throughout the country.

7 Finally, it was mentioned earlier we are
8 concerned about the two-year sell-through provision.
9 The proposed two-year sell-through provision is
10 counterproductive and it's inconsistent with the OTC
11 Phase 1 and Phase II model rules. Really all the
12 California air suggested control measures and other
13 state and local California air district rules.

14 Actually, in fact, every single other AIM rule
15 in the United States either has a three-year or an
16 unlimited sell-through. The proposed two-year
17 sell-through period will require manufactures to travel
18 to stores, collect products off the shelf, and dispose
19 of these products at significant and unnecessary
20 expense to stores, retailers, and manufacturers. New
21 York State DEC has not accounted for these burdens and
22 expenses including lost sales revenue, transportation,
23 disposal costs, or other associated greenhouse gas
24 emissions from collecting and transporting these
25 products. DEC has also not accounted for possible

1 environmental impacts associated with these products
2 being disposed of improperly.

3 As a result, in order to limit the
4 negative financial and environment impacts associated
5 with disposing of stranded products that can no longer
6 be sold, ACA requests DEC include a three-year
7 sell-through provision. This would be consistent with
8 every other AIM regulation in the United States and
9 provide an ample time for architectural coatings to be
10 sold from the retail shelves. A three-year
11 sell-through provision would also minimize the
12 environmental and economic impact of disposing usable
13 products on the shelves.

14 I leave with last point, exempt compounds.
15 ACA recommends that New York State DEC add AMP two
16 amino, two menthyl, one propanol to the list of exempt
17 compounds in New York State. The coatings industry is
18 under constant pressure to reformulate products to
19 lower and lower VOC content. As a result, there is a
20 critical urgent need for safe, effective, and
21 affordable exempt compounds, and coating formulators
22 need all available tools to reformulate both the lower
23 VOC and reactivity coatings.

24 ALJ McBRIDE: Thank you. Howard Berman.

25 MR. BERMAN: Good morning. Howard Berman

1 with E4 Strategic Solutions appearing today for
2 Rust-Oleum. We will be submitting written comments as
3 well. But I want to join the prior two speakers in
4 voicing confusion over the small container issue. The
5 draft rule is published on -- it says it's Section
6 2051B3, this rule does not apply to any architectural
7 coating that is sold in a container with a volume of
8 less than one liter or less.

9 This seems to be contradictory to what
10 statements have made, and we really are just at a loss
11 as to whether they're in or they're out. Our comments
12 in writing will reflect that. Otherwise, we support
13 the statements of the American Coatings Association and
14 we plan to incorporate that as well. Thank you.

15 ALJ McBRIDE: Thank you. Roger Downs.

16 MR. DOWNS: My name is Roger Downs. I am
17 the Conservation Director for the Sierra Club Atlantic
18 Chapter. We are a volunteer led organization of 54,000
19 members statewide dedicated to protecting New York's
20 air, water, and remaining wild places. The Sierra Club
21 will be submitting formal comments on the proposed
22 regulation to put greater restrictions on allowable NOX
23 emissions from simple cycle and regenerative combustion
24 turbines or peaking units during the ozone season.

25 But we would like to take this opportunity

1 to applaud the effort and hope it will lead to the
2 closure of many of these aging, inefficient, and
3 polluting electricity generating facilities.

4 Because these units run to meet electrical
5 loads during peak periods of electricity demand, their
6 operations tend to correspond with high temperature
7 summer days and high ozone levels when air conditioning
8 units strain the capacity over electricity grid. The
9 resulting air quality degradation and increased NOX
10 profoundly affects the health of those living near
11 these peaking plants exacerbating asthma, heart
12 attacks, and other respiratory ailments that contribute
13 to tens of thousands of hospital visits annually and
14 dozens of deaths in New York's nonattainment air
15 quality regions. This is especially true for
16 environmental justice areas that should not have to
17 bear the brunt of dirty and outdated energy policy.

18 In addition to cleaner air and the
19 associated health and climate benefits the Sierra Club
20 anticipates that this new regulation will also
21 facilitate better water resource management as many of
22 the aging peaking plants also use egregious amounts of
23 water for cooling. The billions of gallons of water a
24 day required to cool Ravenswood, Astoria Generating,
25 and other facilities drawing from New York waters also

1 contain hundreds of millions of larval fish and eggs
2 that are entrained and entrapped in the industrial
3 intake structures. The DEC has struggled to rein in
4 this unnecessary slaughter of critical fisheries
5 species for decades and misuse of estuarine waters and
6 we hope that these restrictions on allowable NOX
7 emissions and other VOCs will translate into shutting
8 down many harmful cooling waters systems as well.

9 The Sierra Club feels that this regulation
10 should also be synchronized with the state's current
11 and emerging climate goals, policies we hope to codify
12 this year that would see a zero carbon electricity grid
13 in New York by 2040. Clearly, if we are to achieve
14 such goals the state cannot allow plants which will be
15 forced to retire to repower with new units that use the
16 same climate polluting fuels like fracked gas. Every
17 effort must be made with this regulatory opportunity
18 and ensure that every closure is met with the
19 replacement of renewable energy technology. To this
20 end we remain uncomfortable some of the current
21 language in the regulations that could allow for more
22 lenient air quality rules if the peaking facility
23 accommodates on-site energy storage. Storage capacity
24 fed by renewables represents a sound grid enhancement
25 consistent with our air quality and climate goals but

1 energy storage serviced by the same dirty fuel sources
2 significantly undermines the overall climate and air
3 quality goals of this regulation.

4 Again, along with recent regulatory
5 efforts the ban coal fired power plants in New York,
6 we're excited that the Department is tackling the next
7 wave of dirty fuel generation on our way to an eventful
8 one hundred percent carbon-free grid. We applaud
9 Governor Cuomo and the Department for your efforts and
10 look forward to working with you to ensure more of
11 these peaking plants close down in exchange for solar
12 and wind generation and installations. Thank you again
13 for this opportunity to testify.

14 ALJ McBRIDE: Thank you. Gail Pisha.

15 MS. PISHA: Good morning. My name is Gail
16 Pisha, and I live in Rockland County. Today I'm
17 representing over 5,500 members of Sierra Club's Lower
18 Hudson Group who live in Rockland, Westchester, and
19 Putnam Counties. We support the DEC's intention to
20 lower nitrous oxide emissions from simple cycle and
21 regenerative combustion turbines or peaking units
22 during the ozone season. Old peakers plants, many of
23 which are close to 50 years old have a high NOX
24 emission rates and contribute to the formation of the
25 ground level ozone which is a lung irritant, especially

1 during hot summer months when peaker plants tend to be
2 used.

3 We in Lower Hudson Group are particularly
4 aware of this because Rockland County has such a peaker
5 plant in Hillburn located in a community of color as
6 all too many peaker plants, unfortunately.

7 Rockland and Westchester are currently
8 designated by the United States Environmental
9 Protection Agency as nonattainment areas for ozone and
10 the American Lung Association currently rates Rockland,
11 Westchester, and Putnam's air quality with an F for
12 ozone pollution. In Rockland alone, where the Hillburn
13 peaker plant is located we've had over at 8,000
14 pediatric asthma cases, almost 22,000 adult asthma
15 cases, and almost 13,000 cases of COPD in 2016.

16 So clearly a regulation to reduce NOX will
17 protect public health especially of the people living
18 closest to the dirtiest of the dirty fossil fuel peaker
19 plants, most of which are located in New York City and
20 Long Island. Reducing NOX will go a long ways with
21 promoting environmental justice in our state. However,
22 we need to replace these old dirty peaker plants with
23 renewable generation to help us meet Governor Cuomo's
24 goal of achieving a carbon neutral grid by 2040.

25 To fulfill the governor's vision to move

1 New York to a renewable energy future we must replace
2 these fossil fuel peaker plants with energy storage,
3 distributed solar, grid scale solar, efficiency and
4 offshore wind since even new fossil fuel plants emit
5 some NOX. In this way we can provide jobs for New
6 Yorkers in the renewable energy economy and reduce
7 burning of fossil fuels which contribute to climate
8 change and poor health.

9 Retiring dirty peaker plants and moving
10 directly to renewable energy will reduce the worst
11 effects of climate change and make our residents
12 healthier, both of which will save money and give New
13 Yorkers a better quality of life. Thank you.

14 ALJ McBRIDE: Thank you. Is there anyone
15 else who would like to make a comment on the record
16 here today?

17 (No affirmative response.)

18 ALJ McBRIDE: All right. I'd like to
19 thank all for coming out here today on behalf of the
20 Department.

21 (Whereas the above entitled proceeding was
22 concluded at 11:41 a.m.)
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C E R T I F I C A T I O N

I, MICHELE AMBROSINO, a Shorthand Reporter and
Notary Public in and for the State of New York, do
hereby CERTIFY that the record taken by me at the time
and place noted in the heading hereof is a true and
accurate transcript of same, to the best of my ability.

Michele Ambrosino

MICHELE AMBROSINO
Court Reporter

In the Matter Of:
PROPOSED SUBPART 227-3

HEARING
May 13, 2019



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STATE OF NEW YORK

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter

of

Proposed Subpart 227-3 ("Ozone Season Oxides of
Nitrogen (NO_x) Emissions Limits for Simply Cycle and
Regenerative Combustion Turbines")

and

Proposed Amendments to Part 205 ("Architectural and
Industrial Maintenance (AIM) Coatings")

of

Title 6 of the Official Compilation
of Codes, Rules and Regulations
of the State of New York

A P P E A R A N C E S:

NEW YORK STATE DEPARTMENT of ENVIRONMENTAL
CONSERVATION

Administrative Law Judge
Office of Hearings & Mediation Services
625 Broadway, 1st Floor
Albany, New York 12233

RICHARD A. SHERMAN, ESQ.

ALSO PRESENT:

Ona Papageorgiou, P.E., Professional Engineer 1,
Bureau of Air Quality Planning Division of Air
Resources

1
2 LAW JUDGE: Ladies and gentlemen, if I
3 can have your attention. We are going on to
4 the record now. Again, my name is Richard
5 Sherman. I am an administrative law judge of
6 New York State Department of Environmental
7 Conservation. I have been assigned to
8 conduct today's public hearing on proposed 6
9 NYCRR Subpart 227-3, which is intended to
10 lower NOx emissions during the ozone season
11 and proposed amendments to Parts 200 and 205,
12 which are intended to reduce V.O.C emissions
13 from architectural and industrial maintenance
14 (AIM) coatings.

15 The purpose of today's hearing is to hear
16 from the public on your concerns and comments
17 concerning both of these proposed regulations.
18 If you wish to make a statement today, please
19 be sure to fill out one of these registration
20 cards. Give your complete name, organization
21 you are with, and I will call the speakers in
22 the order that I receive your cards. If you
23 have lengthy statements, I encourage you to
24 submit those lengthy statements in writing. If
25 speakers run too long today, I will ask you to

1
2 bring your statement to a close. You are still
3 able to submit your comments in writing after
4 today's proceeding, and I will also accept any
5 written comments you might want to turn in
6 today.

7 I do have complete contact information for
8 submitting written comments. They can be sent
9 by email to the department or can mail them to
10 the central office in Albany, New York. I have
11 the contact information up here with me, if
12 anyone would like to have that after we are
13 done with receiving the oral comments today.

14 This public hearing was noticed in local
15 papers and also in the Department's
16 Environmental Notice Bulletin and in the State
17 Register in late February and early March. As
18 stated in that notice, all written comments
19 must be received by the department on or before
20 5:00 p.m. on May 20, 2019.

21 I understand that department staff has a
22 brief presentation on both proposed
23 regulations, and we will have that now. Ms.
24 Papageorgiou?

25 MS. PAPAGEORGIOU: Thank you. Just to

1
2 be clear, I know this was just mentioned, but
3 we are talking about two regulations today.
4 One of them is a revision, which I am going
5 to start with, and second is a proposed new
6 rule. My name is Ona Papageorgiou. I am a
7 professional engineer with the Division of
8 Air Resources. The department is proposing
9 to revise Part 205, Architectural and
10 Industrial Maintenance coatings, also known
11 as AIM coatings, and Part 200, General
12 Provisions of Title 6 of the Official
13 Compilation of Codes, Rules and Regulations
14 of the State of New York.

15 This public hearing is one of three
16 scheduled for the purpose of receiving
17 statements and comments on the Department of
18 Environmental Conservation's proposal to revise
19 Part 205 and Part 200.

20 Now, the purpose of this proposal is to
21 lower volatile organic compounds, also known as
22 VOX emissions, from AIM coating categories.
23 This proposal will address Clean Air Act
24 requirements, including ozone nonattainment,
25 and protect the health of New York State

1
2 residents. The department plans to submit Part
3 205 to the United States Environmental
4 Protection Agency as a revision to the State
5 Implementation Plan for New York State.

6 AIM coatings, such as paint, are applied
7 to stationary structures or their appurtenances
8 at the site of installation, portable buildings
9 at the site of installation, pavements or
10 curbs. While AIM coatings are often referred
11 to as paint, there are over 50 categories of
12 coatings regulated under Part 205. These
13 products may contain volatile organic compounds
14 as part of their formulation.

15 The stakeholder process of this rulemaking
16 began with a larger meeting on May 12, 2010,
17 sponsored by the Ozone Transport Commission.
18 This was followed up by multiple presentations
19 at professional meetings for both national and
20 New York-based coatings associations. The
21 comments received during the stakeholder
22 outreach process were considered in the
23 development of this proposal.

24 This proposal is applicable to any person
25 who supplies, sells, offers for sale or

1
2 manufactures any architectural coatings for use
3 within New York State, as well as any person
4 who solicits, who applies or solicits the
5 application of any architectural coating within
6 New York State.

7 The Part 205 proposal eliminates 15
8 coating categories, adds 12 new coating
9 categories, lowers the VOC limits on 12 coating
10 categories, broadens the scope of DEC's data
11 collecting authority and eliminates the quart
12 exemption. The proposed effective date is
13 January 1, 2021, with a two-year sell-through
14 allowance.

15 So the department is also proposing to
16 adopt a new Subpart 227-3 Ozone Season Oxides
17 of Nitrogen Emission Limits for Simple Cycle
18 and Regenerative Combustion. This is also of
19 Title 6 of the Official Compilation of Codes,
20 Rules and Regulations of the State of New York.

21 This public hearing is also one of three
22 scheduled for the purpose of receiving
23 statements and comments on the Department of
24 Environmental Conservation's proposal to adopt
25 Subpart 227-3.

1
2 The department is proposing to adopt this
3 ozone season regulation to lower allowable NOx
4 emissions from simple cycle and regenerative
5 combustion turbines. This proposal will
6 address Clean Air Act requirements, including
7 ozone nonattainment, and protect the health of
8 New York State residents. The department plans
9 to submit Subpart 227-3 to the United States
10 Environmental Protection Agency as a revision
11 to the State Implementation Plan for New York
12 State.

13 During the development of the current
14 proposal, the department held stakeholder
15 meetings on January 20th and January 26, 2017.
16 The department released a stakeholder draft
17 outline on June 7, 2018, to present more
18 detailed elements of the proposed rule.
19 Throughout the stakeholder process, the
20 department also met with a New York Independent
21 System Operator, the New York Department of
22 Public Service, and the New York State Energy
23 Research and Development Authority to discuss
24 the likely elements of the proposed rule and to
25 obtain feedback. The comments received during

1
2 the stakeholder outreach process were
3 instrumental in developing this proposal.

4 This proposal is applicable to simple
5 cycle and regenerative combustion turbines that
6 are electric-generating units with a nameplate
7 capacity of 15 megawatts or greater and that
8 bid into the NYISO wholesale market.

9 Subpart 227-3 is proposed to be phased in
10 with the compliance plan due on March 2, 2020.
11 Initial emission rate limits of 100 parts per
12 million on a dry volume basis at 15 percent
13 oxygen -- which I will from here on out call
14 PPMVD -- will go into effect on May 1, 2023.
15 Then on May 1, 2025 the emission limits will be
16 reduced to 25 PPMVD when burning gas and 42
17 PPMVD when burning oil.

18 Sources subject to Subpart 227-3 are
19 offered several compliance options under this
20 proposal, including emissions averaging with
21 renewable and energy storage resources, that is
22 one. Not operating an affected source during
23 the ozone season, that is another. And
24 permanently shutting down an affected source.

25 In addition to providing statements at

1
2 this hearing today, anyone may also submit
3 written comments related to the proposed
4 Subpart 227-3, which I just went over, or what
5 I mentioned earlier, Part 205 and Part 200.
6 Any statements made at this hearing today, as
7 well as any written comments received during
8 the public comment period, will be given equal
9 weight and will become part of the
10 administrative record for this rulemaking.

11 Anyone who wishes to obtain information or
12 submit comments related to the proposed Part
13 205, Part 200 or Subpart 227-3 may contact me,
14 Ona Papageorgiou, NYSDEC Division of Air
15 Resources, 625 Broadway, Albany, New York
16 12233, telephone number is (518)402-8396; or
17 you may email air.regs@dec.ny.gov. And you may
18 also visit our Web site at
19 dec.ny.gov/regulations/propregulations.html.
20 Written comments will be accepted through 5:00
21 p.m. Monday, May 20, 2019. Thank you for
22 attending this hearing.

23 LAW JUDGE: Thank you, Ms. Papageorgiou.
24 Now I am going to turn to the speaker cards.
25 I would ask that when I call your name, you

1
2 come up to the podium. Please state your
3 name, your organization, spell your name for
4 the court reporter so we have that accurately
5 transcribed. Please be sure to speak
6 directly into the mic so that the court
7 reporter can get every word you have to say
8 today. I also ask that the audience be
9 respectful of each speaker. With that I will
10 remind anyone who came in late that we have
11 these cards in the hallway behind the hearing
12 room, if anybody wants to fill out a card and
13 speak today. And with that, I will call the
14 first speaker. It's Dr. Bevington.

15 DR. BEVINGTON: Good morning and thank
16 you. My name is Dr. Charles Bevington,
17 B-E-V-I-N-G-T-O-N. I am a retired educator.
18 I am also the chair of Sierra Club Long
19 Island Group. I just want to speak
20 specifically to my experience as an educator
21 at the Westbury School District eight years,
22 where 23 percent -- between 19 and 23 percent
23 of the students have asthma or asthma
24 related -- and this is, you know, referral
25 from medical physicians. 23 percent of the

1
2 students is a significant number. It's one
3 of the highest on Long Island. It's located
4 in an area of Nassau County where you have
5 one of the major peaker plants, and anything
6 that you can do to control emissions would be
7 significant and very helpful.

8 You know, as students -- and this is
9 mostly -- as I said, the range was 19 to
10 23 percent, but middle school, as the students
11 were there longer in the area, the asthma
12 complications got worse. And you can't learn.
13 You are impacted. So I just wanted to say
14 again, thank you for the 227-3.4 and the
15 control requirements that you are putting into
16 place. Thank you.

17 LAW JUDGE: Thank you, Doctor. Next
18 speaker is Joe Tonini.

19 MR. TONINI: Good morning. My name is
20 Joe Tonini, T-O-N-I-N-I. I am a longterm
21 resident of Long Island, with homes in
22 Mineola and in Southold. First I want to
23 thank the Department of Environmental
24 Conservation for holding these hearings on
25 proposed regulations for peaking plants. I

1
2 also want to congratulate Commissioner Seggos
3 and Governor Cuomo on enactment of the
4 regulations to control emissions from New
5 York State's coal-fired power plants.

6 I am a volunteer with the Sierra Club's
7 Clean Energy For All Campaign and also with the
8 Long Island Progressive Coalition client
9 committee. I am here as a climate activist but
10 also I am here as a husband of an asthmatic and
11 a grandfather of five between the ages of one
12 and eight, and one of them, three-year-old
13 Andrew, was also recently diagnosed as an
14 asthma sufferer. I will leave it to others
15 more conversant with the data to describe the
16 relationship between the toxic emissions that
17 come from peaking plants and health impacts
18 they cause and the deaths they contribute to.

19 As a climate activist, husband and a
20 grandfather, I have three recommendations for
21 the DEC to consider: First, number one, put an
22 ozone monitoring station in Nassau County.
23 Queens to our west and Suffolk to the east both
24 receive F ratings for ozone pollution. Nassau
25 doesn't have an ozone monitoring station and,

1
2 therefore, receives no official grade.

3 According to the New York State Department of
4 Health, DEC air quality measurements have
5 "limitations." "Values best represent air
6 quality near monitors."

7 Number two, speed up the proposed timeline
8 for adoption of the regulations. DEC is
9 proposing to implement new regulations starting
10 on May 21, 2023, and then a little bit stronger
11 regulations on May 21, 2025. The Environmental
12 Protection Agency estimates 13 to 22 deaths
13 from the effects of ozone pollution per year in
14 New York State. Between now and May 21, 2025,
15 you could have 78 to 132 deaths, as well as
16 200,000 exacerbated asthma incidents. And it
17 is important to note that American Lung
18 Association research found that ozone poisoning
19 at levels 16 percent to 80 percent, lower than
20 those the EPA currently considers acceptable,
21 "was associated with deaths from cardiovascular
22 disease, strokes and respiratory causes."

23 And number three, make these regulations
24 strong. Resist letting them be compromised by
25 those who put profit ahead of the health of the

1
2 people and environment. And I thank you for
3 considering my comments today.

4 LAW JUDGE: Thank you, Mr. Tonini. Next
5 speaker is James Haggerty. Before
6 Mr. Haggerty speaks, please be certain to put
7 your phones on vibrate, if you have not
8 already done so. A phone going off makes it
9 a little hard for the court reporter to do
10 her job.

11 MR. HAGGERTY: Hi, my name is James
12 Haggerty, H-A-G-G-E-R-T-Y. I am a student
13 here at Stony Brook University. I am also a
14 member of the Sierra Club on campus, also
15 here to represent students and young people
16 in general. So I am a student at Stony Brook
17 University and a lifelong resident in New
18 York State, and I will review as the
19 Department of Environmental Conservation have
20 an obligation to use your power and
21 regulations to mitigate the problems that
22 pollution is going to cause for my
23 generation.

24 The proposed regulations of NOx are a
25 great step in the right direction, fighting the

1
2 notion that we must continue to live with the
3 status quo of letting power plants pollute our
4 air in return for cheap electricity. This
5 issue, air pollution and its successor, climate
6 change, is no longer a technological one. To
7 quote The Six Million Dollar Man, a TV series
8 much before my time, we have the technology.
9 We can reduce NOx emissions from the simple
10 cycle power plants. We can rebuild the clean
11 air we used to have in New York and,
12 additionally, we can generate completely NOx
13 free electricity with renewable sources.

14 Your responsibility at the DEC is to be
15 the compass that sets the direction of New
16 York's path towards these goals. Without these
17 steps towards limiting our pollution, my
18 generation and the generations to come will
19 suffer because of choices we did not make. Air
20 pollution and climate change as a whole is an
21 issue that keeps me up at night and is forcing
22 people in my generation to make choices about
23 our lives that prior generations never had to.
24 We, young people at large, are relying on the
25 DEC and the government of the State of New York

1
2 to assume the climate and air pollution action
3 and install these regulations, so that we can
4 continue to have the same standard of living as
5 the generations before us. You can be the
6 people and the institution that goes down in
7 history as the beginning of a landslide for the
8 positive change for our communities. Thank
9 you.

10 LAW JUDGE: Thank you for the
11 generational reference that I understood.
12 Next speaker is Jessica Enzmann.

13 MS. ENZMANN: Hello, my name is Jessica.
14 I am a national staffer at the Sierra Club.
15 My last name is E-N-Z-M-A-N-N. I am here to
16 speak about the NOx regs 227-3.4. First I
17 would like to thank the governor, the head of
18 the DEC, and also Bill Fondant (phonetic) for
19 answering all my questions about this
20 hearing.

21 Thank you for taking action against the
22 dirtiest power plants in New York. Caping
23 nitrogen oxide emissions from peaking power
24 plants is critical for cleaning up air. NOx
25 emissions create ozone which triggers asthma

1
2 attacks in children and adults. By putting
3 strict limits on NOx emissions during the smog
4 season, we can improve public health and
5 quality of life, especially for people living
6 in communities that bear a high burden of
7 pollution.

8 We encourage you to ensure that the
9 regulation is as rigorous as it can be, by
10 removing loopholes that weaken pollution limits
11 for existing peakers matched with on-site
12 storage -- storing dirty power doesn't make it
13 cleaner -- ensuring that affected plants close
14 for good and are replaced with renewable power
15 combined with battery storage. We cannot
16 replace old, dirty fossil fueled power peaking
17 plants with new, dirty fueled powered peaking
18 plants and still meet the bold goal of
19 100 percent clean electricity by 2040. Thank
20 you.

21 LAW JUDGE: Next speaker is Karen
22 Miller.

23 MS. MILLER: Hello, my name is Karen
24 Miller. I am from OR Energy. We are a long
25 Island-based environmental nonprofit that

1
2 educates, involves and empowers the public to
3 act on renewable energy and environmental
4 protection. We want to thank you for the
5 opportunity to speak today.

6 We are here to remind you to look to the
7 future and set the high standards necessary to
8 meet our climate and air pollution goals to
9 stronger limits from the nitrogen oxide
10 emissions that our peaker plants create. We
11 need to institute much stronger standards,
12 dramatically draw down and severely limit the
13 nitrogen oxide pollution affecting our
14 residents, cities, especially environmental
15 justice communities these plants occupy.

16 New Yorkers are entitled to clean air.
17 The use of these plants must be drastically
18 reduced to make this a reality. This can be
19 achieved with significant solar investment and
20 proffer up from valuation of solar in the value
21 of distributed energy resources which reflect
22 the elimination of these emissions, which will
23 give decades of dividend and clean air, climate
24 jobs and on-demand clean energy storage
25 expansion.

1
2 We need renewables to be their own bridge
3 to the future. Time of use, energy efficiency
4 and other incentives to reduce peaker demand
5 always are the cheapest and should all be
6 heavily invested in right now. Then New York
7 must draft service renewables commitment of
8 land as we await the decade for offshore wind
9 to arrive. Let's use this time to create the
10 grid both as we need it to be for now and as it
11 will be when thousands of megawatts of offshore
12 wind come ashore.

13 We must set the priority now by creating
14 and assuring that any excess clean energy not
15 only has a repository but is given preference
16 to be on the bridge to displace these dirty
17 peaker plants. Since this will greater reduce
18 financial work peak generation markets, it must
19 not lead to dirty generation to make a quick
20 buck in storage for peak demand. This renewal
21 energy peak demand market fulfillment will
22 benefit all of New Yorkers all the time, on all
23 their electric bills, and they should be
24 rewarded as such. We also need to assure that
25 there are strict limits of counties on any

1
2 dirty energy used to a stored power for peak
3 demand which would just kill any gains to be
4 had. We cannot burn our way out of the climate
5 and crisis and toxic air-conditions, and it
6 should be prohibited.

7 Help make New York the future we need now.
8 Let's use this time wisely to systematically
9 replace the culprits, expand efficiency and
10 incentives. Incentivize time of use, increase
11 solar storage capacity that we need to scale
12 storage infrastructure, and assure our storage
13 is not from dirty energy emissions. Thank you.

14 LAW JUDGE: Next speaker is Bridget
15 Foley.

16 MS. FOLEY: Hello, my name is Bridget
17 Foley. My last name is F-O-L-E-Y. Today I
18 will be speaking as a volunteer with Sierra
19 Club and New York Renews and a resident of
20 Blue Point. On Long Island we have a robust
21 and wide reach in clean energy and climate
22 justice movement. So the speakers today, we
23 are a small portion of an Island-wide
24 community that is fighting for this.

25 So the NOx emissions cap immediately makes

1
2 me think of the communities that this is going
3 to benefit when I first heard about it. But I
4 am joining many other people today and asking
5 that it does not fall short for those exact
6 communities that it is intended to serve. The
7 regulation, it cannot allow new fossil fuel
8 peaking plants that meet the NOx regulation
9 cap, thanks to new technologies. Sorry, that
10 wasn't right. But it would be a loophole, so
11 to speak, that is counterproductive to the
12 lifesaving public health benefits that the
13 regulation intends, and equally
14 counterproductive is the loophole that allows
15 on-site storage in existing plant. It's
16 understandable that they are in there, but it
17 will reverse -- not reverse, but it will
18 just -- won't allow it to be as productive and
19 as beneficial as it can be and needs to be.

20 So if it comes to fruition, it can't leave
21 those holes open. And to best serve us and our
22 future on Long Island, it needs instead to team
23 with aggressive implementation of clean energy
24 technologies and storage, off-shore winds,
25 bridge scale solar, and also distributed solar.

1
2 So that's it for me. As a member of Long
3 Island, I am in vast support of this. Thank
4 you.

5 LAW JUDGE: That was the last of the
6 cards I have. Is there someone else here who
7 would like to make a public comment? I am
8 hearing none. It's half past now and I am
9 just going to call a recess for about 20
10 minutes or so just in case someone comes in
11 late, and I will reopen the record at that to
12 close it out or hear additional speakers.
13 Thank you for your participation today.

14 (Whereupon, a recess was taken.)

15 LAW JUDGE: Okay. We are back on the
16 record. I did receive one more speaker card.
17 Is there anyone else who arrived that wanted
18 to speak but was not aware that you needed to
19 fill out a card first? Hearing none, I will
20 call Jan Heubner.

21 MS. HEUBNER: Hi. I found an article
22 online and I have been following it for a
23 year --

24 LAW JUDGE: Sorry, since you were not
25 here before, I probably should have gave you

1
2 the spiel. If you would just step to the
3 podium and state your full name and spell
4 your last name for the court reporter and any
5 organization you are with.

6 MS. HEUBNER: Hi. We just joined the
7 Sierra Club. We are concerned about the
8 environment. We have been following the --

9 LAW JUDGE: Sorry, could you state your
10 full name and spell your last name for the
11 court reporter.

12 MS. HEUBNER: Jan Heubner,
13 H-E-U-B-N-E-R. We joined the Sierra Club.
14 We are concerned about the earth. It's the
15 only one we have. There is a power grid
16 backup, it's the largest battery project in
17 the world in Australia, and it was installed
18 a little over a year ago. It cost -- the
19 battery backup alone was done by Tesla Energy
20 and it cost \$66 million. And just recently I
21 found an article online, in one year it saved
22 the Australians \$40 million. So it's
23 two-thirds paid for in one year. And they
24 used to have -- they constantly have bad
25 storms in southern Australia, bad lightning

1
2 storms. So 45-minute power interruptions
3 were common. Now the residents aren't even
4 aware that it has happened. Instead of 45
5 minutes to fire up the peaker plants, in some
6 milliseconds, so less than a second, the
7 power is restored. The residents aren't even
8 aware that the power went out. It's a good
9 thought.

10 LAW JUDGE: Thank you for your comments.
11 Again I received no other cards, I assume no
12 one else wants to speak today. With that,
13 the hearing record is closed. I thank you
14 all for coming out.

15 (Time noted: 11:55 a.m.)
16
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25

C E R T I F I C A T E

I, CHRISTINA FERRARO, a shorthand
reporter and Notary Public within and for the State
of New York, do hereby certify:

That the witness whose testimony is
hereinbefore set forth was duly sworn by me, and the
foregoing transcript is a true record of the
testimony given by such witness.

I further certify that I am not related to
any of the parties to this action by blood or
marriage, and that I am in no way interested in the
outcome of this matter.



CHRISTINA FERRARO

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In the Matter Of:

IN THE MATTER OF PROPOSED SUBPART 227-3

HEARING

May 14, 2019



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STATE OF NEW YORK

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter

of

Proposed Subpart 227-3 ("Ozone Season Oxides of
Nitrogen (NOx) Emissions Limits for Simply Cycle and
Regenerative Combustion Turbines")

and

Proposed Amendments to Part 205 ("Architectural and
Industrial Maintenance (AIM) Coatings")

of

Title 6 of the Official Compilation
of Codes, Rules and Regulations
of the State of New York

1 Hunters Point Plaza
47-40 21st Street
Long Island City, New York 11101

May 14, 2019

A P P E A R A N C E S:

NEW YORK STATE DEPARTMENT of ENVIRONMENTAL
CONSERVATION

Administrative Law Judge
Office of Hearings & Mediation Services
625 Broadway, 1st Floor
Albany, New York 12233

MARIA E. VILLA, ESQ.

ALSO PRESENT:

Ona Papageorgiou, P.E., Professional Engineer 1,
Bureau of Air Quality Planning Division of Air
Resources

1
2 LAW JUDGE: We are on the record. This
3 is an administrative public hearing with a
4 legislative format, before the New York State
5 Department of Environmental Conservation, in
6 the matter of department staff proposed
7 rulemaking to add Subpart 227-3 to the
8 Official compilation of Codes, Rules and
9 Regulations of the State of New York, or 6
10 NYCRR for short.

11 The new Subpart 227-3 is entitled Ozone
12 Season Oxides of Nitrogen or NOx Emission
13 Limits for Simple Cycle and Regenerative
14 Combustion Turbines. Department staff also
15 proposes to amend the existing Part 205 of 6
16 NYCRR entitled Architectural and Industrial
17 Maintenance or AIM coatings. This amendment
18 would also require revisions to Part 200 of 6
19 NYCRR.

20 The primary goal of the new Subpart 227-3
21 is to lower allowable NOx emissions from simple
22 cycle and regenerative combustion turbines
23 during the ozone season. To lower emissions
24 from the sources will help to address Clean Air
25 Act requirements, ozone nonattainment and

1
2 protect the health of New York State residents.
3 This is not a mandate on local government and
4 is only applicable to simple cycle and
5 regenerative combustion turbines. It applies
6 to any entity that owns or operates a subject
7 source. The amendments to Part 205 address AIM
8 coatings which are commonly referred to as
9 paints. These coatings release volatile
10 organic compounds (VOC) into the atmosphere.

11 Part 205 regulates VOC content for 52
12 coating categories. The current VOC limits
13 were set in 2004 and the industry and
14 technology have changed and improved since that
15 time, to make lower VOC options available.
16 Because New York State has a nonattainment area
17 for ozone, the Clean Air Act requires the state
18 to develop strategies to reduce VOC emissions.
19 The revisions are part of that effort. The
20 major revisions are intended to reduce the VOC
21 limit on 12 coating categories, create VOC
22 limits for 12 additional categories, eliminate
23 15 coating categories and eliminate the quart
24 exemption. This proposal applies to any person
25 who supplies, sells, offers for sale or

1
2 manufactures architectural coatings for use in
3 New York State.

4 The purpose of this hearing is to receive
5 comment on the proposed rulemaking. So in the
6 back there are some cards to fill out. If you
7 want to speak and put a statement on the
8 record, fill out a card and give it to me and I
9 will call the speakers in the order that I
10 receive the cards. I am Maria Villa. I am
11 serving as the hearing officer for the
12 department. All persons, organizations,
13 corporations or government agencies that may be
14 affected by the proposed rule are invited to
15 submit either written or oral statements. All
16 statements taken today, either written or
17 spoken, will be incorporated into the official
18 record of this proceeding. Statements are not
19 given under oath. There won't be any
20 cross-examination. This isn't a
21 question-and-answer session.

22 Hearings already have been held in Albany
23 and Stony Brook. A cumulative record will be
24 compiled of all the comments received at the
25 three hearing sessions. So written statements

1
2 received during the public comment period and
3 oral statements made at the hearing will be
4 given equal weight. If you have a lengthy
5 statement and you can submit it in writing, it
6 is a big help to the court reporter, or you can
7 summarize the statement verbally. And written
8 comments can also be submitted on or before
9 5:00 p.m. on May 20, 2019, to the Division of
10 Air Resources. We have here Ms. Ona
11 Papageorgiou at DEC central office. If you
12 want to speak to Ms. Papageorgiou about how to
13 make comments by email, or where to mail them
14 in, you can talk to her. I also have the
15 information up here. But rather than detain
16 us, just ask Ms. Papageorgiou.

17 Department staff has provided me with
18 copies of the notices of the hearing sessions.
19 They were published in the February 27, 2019
20 edition, and this is for Subpart 227-3, and the
21 March 6, 2019 edition, Part 205, of the
22 Department's Environmental Notice of Bulletin,
23 as well as New York State Register.

24 In addition, I have affidavits of
25 publication of the notice for Subpart 227-3

1
2 published in the February 27, 2019 editions of
3 the New York Post, Newsday, The Albany Times
4 Union, The Buffalo News, The Glens Fall
5 Post-Star and the Rochester Democrat and
6 Chronical on February 27, 2019. The notice was
7 published in the February 26, 2019 edition of
8 the Syracuse Post Standard. I also have
9 affidavit of publication for the notice for the
10 Part 205 hearings and those were published in
11 the March 6, 2019 editions of the New York
12 Post, Newsday, The Albany Times Union, The
13 Buffalo News, The Glens Fall Post-star and The
14 Rochester Democratic Chronical on February 27,
15 2019. The notice was published in the March 5,
16 2019 edition of the Syracuse Post Standard.
17 And, as I mentioned, we have Ms. Papageorgiou
18 here with us, and she is going to make a brief
19 presentation regarding the rule.

20 MS. PAPAGEORGIU: Thank you, Judge
21 Villa. Just to be clear, I am going to
22 repeat quite a bit of what Judge Villa just
23 went through, but to make our hearings
24 consistent, I am going to go through my
25 entire hearing statement so it's consistent

1
2 amongst our three hearings. And also we
3 are -- as you probably already know, there
4 are two regulations. So if I start talking
5 about one and you wonder, we will get to the
6 next one after.

7 My name is Ona Papageorgiou. I am a
8 professional engineer with the Division of Air
9 Resources. The department is proposing to
10 revise Part 205, Architectural and Industrial
11 Maintenance Coatings, which I will refer to as
12 AIM coatings, and Part 200, General Provisions
13 of Title 6 of the Official Compilation of
14 Codes, Rules and Regulations of the State of
15 New York.

16 This public hearing is one of three
17 scheduled for the purpose of receiving
18 statements and comments on the Department of
19 Environmental Conservation's proposal to revise
20 Part 205 and Part 200.

21 The purpose of this proposal is to lower
22 volatile organic compounds (VOC) emissions from
23 the source category. This proposal will
24 address Clean Air Act Requirements, including
25 ozone nonattainment, and it will protect the

1
2 health of New York State residents. The
3 department plans to submit Part 205 to the
4 United States Environmental Protection Agency
5 as a revision to the State Implementation Plan
6 for New York State.

7 AIM coatings, such as paint, are applied
8 to stationary structures or their appurtenances
9 at the site of installation, portable buildings
10 at the site of installation, pavements, or
11 curbs. While AIM coatings are often referred
12 to as paint, there are over 50 categories of
13 coatings regulated under Part 205. These
14 products may contain volatile organic compounds
15 as part of their formulation.

16 The stakeholder process of this rulemaking
17 began with a stakeholder meeting on May 12,
18 2010, sponsored by the Ozone Transport
19 Commission. This was followed up by multiple
20 presentations at professional meetings for both
21 national and New York-based coatings
22 associations. The comments received during the
23 stakeholder outreach process were considered in
24 developing this proposal.

25 This proposal is applicable to any person

1
2 who supplies, sells, offers for sale, or
3 manufactures any architectural coating for use
4 within New York State, as well as any person
5 who applies or solicits the application of any
6 architectural coating within New York State.

7 The Part 205 proposal eliminates 15
8 coating categories, adds 12 new coating
9 categories, lowers the VOC limits on 12 coating
10 categories, broadens the scope of DEC's data
11 collecting authority and eliminates the quart
12 exemption. The proposed effective date is
13 January 1, 2021, with a two-year sell-through
14 allowance.

15 Moving on to the next. The department is
16 proposing to adopt a new Subpart 227-3, Ozone
17 Season Oxides of Nitrogen NOx Emissions Limits
18 for Simple Cycle and Regenerative Combustion
19 Turbines of Title 6 of the Official Compilation
20 of Codes, Rules and Regulations of the State of
21 New York.

22 This public hearing is also one of three
23 scheduled and department is proposing to adopt
24 this ozone season regulation to lower allowable
25 NOx emissions from simple cycle and

1
2 regenerative combustion turbines. This
3 proposal will address Clean Air Act
4 requirements, including ozone nonattainment,
5 and it will protect the health of New York
6 State residents. The department plans to
7 submit Subpart 227-3 to the United States
8 Environmental Protection Agency as a revision
9 to the State Implementation Plan for New York
10 State.

11 During the development of the current
12 proposal, the department held stakeholder
13 meetings on January 20th and 26th of 2017. The
14 department released a stakeholder draft outline
15 on June 7, 2018, to present more detailed
16 elements of the proposed rule. Throughout the
17 stakeholder process the department also met
18 with the New York Independent System Operator,
19 the New York Department of Public Service and
20 the New York State Energy Research and
21 Development Authority. And these meetings were
22 to discuss the likely elements of the proposed
23 rule and obtain feedback. The comments
24 received during the stakeholder outreach
25 process were instrumental in developing this

1
2 proposal.

3 This proposal is applicable to simple
4 cycle and regenerative combustion turbines that
5 are electric-generating units with a nameplate
6 capacity of 15 megawatts or greater and that
7 bid into the NYISO wholesale market.

8 Subpart 227-3 is proposed to be phased in
9 with a compliance plan due on March 2, 2020,
10 initial emission rate limits of 100 parts per
11 million on a dry volume basis at 15 percent
12 oxygen, which I will call PPMVD. It's a way of
13 demonstrating parts per million. That 100
14 parts per million VD will go into effect on
15 May 1, 2023. Then on May 1, 2025, the emission
16 limits will be reduced to 25 PPMVD when burning
17 gas and 42 PPMVD when burning oil.

18 Sources subject to Subpart 227-3 are
19 offered several compliance options under this
20 proposal. These include emissions averaging
21 with renewable and energy storage resources,
22 not operating an effected source during the
23 ozone season or permanently shutting down that
24 source.

25 In addition to providing statements at

1
2 this hearing today, anyone may also submit
3 written comments related to the proposed
4 Subpart 227-3 or Part 205 and Part 200. Any
5 statements made at this hearing today, as well
6 as all written comments received during the
7 public comment period, will be given equal
8 weight and will become part of the
9 administrative record for this rulemaking.

10 Anyone who wishes to obtain information or
11 submit comments related to the proposed Part
12 205, Part 200 or Subpart 227-3 may contact me,
13 Ona Papageorgiou, at NYSDEC Division of Air
14 Resources, 625 Broadway, Albany, New York
15 12233, telephone is (518)402-8396, email is
16 air.regs@dec.ny.gov, or visit the department's
17 Web site. Written comments will be accepted
18 through 5:00 p.m. Monday, May 20, 2019. Thank
19 you for attending this meeting.

20 LAW JUDGE: Thank you very much. I am
21 going to go ahead and call the speakers in
22 the order that I received the card. If there
23 is anyone who came in and wants to speak and
24 hasn't filled out a card, please do so and
25 bring it up to me.

1
2 So our first speaker is Samantha Wilt. I
3 think you can stay right where you are, as long
4 as the court reporter can hear you.

5 MS. WILT: Good morning. My name is
6 Samantha Wilt. I am an energy policy analyst
7 at the NRDC, the National Resources Defense
8 Counsel. NRDC is an international
9 environmental advocacy organization
10 headquartered in New York. Thank you for the
11 opportunity to testify today in support of
12 Subpart 227-3.

13 We really welcome this effort to reduce
14 the enormous volume of air pollutants from
15 these old, dirty peaker plants. We fully
16 support these rules that will help clear the
17 air for New Yorkers, with a small change
18 recommended to the second compliance option.

19 These rules are critical for getting rid
20 of the worst stationary sources of air
21 pollution and will help address Clean Air Act
22 requirements and ozone nonattainment. New
23 Yorkers are routinely exposed to some of the
24 highest ozone levels in the Eastern United
25 States and currently 64 percent of New York

1
2 State residents, more than 12 million people,
3 live in counties designated as not meeting the
4 EPA 2015 health-based standard of 270 parts per
5 billion for ozone.

6 Our failing air quality has serious health
7 consequences for residents in the New York City
8 metro area where the ozone levels are highest.
9 This area records the third most asthma-related
10 deaths in the country. Asthma prevalence among
11 adult New Yorkers increased 24 percent between
12 2002 and 2010, declining nationwide. Children
13 in the New York City region experienced even
14 higher rates of emergency department visits.
15 So the visits per ten thousand children on
16 population in New York City is 228 versus the
17 rest of the state if you take out New York
18 City, which is 68. So that's 228 versus 68 in
19 the rest of the state. And in the Bronx,
20 that's 425 versus 68 in the rest of the state.
21 And communities of color and low income
22 communities disproportionately bear the impact
23 of this air pollution.

24 The proposed regulation must be paired
25 with aggressive efforts to promote energy

1
2 storage, distributed solar, utility scale
3 solar, energy efficiency, and offshore wind to
4 ensure these filthy, old peakers are not
5 replaced with new peakers that are also fossil
6 fueled.

7 We recommend changes in the second
8 compliance option which allows averaging of the
9 output-based emission rate with battery storage
10 and renewable energy. The second compliance
11 option proposed will result in local benefits
12 for communities with the reduced amounts of NOx
13 and the addition of those renewables or battery
14 stored resources in their community. To assure
15 there is local air quality benefits from
16 utilization of renewables or battery storage it
17 is essential the renewable generation or
18 storage under common control only be counted
19 toward the averaging with the existing peaker
20 outlet during peak hours. If, as proposed, the
21 entire output of the renewable or battery
22 resources over 24 hours is used for averaging,
23 it's possible that displacing the dirtiest
24 marginal generation will not occur, as
25 generation or injections that happened during

1
2 hours where clean resources are on the margin
3 could be counted. This would effectively
4 reduce or negate the displacement benefit of
5 those cleaner resources.

6 NRDC strongly supports the proposed rules,
7 and we hope that the health, environmental and
8 quality of life benefits that will result for
9 the residents and businesses of the region will
10 be realized as soon as possible. Thank you.

11 LAW JUDGE: Thank you. Mr. Joe Tonini.

12 MR. TONINI: My name is Joe Tonini. I
13 am a long-term resident of Mineola on Long
14 Island. I have a home in Mineola and another
15 home in Southold. First I want to thank the
16 Department of Environmental Conservation for
17 holding these hearings on proposed
18 regulations for peaking plants. I also want
19 to congratulate Commissioner Seggos and
20 Governor Cuomo on enactment of the
21 regulations to control emissions on New York
22 State's coal-fired power plants. I am a
23 volunteer with the Sierra Club's Clean Energy
24 For All Campaign and also with the Long
25 Island Progressive Coalition Climate

1
2 Committee. I am here as a climate activist
3 but I am also here as a husband of an
4 asthmatic and a grandfather of five between
5 the ages of one and eight. One of them,
6 three-year-old Andrew, was also recently
7 diagnosed as an asthmatic. I will leave it
8 to others more conversant with the data to
9 better describe the relationship between the
10 toxic emissions that come from peaking plants
11 and the health impacts they cause and the
12 deaths they contribute to.

13 As a climate activist, a husband and a
14 grandfather, I have three recommendations for
15 the DEC to consider. Number one, put an ozone
16 monitoring station in Nassau County. Queens to
17 our west and Suffolk to the east both received
18 F ratings for ozone pollution. Nassau doesn't
19 have an ozone monitoring station and,
20 therefore, receives no official grade.
21 According to the New York State Department of
22 Health, DEC air quality measurements have
23 "limitations. Values best represent air
24 quality air monitors." And, by the way,
25 Brooklyn also has no air monitoring stations

1
2 for ozone.

3 Number two, speed up the proposed timeline
4 for adoption with the regulations. The DEC is
5 proposing to implement new regulations starting
6 May 1, 2023, and strengthening them on May 1,
7 2025. The EPA estimates 13 to 22 deaths from
8 effects of ozone pollution per year in New York
9 State. Between now and May 1, 2025, you could
10 have 78 to 132 deaths, as well as 20,000
11 exacerbated asthma incidents. And it is
12 important to note that American Lung
13 Association Research found that ozone poisoning
14 at levels 16 to 80 percent, lower than those
15 the EPA currently considers acceptable, "was
16 associated with deaths from cardiovascular
17 disease, strokes and respiratory causes.

18 And finally number three, make these
19 regulations strong. Resist letting them be
20 compromised by those who put profit ahead of
21 the health of people and of the environment.
22 Thank you.

23 LAW JUDGE: Thank you very much. Next
24 speaker is Lipa Sofer.

25 MR. SOFER: Good morning. My name is

1
2 Lipa Sofer from health environment in
3 Brooklyn. I would like to thank New York
4 State Department of Environmental
5 Conservation for doing this great job to
6 reduce VOCs and these strong toxic chemicals.
7 I fully support what they are doing in
8 reducing these strong chemicals and
9 eliminating the exemption for these high
10 VOCs.

11 We have seen for the last, I would say, 18
12 years what these high VOCs are doing to people.
13 We have seen contractors come into buildings
14 with strong paints and people and children are
15 getting asthma attacks. Women have lost
16 miscarriage -- unborn children. We have seen
17 people which had cancer and they got cured.
18 When they were exposed to these chemicals their
19 cancer came back. So we have to fully stop the
20 companies from making these strong chemicals.
21 Today there are alternatives for products which
22 don't have these strong chemicals, and as soon
23 as these regulations go into effect, less
24 people will get sick. And so we have to make
25 sure these rules are strong and make them go

1
2 into effect fast. And I thank you very much
3 for making these rules. Thank you.

4 LAW JUDGE: The next speaker is Elaine
5 O'Brien.

6 MS. O'BRIEN: Hi. Thank you. My name
7 is Elaine O'Brien and I am here as a
8 volunteer with Sierra Club. Thank you
9 everyone for the comments and for holding
10 this hearing today. I am a long time New
11 York City resident -- and just to share some
12 personal story about the effects of poor air
13 quality in our neighborhoods -- in 2008 I
14 developed severe allergies and asthma due to
15 pollution in Williamsburg when there was a
16 ton of construction, and my symptoms were
17 exacerbated by air quality issues from living
18 near the BQE and then later on in lower
19 Manhattan.

20 At that time my job provided me with
21 health insurance and I was able to treat my
22 asthma and allergy with medication and steroid
23 inhalers. Later my insurance company inflated
24 the price of my medication, and my ten dollar
25 inhaler now cost over \$200. So I can no longer

1
2 afford my medication and took measures to treat
3 my symptoms holistically, and I moved out of
4 those neighborhoods and my health did improve.
5 I am grateful to have limited symptoms today,
6 but I know that that would not be the case if I
7 still lived in those neighborhoods. And I
8 think the families with less housing ability
9 and many children in New York may never be able
10 to breathe well due to the combined effect of
11 air pollution and the high cost of medication.
12 It's time to take action and replace and fossil
13 fuels with renewables to protect the health of
14 New York State residents. Thank you.

15 THE ARBITRATOR: Thank you very much.
16 Leontine Greenberg.

17 MS. GREENBERG: I am a mom and an
18 educator and I live in Queens, pretty close
19 to both of the plants. I am here to support
20 the proposed regulations on nitrogen oxide.
21 I have heard rightfully a lot of focus on the
22 respiratory effects of pollutants, but I want
23 to take a moment and talk about the
24 neurological impact that burning fossil fuels
25 and other air pollutants have on kids.

1
2 When I was pregnant in 2007, and for the
3 first year of my daughter's life, we lived
4 directly between the Astoria Generating Station
5 and the Ravings Generating Station, and
6 ironically at the time I was writing my
7 master's thesis on the role that the natural
8 environment plays with supporting human
9 cognition.

10 Since then a large body of research has
11 been done on the connection between prenatal
12 and childhood exposure to air pollution and
13 damage to the developing brain. Both
14 epidemiological studies of children who lived
15 in polluted areas, as well as controlled
16 studies on animals, showed that pollutants from
17 fossil fuels can break down the blood brain
18 barrier and, as a result, children in areas
19 with polluted air suffered from persistent
20 inflammation and tissue damage throughout their
21 brains.

22 These type of damages are associated with
23 learning and behavior problems, and those
24 problems are indeed found with greater
25 frequency in children who are exposed to air

1
2 pollution. They include memory problems,
3 difficulties with auditory processing and
4 speech, deficits of self-control and mood
5 regulation, early hallmarks of Alzheimer's and
6 Parkinson's disease, lower IQ, attention
7 deficit disorder and autism.

8 We need to shut down these high-polluting
9 plants, and rather than building another fossil
10 fuel powered plant in another child's
11 neighborhood, we need to invest in renewable
12 energy and energy storage.

13 I also have about 20 letters from kids who
14 take an environmental science class in
15 Manhattan and I am going to read two of them.
16 They are short.

17 The first one is from Nina Watson and she
18 says, "Dear DEC, I am 11 years old and I love
19 New York City but it's kind of disgusting. My
20 grandfather got lung cancer from air pollution;
21 he worked in a factory. And because the
22 factory he worked at did not have
23 well-regulated rules about keeping the air
24 clean and their employees safe, he got cancer
25 that spread to his brain. That is why I want

1
2 more rules about air pollutions."

3 "Dear DEC, in this letter I am going to
4 tell you about the problems that the planet is
5 facing. Power plants are contributing to
6 global warming and I strongly urge you to do
7 something. I believe that the earth is a
8 beautiful thing and we are giving that up for
9 money and power. So I ask you to please try to
10 stop this disaster." Thank you.

11 LAW JUDGE: Thank you very much. The
12 next speaker is Shay O'Reilly.

13 MR. O'REILLY: Hi, my name is Shay
14 O'Reilly and I am the senior organizing
15 representative for the Sierra Club in New
16 York City. My colleagues have already spoken
17 in Albany and in Long Island, so I will make
18 this very brief. We are very supportive of
19 these regulations. We know that they are
20 needed to clean up our air quality locally
21 and around the state, and we have two
22 considerings that we want to highlight in our
23 approach to these.

24 First of all, we want to make sure that
25 the options for compliance do not include

1
2 simply combining dirty power with battery
3 storage technology. We are concerned about
4 some of the language in there that could bolden
5 up that opportunity, and we know that storing
6 dirty power doesn't make it cleaner. So we
7 would like to make sure that that language is
8 very clear, that these plants cannot contain
9 compliance simply by installing battery storage
10 for their dirty power.

11 Secondly, we want to make sure that the
12 state is engaged in the holistic effort to
13 replace these power plants with renewable
14 energy combined with battery storage
15 technology, including offshore wind,
16 distributed solar, and other clean renewable
17 technologies. We know that we can't replace
18 these old, dirty fossil fuel power peaking
19 plants with new, dirty fossil fuel peaking
20 plants and still meet the bold goal of 100
21 percent clean energy by 2040.

22 In accordance with these two
23 considerations and support of this regulation I
24 have -- from people in these districts affected
25 by F ratings and air quality, assuming that

1
2 Brooklyn and Nassau County are somehow not
3 spared from that rating, I have 1,957 petition
4 signatures in support of these comments.

5 LAW JUDGE: Thanks. Andrew Wassermann.

6 MR. WASSERMAN: Thanks for holding this
7 hearing today and for letting everybody
8 speak. This right here, this is my inhaler.
9 I carry it with me almost everywhere I go
10 because I have a mild form of asthma. I
11 don't suffer from asthma attacks or anything
12 else that could be life threatening, so it's
13 a small burden. This is nothing compared to
14 the burden carried by those who live near the
15 power plants we are discussing today.

16 Environmental justice communities around
17 the state, and particularly in the city, right
18 here in Long Island City, have high rates of
19 asthma, a life threatening burden they are
20 forced to carry because of dirty fossil fuel
21 power plants. But they don't need to carry
22 this burden. Regulations Subpart 227-3 we are
23 discussing today is important for protecting
24 public health, particularly for communities
25 living near some of the oldest, dirtiest

1 fossil-fired peaking units in New York.

2 Addressing pollution from these outdated
3 and highly polluting facilities is critical to
4 promoting environmental justice in New York and
5 in reducing our contribution to climate change.
6

7 It is crucial that this regulation does
8 not result in the replacement of old, dirty
9 fossil fuel peaker plants, even if the new ones
10 are paired with energy storage. As Shay just
11 said, storing dirty power does not make it
12 cleaner. It still directly causes asthma.

13 Dirty peaker plants are not necessary. It
14 is vital that the implementation of the
15 regulation be paired with aggressive efforts to
16 promote energy efficiency, renewable energy
17 such as distributed solar, grid scale solar,
18 offshore wind, and energy storage, to replace
19 retiring peaker plants. These technologies are
20 available today and they get cheaper every
21 year.

22 This isn't a list of wants. Such actions
23 are necessary to relieve communities of the
24 burden they carry and to reduce the burden of a
25 changing climate for all of us. Thank you.

1
2 LAW JUDGE: Thank you. Now,
3 Mr. Wassermann was the last card that I
4 received. Is there anybody else who wants to
5 speak? Why don't you go ahead, Rachel
6 Spector.

7 MS. SPECTOR: Hi, my name is Rachel
8 Spector. I am the environmental justice
9 program director at New York Lawyers for the
10 Public Interest. New York Lawyers for the
11 Public Interest strongly supports these
12 regulations. Reducing NOx emissions during
13 ozone season is crucial for public health and
14 should be done in an equitable manner;
15 informed by the reality that many of the most
16 inefficient resources are cited in
17 environmental justice. So we applaud DEC for
18 taking this step to reduce NOx emissions and
19 for proposing alternative compliance pathways
20 that incentivize investment in renewable
21 energy and storage technologies.

22 We have several concerns about the
23 regulations as written. First, it's crucial
24 that the second compliance option not increase
25 NOx emissions. The rule must be modified to

1
2 ensure that the storage is not simply being
3 used to store dirty power. Secondly, it's
4 crucial that the process by which NYISO may
5 designate as a reliability source, incorporate
6 consultation with the local community,
7 particularly environmental justice communities,
8 and involve transparency around the decision
9 process and mitigation of public health impacts
10 for continued noncompliance regulations.

11 Finally, it's crucial that this rule is
12 written as a step towards phasing out fossil
13 fuel burning structure across the state and
14 transitioning to renewable and resilient energy
15 sources in a manner that achieves equitable air
16 quality and community resilience. Thank you.

17 LAW JUDGE: Thank you very much. Anyone
18 else who wanted to speak? All right, hearing
19 no response, a reminder, the public comment
20 period will close on May 20, 2019. And the
21 comments can be mailed and can be sent via
22 email. Once again, as Ms. Papageorgiou
23 mentioned, the email address for comments is
24 air.regs@dec.ny.gov. So that's
25 air.regs@dec.ny.gov. And if you could

1
2 include comments on proposed amendment Part
3 205 or comments on Subpart 227-3 in the
4 subject line, that would be a big help.

5 All right. Thank you to everyone for
6 coming out today and speaking. We are
7 adjourned.

8 (Time noted: 11:40 a.m.)
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C E R T I F I C A T E

I, CHRISTINA FERRARO, a shorthand
reporter and Notary Public within and for the
State of New York, do hereby certify:

That the within statement is a true and
accurate record of the stenographic notes taken
by me.

I further certify that I am not related
to any of the parties to this action by blood
or marriage, and that I am in no way interested
in the outcome of this matter.



CHRISTINA FERRARO

HEARING
IN THE MATTER OF PROPOSED SUBPART 227-3

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6 NYCRR Subpart 227-3, Ozone Season Oxides of Nitrogen (NO_x) Emission Limits for Simple Cycle and
Regenerative Combustion Turbines

Assessment of Public Comment

Comments received from February 26, 2019 through 5:00 P.M., May 20, 2019

General Comments

Comment 1: Support the regulation. (Commenters: 2, 4, 5, 6, 12, 14-1955, 1957, 1958, 1959, 1960, 1962, 1963, 1965, 1966, 1971, 1974, 1976, 1979, 1980, 1981, 1985, 1990, 2003-2015, 2016, 2018, 2019, 2024, 2025, 2028, 2029, 2031)

Comment 2: Subpart 227-3 will certainly help support pollution-free air which is incredibly important for the health of everyone in the region. (Commenter: 2)

Comment 3: There is a long history of polluting power plants and other industrial facilities being placed near low-income and minority communities, and this regulation would help fight against some of these injustices. This element of environmental justice makes the regulation's success imperative because equitable access to clean air is a right that everyone deserves. (Commenter: 2)

Comment 4: I am concerned about the polluting plants located in Astoria and Long Island City, Queens. I'd like to see reduced emissions from these plants. Please cap the emissions, especially in the summer months. (Commenter: 7)

Response to Comments 1-4: The Department of Environmental Conservation (Department or DEC) thanks you for your support in lowering nitrogen oxide (NO_x) emission rates from simple cycle and regenerative combustion turbines (SCCTs).

Comment 5: Even if the Environmental Protection Agency (EPA) does not ultimately reclassify the New York City metropolitan area as a “serious” nonattainment area, the DEC should still enact this rule and require that these turbines either cease operation or install pollution reduction equipment to dramatically reduce NO_x emissions in order to protect local communities. (Commenter: 1959)

Response to Comment 5: The Department agrees and intends to proceed with this rulemaking as expeditiously as practicable in accordance with the State Administrative Procedures Act (SAPA).

Applicability Section (227-3.1)

Comment 6: Are existing emission limits (Part 227-2.4(e)) and system averaging (Part 227-2.5(b)) with SCCT units included still applicable during the non-ozone season? We suggest clarification of which emission limits apply to SCCTs during the non-ozone season. (Commenters: 1, 3)

Response to Comment 6: The requirements of Subpart 227-2 are unchanged and are applicable year-round. The ozone season requirements in Subpart 227-3 are applicable only during the ozone season.

Comment 7: Will SCCTs with nameplate ratings less than 15 megawatts (MW) continue to be subject to the system averaging provisions of Part 227-2. (Commenter: 1973)

Response to Comment 7: Yes, the provisions of Subpart 227-2 will still apply year-round.

Comment 8: The applicability of Subpart 227-3 should be expanded beyond the ozone season to year-round. (Commenters: 2, 1956)

Response to Comment 8: The goal of Subpart 227-3 is to reduce NOx emissions during the summer when ozone levels are at the highest levels.

Applicability: Black start/emergency operations

Comment 9: The Department should consider exempting turbines that are only used for emergency purposes from the proposed emission limits. For Con Edison, there are two types of emergencies that are addressed by turbines. One is a steam system “black start,” a situation in which a wide-scale outage requires a re-start of the steam system without the usual source of electric power. The other occurs when these same turbines provide second-order contingency support to a distribution load pocket to avert an outage. We request that second order contingency use be authorized as a permissible emergency use in the final rule. (Commenters: 1967, 1970)

Comment 10: Commenters suggest that the Department could require a unit to convert to “emergency use only” as an alternative compliance option. Specifically, DEC could add language to the proposed regulation stating that units would need to be designated “emergency use only” in a federally enforceable permit modification prior to May 2025. (Commenters: 1967, 1970)

Comment 11: The proposed rule does not specify the conditions under which SCCTs that are removed from the New York Independent System Operator (NYISO) market may operate. Long Island Power Authority (LIPA) and Public Service Enterprise Group – Long Island (PSEG-LI) suggest that such SCCTs could be maintained on standby and operate only under the following special conditions:

a. to restart the electric system in the event of a blackout (also known as “black start” operation).

b. at the request of the local system operator after the occurrence of a contingency (i.e., a failure of one or more sources of power to a local area, such as a transmission line or generator other than the SCCT in question or required equipment maintenance) in the local area in which the SCCT is located, if needed to avoid curtailing electric service to customers in that area. The SCCT would be turned on after the contingency occurred, but before any customer load is shed. In the past 6 years, SCCTs in the Long Island system operated less than 100 hours a year for these purposes, on average. (Commenter: 1973)

Response to Comments 9-11: The Department agrees that black start sources should be exempt from the requirements of this rule. In response to the comments regarding black start sources, the Department proposes to revise subdivision 227-3.1, “Applicability,” to exempt black start resources. The Department has also revised subdivision 3.2, “Definitions,” to add a definition for the term ‘black start resource.’

The Department does not agree that other services should be exempt. The Department expects that the NYISO and/or transmission/distribution owners will plan for these services based on the information contained in each facility’s compliance plan and outcomes from the NYISO 2020 Reliability Needs

Assessment (RNA), by looking for market solutions, utilizing other sources or by adding technology to support those services. In addition, the regulation provides for a reliability extension when solutions cannot be put into place and a need has been identified.

Applicability: New York Independent System Operator (NYISO) wholesale market

Comment 12: Are all of the SCCTs that bid into the NYISO wholesale market subject to Subpart 227-3 or are some SCCTs not subject to the rule? (Commenter: 1956)

Comment 13: AGC opposes the exemption for units that do not bid into the New York Independent System Operator wholesale market. (Commenter: 1961)

Response to Comments 12-13: The Department agrees that sources that do not bid into the NYISO wholesale market but inject energy into the grid should not be exempt from Subpart 227-3. The intent of this rule is to address emissions from SCCTs which inject power into the grid. In response to these comments and to clarify intent, the Department is revising subdivision 227-3.1, "Applicability." The revision ensures that the intention to capture all SCCTs, 15 MW and greater, that inject energy into the grid is referenced in the regulation.

Comment 14: The focus of this regulation should be on downstate peaking turbines operating to provide power to the grid. Peaking turbines outside the non-attainment area should be exempted from this regulation. Emissions from any peaking turbines outside New York City and Long Island will not

contribute to the observed ozone exceedances that are the primary focus of the ozone non-attainment problem. (Commenter: 1960)

Response to Comment 14: The Department disagrees with this comment and believes the regulation should apply statewide. There are upstate air quality monitors which show readings close to the 2015 ozone national ambient air quality standards (NAAQS) of 70 parts per billion (ppb). For example, a monitoring station in the Buffalo area has a 2018 design value of 69 ppb and has experienced days where the air quality monitor has measured levels greater than the 70 ppb standard.

Comment 15: Commenter opposes the applicability threshold of 15 megawatts or greater proposed for Section 227-3.1(a) and believes that all SCCTs should be required to comply. (Commenter: 1961)

Response to Comment 15: The Department has evaluated the options for managing and enforcing this regulation. The Department believes that the applicability threshold captures the bulk of SCCT emissions and will result in significant emissions reductions from this sector.

Comment 16: Proposed subsection 227-3.1(a) should be revised to substitute the word “permitted” for the word “nameplate.” A “nameplate” rating is associated with the original manufacturer’s presumption about how a unit may be operated and does not necessarily reflect how a unit is actually permitted to operate. Currently, turbine owners operate at a level authorized by their Department-issued permit; revising the language will define the unit output more accurately. (Commenter: 1967)

Response to Comment 16: The Department disagrees with this comment and believes that a nameplate rating assigned by the manufacturer is consistent with existing regulatory programs and is the most appropriate way to categorize applicable sources under this proposal.

Reporting and Ozone Season

Comment 17: The ozone season definition (May 1 to October 31) is a concern and a clarification is requested. Some facilities currently only report during the ozone season to EPA, how will DEC address these sources? (Commenters: 1, 3)

Comment 18: There is no justification for the ozone season change given analysis of recent ambient ozone data because monitors do not show exceedances during the month of October from 2011-2018. (Commenters: 1, 1961)

Comment 19: We recommend that the definition of ozone season remain as currently defined May 1 – September 30. (Commenters: 1, 1967, 1970)

Comment 20: Data for October will not be available or certified by November for units using continuous emissions monitors (CEMs). In addition, the proposal requires generation of a new report by November 30. Alliance members suggest the quarterly reports prepared under our existing compliance obligations obviate the need for an additional report. (Commenter: 1)

Comment 21: The proposed regulation requires operational data for each compliance period (ozone season) to be submitted to the Department by November 30 of each year. First, the SCCT owners are

already required to report such data under their permits on a calendar quarterly basis. AGC suggests that rather than imposing another layer of reporting, it would be more efficient to report the operational data in the usual quarterly reports. (Commenter: 1961)

Comment 22: If the Department continues to require submission of a November report, as the ozone season for purposes of proposed Part 227-3 ends on October 31 instead of September 30, the data for the month of October will not be certified by the U.S. Environmental Protection Agency until after November 1 (it takes approximately 30 days to receive such certification). (Commenter: 1961)

Response to Comments 17-22: The Department agrees that the ozone season for emissions reporting requirements should remain May 1st through September 30th of each calendar year. The Department has made the appropriate change to the revised proposed rule. In addition, paragraph 227-3.7(b) has been revised to change the compliance date for submitting operational data. In the revised proposed rule, operational data must be submitted as part of a facility's annual compliance report.

Definitions

Comment 23: The Department should clarify that "two or more sources" in the definition of common control encompasses one or more renewable or electric storage resources, an SCCT, and any electric stream units. (Commenter: 1975)

Response to Comment 23: The Department agrees that renewable or electric storage resources should be included and has revised the definition of common control in the revised proposed rule to clarify this intention.

Comment 24: LIPA and PSEG-LI propose adding a definition of “non-ozone season” under this section and referencing the appropriate rule(s) that will be applicable to the SCCTs referenced under 227-3.1 during this time period. (Commenter: 1973)

Response to Comment 24: The Department disagrees that there needs to be a separate definition for non-ozone season in Subpart 227-3. The definition for ozone-season is sufficient to support the requirements of this regulation. Subpart 227-3 only applies to SCCTs during the ozone season while Subpart 227-2 applies to SCCTs year-round.

Control Requirements (227-3.3)

Comment 25: Is the compliance demonstration with the new SCCT limits during the ozone season based on a 24-hour time period consistent with Part 227-2.6? (Commenter: 1)

Response to Comment 25: Compliance may be demonstrated through the use of CEMs (24-hour time period) or stack test data (1-hour period) and is consistent with Subpart 227-2.6

Comment 26: Do all existing ozone season system averaging rules under 227-2 still apply except for units regulated under 227-3? (Commenter: 1)

Comment 27: Do system averaging rules under 227-2 still apply for units not regulated under 227-3? (Commenter: 3)

Comment 28: Proposed Section 227-3.4(a) regarding “Control Requirements” requires that the proposed NOx emission limits be met based on “a facility-level average of all SCCTs at a facility.” We would like the Department to confirm that the averaging requirement under this regulation is separate and apart from and does not affect any averaging requirement of existing Part 227-2. (Commenter: 1961)

Response to Comments 26-28: Subpart 227-3 includes additional emission requirements for SCCTs during the ozone season. The existing averaging provisions under Subpart 227-2 will still apply to SCCTs as defined in that Subpart.

Comment 29: Consistent with existing emissions averaging rules, is compliance possible during the ozone season by over-controlling a unit and averaging with other uncontrolled units and with units that are not affected sources under Part 227-3? (Commenters: 1, 3)

Comment 30: Can facility-level averaging include diesel engines used for startup (which are not affected sources under Part 227-3) or must SCCTs be averaged alone for the purpose of compliance demonstration during the ozone season? (Commenter: 1)

Response to Comments 29-30: The provisions of 227-3 only allow for averaging with other applicable SCCTs at a facility. In response to comments on the proposal the Department is revising subdivision 227-3.4(a) to clarify this issue.

Comment 31: Can SCCT generators also comply by simply reducing output to the point where they meet the maximum emission limits listed (100 parts per million volume dry (ppmvd) by May 1, 2023)? Please

clarify if this is actually an option and it is just implied, or if this is not possible and the SCCTs must follow one of the two options: “ozone season stop” and “electric storage and renewable energy resource” options. (Commenter: 8)

Response to Comment 31: Reduced output will not result in reduced emission rates and therefore reduced output will not bring an SCCT into compliance or help an SCCT meet the emission limits. All SCCTs must meet the provisions in the regulation. The regulation provides several compliance options and the manners by which these provisions are met are under the purview of the facility owners.

Comment 32: The NO_x Reasonably Available Control Technology (RACT) limits are 50 ppmvd for gas-fired units and 100 ppmvd for oil-fired units. Do individual SCCTs need to meet the 50 ppmvd limit under Subpart 227-2 or the 100 ppmvd under Section 227-3.4(a)(1)? EPA believes the stricter NO_x RACT limit should apply during the ozone season. (Commenter: 1956)

Response to Comment 32: As proposed, Subpart 227-3 does not alter any provisions of Subpart 227-2. Subpart 227-3 includes additional emission requirements for SCCTs during the ozone season only. The existing ozone season averaging provisions under Subpart 227-2 will still apply to SCCTs as defined in that Subpart.

Control Requirements: Averaging

Comment 33: DEC should define how the “facility-level average of all SCCTs” is calculated. (Commenter: 1956)

Comment 34: The facility-level average should be based upon a weighted average (megawatt-hour (MWh-basis)) rather than an arithmetic average. (Commenter: 1956)

Response to Comments 33-34: The intent of subdivision 227-3.4(a) is to allow for facility averaging on a weighted average basis. Based on comments received, subdivision 227-3.4(a) was revised to clarify this issue.

Comment 35: How is a “one-hour average” defined for cases where stack testing is conducted? (Commenter: 1956)

Response to Comment 35: NO_x emission rates will be based on the average rate of three one-hour stack test runs.

Comment 36: If stack testing may be used to demonstrate compliance with emission limits, such testing should be conducted prior to the May 1, 2023 compliance date or at least very soon thereafter. (Commenter: 1956)

Response to Comment 36: The Department currently requires stack testing once during the five-year term of a Title V permit and this regulation will accept those stack tests to demonstrate compliance. The Department expects the results of the most recent stack tests to be reported in the compliance plans.

Comment 37: Do not allow averaging of emission limits at the facility level. The rule should specify NO_x emission limits at the emission unit level instead of at the facility level. (Commenter: 1976)

Comment 38: DEEP recommends that NYDEC assure that the rule prevents trading with existing units.

(Commenter: 1957)

Response to Comments 37-38: Under Subpart 227-3, the Department will not allow full facility averaging but will allow averaging only with other SCCTs at the facility on a 24-hour basis. This provision ensures that lower NOx emission rates are met while providing some flexibility in complying with the requirements of this Subpart. This regulation does not include trading as a commenter suggests, rather, it allows for averaging of emissions between SCCTs only.

Control Requirements: Timing

Comment 39: The DEC should require that the emission standards take effect on a more expedited schedule. (Commenter: 1956)

Comment 40: The new NOx requirements should be phased-in as rapidly as possible in order to protect children and vulnerable adults from the negative health impacts associated with these peaker plants.

(Commenter: 1959)

Comment 41: DEC's proposed standard does not come fully into force until 2025. This is too long to wait. (Commenter: 1959)

Comment 42: In order to allow for a smoother planning process and to reduce uncertainty, we recommend that the DEC extend each compliance deadline by two years. (Commenter: 1969)

Comment 43: System averaging should be phased-out no later than 2021 and full implementation of the new NOx limits should take place no later than May 1, 2023. (Commenter: 1972)

Comment 44: The implementation dates are far too late to address the ozone air quality problems that the shared NNJ-NY-CT non-attainment area is now facing. (Commenter: 1976)

Comment 45: The new NOx limits on peaking units in New York City should take effect as soon as possible. (Commenters: 1972, 2017, 2026)

Comment 46: The sooner New Yorkers are spared exposure to emissions from peaker units the better. (Commenter: 1959)

Response to Comments 39-46: The Department consulted with stakeholders including environmental justice (EJ) organizations, environmental groups, impacted source owners, the NYISO, the Department of Public Service (DPS) and the New York State Energy Research and Development Authority (NYSERDA) during the development of this regulation. The proposed timeframe includes considerations for improving air quality while striving to maintain electric system reliability. The Department has factored in permitting and other issues, such as stack testing and has determined that the compliance schedule in the regulation is appropriate.

Comment 47: We recommend that the 2025 emission limits be revised to 40 ppmvd on gas and 50 ppmvd on oil. The limits are consistent with Connecticut's Phase 2 NOx reduction program. (Commenter: 1969)

Response to Comment 47: The Department considered several options and presented them during the stakeholder process. In addition to the commenter's example, the 2016 Ozone Transport Commission (OTC) Model Rule recommends NOx emission limits 25 ppmvd for gas and 42 ppmvd for oil. The Department believes that the limits in the proposed regulation will result in meaningful NOx reductions in the NYMA and further New York's ozone nonattainment mitigation efforts.

Comment 48: Commenter suggests that some dual fueled SCCTs may meet the proposed NOx targets while running on oil but may not be able to do so while running on natural gas which may force the SCCT to produce more NOx while running on oil to comply with the targets. (Commenter: 1973)

Response to Comment 48: The Department received data from the commenter stating that they may be able to meet oil limits with controls but not the gas limits. However, the Department believes that the control requirements in the regulation will result in lower overall NOx emissions. It is anticipated that sources will operate on oil when it is economical to do so or when directed to by the distribution utility.

Comment 49: The Department should further define and provide the detailed justification for the proposed NOx emissions limits. The Department should provide some flexibility and higher limits in Subpart 227-3. (Commenter: 1975)

Response to Comment 49: The Department believes it has provided sufficient justification for the NOx emission limits in the rulemaking support documents, more specifically the Needs and Benefits section of the Regulatory Impact Statement (RIS). The documentation presented in the RIS demonstrates that SCCTs have contributed significantly to the high ozone readings at downwind monitors. Further, the

Department believes that it has provided sufficient flexibility and compliance options in the regulation to allow for multiple compliance pathways, including averaging with renewable and storage resources.

Comment 50: Prohibit oil firing in dual fuel peaking turbines on predicted high ozone days unless there is a gas curtailment. (Commenter: 1976)

Response to Comment (50): The Department considered multiple options during the development of this regulation. At this time, the Department believes that the NO_x limits in the regulation will result in NO_x emission reductions while providing flexibility to maintain electric system reliability. The Department does not believe that a prohibition on the firing of fuel oil in SCCTs on high ozone days is warranted at this time.

Comment 51: The Department should provide assurances for regulated entities that undertake the expenditure to install water injection controls but still are unable to meet the limits by providing the additional time required to adopt other measures and recoup their investment. Such a provision would provide the requisite certainty to prompt the investment required for timely and substantial reductions in NO_x emissions without undermining grid reliability. (Commenter: 1975)

Response to Comment 51: The regulation requires a compliance plan to be submitted to the Department by March 2, 2020 and contains staggered compliance dates beginning in 2023. Furthermore, the regulation allows for several compliance options. The Department believes that the compliance plans, staggered compliance dates and the options available to affected facilities provides sufficient time and flexibility for each affected facility to comply with Subpart 227-3.

Comment 52: The proposal allows for the prolonged use of older SCCTs and may not assure that New York will meet its obligation to prevent these sources from significantly contributing to nonattainment in downwind states. (Commenter: 1957)

Response to Comment 52: The Department believes that the proposed schedule and compliance requirements set forth in this regulation will result in reduced NOx emissions as expeditiously as practicable without jeopardizing electric system reliability. This regulation combined with other New York strategies will decrease emissions impacts on downwind states.

Compliance Options (227-3.4)

Comment 53: The inclusion of renewable electricity generation as part of compliance plans is a very important part of this regulation. (Commenter: 2)

Comment 54: By rewarding operators who use electric storage, this regulation could help lay the infrastructure for a grid that is more supportive of renewable energy generation. Electric storage would help improve grid reliability and address diurnal and seasonal variations that are concerns with renewables like solar and wind. (Commenter: 2)

Comment 55: We support the inclusion of energy storage and renewable energy within the compliance options. (Commenters: 1957, 1968)

Comment 56: We support the concepts incorporated in 227-3.5(b) “electrical and renewable energy resources” allowing electric storage and renewable energy resources to be averaged with SCCTs to meet emissions limits. (Commenter: 1965)

Comment 57: We support the compliance option outlined in subsection 227-3.5(b)(2) which would provide a strong incentive for the development of renewable energy and energy storage facilities that support the State’s Green New Deal initiative while achieving the desired reductions in NOx emissions. (Commenter: 1973)

Response to Comments 53-57: The Department thanks you for supporting this compliance option. The Department believes this option supports the Governor’s goals for improved air quality and renewable energy and storage infrastructure.

Comment 58: How were the pound per MWh (lb/MWh) standards in Section 227-3.4 calculated? What are the equivalent limits in units of ppmvd? (Commenter: 1956)

Response to Comment 58: The calculation used to convert ppmvd to pounds per million British thermal units (lb/mmBtu) is derived from 40 CFR Part 75 Appendix F. The equation used by the Department is:

$$ppmvd = \frac{\left[\left(\frac{lb}{mmBtu}\right)\right] \times 10^6}{\left[MW\left(\frac{g}{mol}\right)\right]\left[F_{dry}\left(\frac{dscf}{mmBtu}\right)\right]\left[O_2 correction(atm)\right]\left[\frac{1}{\left(0.7302\left(\frac{atm-ft^3}{lb-mol-R}\right)\right)(515R)}\right]}$$

Where:

$ppmvd$ is the concentration in parts per million by volume, dry basis, of NO_x or CO;

MW is the molecular weight for NO_x (= 46 lb/lb-mole) or CO (= 28 lb/lb-mole);

$F_{dry\ factor}$ for natural gas = 8,710 dscf/MM BTU; for residual or fuel oil = 9,190 dscf/MMBTU; and

$O_2\ correction\ factor = (20.9\%)/(20.9\% - O_2\ measured)$; where $O_2\ measured$ is percent oxygen on a dry basis.

The equivalent units are converted between ppmvd to lb/MWh by first converting ppmvd to lb/mmBtu using the equation derived from 40 CFR Part 75 Appendix F. Then, lb/mmBtu is converted to lb/MWh using a heat rate. The Department converted from lb/mmBtu to lb/MWh using the average heat rate for New York SCCTs, 15,000 mmBtu/MWh.

Comment 59: When using energy generated to calculate an equivalent emission rate, is the electricity generated (MWh) based on gross energy produced or net energy produced? (Commenter: 1956)

Response to Comment 59: Electricity generated is net energy produced as supported by the regulatory language in paragraph 227-3.5(a)(3) of Subpart 227-3, which states: “energy delivered....”

Comment 60: There would be no additional benefit accrued by the rule if combustion turbine emissions are averaged with clean sources that would operate regardless of the rule. (Commenter: 1957)

Comment 61: DEC should amend the proposal to require that ‘renewable generation resources’ and ‘electric storage resources’ available for averaging must be units that began construction after the date of the rule adoption. (Commenter: 1957)

Response to Comments 60-61: The Department believes that owners of SCCTs have not typically invested in renewable or storage resources under common control. The Department believes that providing this compliance option, as written, will bring new renewable and storage resources into New York's infrastructure.

Comment 62: Preliminary analysis indicates that it may be feasible to retrofit the units at both Gowanus and Narrows facilities in order to comply with the proposed regulations and commenter states that they will continue to pursue such plans for compliance. (Commenter: 1961)

Response to Comment 62: Thank you for the comment. In response, the indirect references to the Gowanus and Narrows facilities have been removed from the supporting documents.

Compliance Options: Charging Storage

Comment 63: We recommend that the charging of storage devices be limited to 'renewable generation resources' or, at very least, that the emissions from charging be attributed to the storage device for averaging as it is discharged. Charging of batteries from barely compliant turbines or other high emitting units in the days or hours prior to an ozone episode will do little to alleviate emissions of critical ozone precursors and may worsen a high ozone episode by increasing the elevated reservoir of ozone. (Commenter: 1957)

Comment 64: Do not allow fossil fuel-powered plants to charge storage. (Commenters: 14-1955, 1958, 2003-2015, 2031)

Response to Comments 63-64: The Department consulted with stakeholders including, EJ organizations, environmental groups, impacted source owners, the NYISO, DPS and NYSERDA during the development of this regulation. The option to offer storage and renewable resources is expected to reduce NO_x emissions and allowing charging from different sources is intended to address reliability. While some charging may come from fossil fuel units, from an economic perspective, the Department believes that recharging battery storage units with power generated by SCCTs will be cost prohibitive.

Compliance Options: Proximity

Comment 65: The one-half mile restriction in Section 227-3.5(b) for renewable and storage projects which may be used by an SCCT owner in order to comply with the Part 227-3 standards is arbitrary and overly restrictive. (Commenter: 1961)

Comment 66: Electric storage and renewable energy projects located more than one-half mile from a SCCT facility should be allowed for compliance with Part 227-3 if the SCCT owners can demonstrate that such projects will service the communities where the SCCTs are located. (Commenter: 1961)

Comment 67: Commenter is concerned that the proposed conditions set forth in paragraph 227-3.5(b)(2) will not fully recognize the ability for the objective to be achieved because a project may be in a location that is within “electrical proximity” of existing generation but still would not qualify for “averaging” under the proposed rule because it is not within a ½ mile radius. (Commenter: 1965)

Comment 68: Locations have been identified in the Long Island electric system where resources could be connected to substations other than the SCCTs substation and still directly reduce the dispatch of the SCCT. (Commenter: 1965)

Comment 69: We recommend the following modifications to 227-3.5 to enable “electrical proximity” resources to be averaged:

The first sub-clause identified above should be replaced with “(i) The renewable generation resource and/or the electric storage resource must be directly connected to the same physical substation as the SCCT with which it is being averaged or to a substation that is electrically proximate to the SCCT substation as certified by the NYISO.” The absence of such flexibility may significantly limit the opportunity for storage and renewable energy resources to facilitate compliance with the proposed rule. To do so, the commenter suggests that NYISO and stakeholders work to define a test that a transmission owner could employ to demonstrate to NYISO that the energy produced by electrically proximate renewable and storage resources will be able to reduce operation of their intended SCCT. (Commenters: 1965, 1973)

Comment 70: The numbering in subsection 227-3.5(B)(2) (i)-(iii) should be revised to make the requirement clear that physical connection to the same substation is not necessary. Specifically, the wording should make clear that a renewable generation resource and/or the electric storage resource must be either: (i) directly connected to the same physical substation as the SCCT, or (ii) within one-half mile radius of the SCCT, with which it is being averaged. Another option would be to eliminate (i), the need to be physically connected to same substation, to allow more flexibility in the regulation will encourage use of this compliance option. (Commenter: 1975)

Response to Comments 65-70: The Department worked with multiple stakeholders on the issue of where to allow placement of renewable and storage resources under this compliance option. The Department felt it was important that the emissions reductions realized benefit the locally impacted communities. The language presented in the proposed rule resulted from stakeholder input and is not arbitrary. The one-half mile radius is derived from 6 NYCRR Part 487.4(a)¹ which refers to assessing impacts on communities, it states: “At a minimum, the impact study area must be the geographic area that is encompassed within a one-half mile radius around the proposed location of the facility.”

Comment 71: Biodiesel could significantly help existing combustion turbines achieve compliance without major capital expense and encourages NYSDEC to recognize and implement a significant role for biodiesel under its proposed NOx regulations for combustion turbines. (Commenter: 1962)

Comment 72: DEC could establish an additional compliance option, using biodiesel, for combustion turbines that might be designated by NYISO as a reliability resource. (Commenter: 1962)

Response to Comments 71-72: The Department believes that it has afforded each facility with the flexibility to determine how to comply with the regulation. Each affected facility will decide which fuel(s) will be used as part of their compliance plans.

Comment 73: Con Edison requests that the Department revise the definition of the “ozone season stop” compliance option in the proposed 227-3.5(a) to make clear that the units can be available to provide

¹ 6 NYCRR Part 487. “Analyzing Environmental Justice Issues in Siting of Major Electric Generating Facilities pursuant to Public Service Law Article 10”.

emergency service during the ozone season and also bid into the wholesale market the rest of the year. Thus, to conform proposed 227-3.5(a) with the applicability requirements in proposed 227-3.1, we request that the “ozone season stop” be rewritten as follows: ‘Ozone season stop.’ An owner or operator of an existing SCCT may opt to comply with this Subpart by not bidding the SCCTS into the NYISO wholesale market during the ozone season. (Commenter: 1967)

Response to Comment 73: The Department agrees that black start sources should be exempt from the requirements of this rule. In response to the comments regarding black start sources, the Department proposes to revise Section 227-3.1, “Applicability,” to exempt black start resources. The Department has also revised Section 3.2, “Definitions,” to add a definition for ‘black start resource.’

The Department’s intent is to capture all SCCTs with nameplate ratings of 15 MW or greater that inject energy into the grid. In response to these comments and to clarify the intent, the Department revised Section 227-3.1.

Comment 74: Commenters caution that while current energy storage technology could serve as a complement to a peaking turbine, it may not serve as a complete replacement for the capacity provided by such a turbine. Peaks during the hottest months can run as long as twelve hours – from noon to midnight – over consecutive days and the current capacity of energy storage units is not sufficient to meet energy demands during such a sustained multi-day period. As a result, a proposal by an SCCT owner to install energy storage equipment as a replacement option for a particular turbine may be inadequate to meet reliability requirements. (Commenters: 1967, 1970)

Response to Comment 74: The Department has provided multiple compliance options including averaging with renewable and storage resources. Each affected source has the flexibility to determine

how best to comply with the regulation. In addition, the regulation requires a compliance plan which we anticipate will be considered by the NYISO during the 2020 RNA and the results of that analysis may identify reliability concerns that can be addressed either through the development of market solutions or, if necessary, through the reliability provisions in section 227-3.6.

Comment 75: The “effective rate” for facilities that utilize the “electric storage and renewable energy resources” pathway to compliance must result in actual and substantial reductions in NOx emissions.
(Commenter: 1968)

Response to Comment 75: The Department agrees and believes that the rule, as written, will accomplish that goal.

Comment 76: We urge DEC to modify the second compliance option in the regulation – which permits averaging of output-based daily nitrogen oxide emissions with approved battery storage or renewable energy – by limiting the allowable averaging period to the NYISOs definition of the “Peak Load Window.”
(Commenter: 1971)

Comment 77: Averaging of SCCT emissions with renewables or battery storage should be limited to peak hours. (Commenter: 2025)

Response to Comments 76-77: The Department considers the proposed daily compliance metric to be the best approach to reduce emissions while providing for operational flexibility for affected sources.

The Draft NYISO 2019 Master Plan² is in draft form and currently calls for a deliverable for a “A report by the consultant and NYISO recommendations for the durations, capacity values, and Peak Load Windows associated with Resources with Energy Duration Limitations.” Therefore, a current “Peak Load Window” is not available for assessment. Furthermore, peak times vary from one area to the next which is especially pronounced in downstate communities where the Staten Island peak load may go well into the night while the Manhattan peak load is early afternoon. Setting a peak load requirement is not well defined currently.

For commenters suggesting an averaging of renewables for a timeframe of less than 24 hours, the Department did seek further information to assess this suggestion. While the commenter did not specify concerns regarding the 24-hour average, the Department researched several possible concerns. If the commenter is concerned that storage sources will charge during peak times using older high emitting sources, time of use (TOU) costs of electricity do not support charging storage resources during peak hours during the day and discharging at night. Consolidated Edison’s TOU system is discussed in an article in Habitat Magazine as follows: “(f)rom June 1 through September 30, electricity during the “off-peak” hours of midnight to 8 AM will cost 1.54 cents per kilowatt/hour. During the “peak” hours of 8 A.M. to midnight, the rate will soar to 21.80 cents. Rates will be even higher during the “super-peak hours” of 2 to 6 P.M. on summertime weekdays. (During non-summer months, the off-peak rate is unchanged, and the peak rate is 8.07 cents. Customers who are not in the time-of-use program pay roughly 18 cents per kilowatt/hour.).”³ The Department does not believe that owners of affected sources would choose to charge storage resources at 21.80 cents per kWh and then sell that power at 1.54 cents per kWh. This difference in cost does not include any storage loss or invested capital.

² <https://www.nyiso.com/documents/20142/6665211/2019%20Master%20Plan%20draft%20v2.pdf/d5e26efd-3860-ec4c-ddbd-9c39d4161d3f>

³ <https://www.habitatmag.com/Publication-Content/Legal-Financial/2018/2018-April/Time-of-Use>

If the commenter was concerned about battery storage performing multiple discharges so that older high emitting sources may emit more, the Department reviewed available data and consulted with the DPS and NYSERDA with respect to the operation of the SCCTs and what is expected with the averaging option. Based on the information gathered and the newly released Peak Study Analysis⁴ developed by NYSERDA and filed by DPS on July 1, 2019, the Department believes that a 24-hour time frame is reasonable. However, the regulation requires the submission of data on the operation of renewable energy and energy storage resources to the Department annually. The Department will monitor how the averaging option is being utilized to ensure that emission reductions are being realized. If the Department finds that this option allows for circumvention of the rule, the Department may propose changes through the SAPA rulemaking process.

Comment 78: We recommend that the following provisions be put into Subpart 227-3 so that exceedance of the emissions limits would not be treated as a violation under either one of the following conditions:

a) avoidance of electric service curtailment (also known as load shedding) would be a permissible occurrence for emissions exceedance, provided that the operation of the SCCT in such an event is requested by the NYISO or local system operator as an emergency operating procedure before load shedding, but after all other remedial steps have been taken.

⁴ NYSDPS website: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7BFDE2C318-277F-4701-B7D6-C70FCE0C6266%7D>

b) The emissions exceedance would not have occurred but for the unexpected failure of equipment or intermittency of supply issues occurring due to wind or solar availability being lower than forecast; and such event(s) could not have been predicted in time to adjust the operation of the SCCT. Absent such provisions, SCCT owners may perceive risks in this compliance option that they are unable to control. (Commenter: 1973)

Comment 79: National Grid appreciates DEC's concept to incorporate renewable energy and energy storage as partial solutions to help reduce emissions from the peaking turbines. However, given the intermittent nature of renewable energy and/or operational issues with this new technology, it is possible that an affected source complying with these regulations in accordance with Section 227-3.5(b) may be required to run in order to avoid a load shedding situation if the renewable resource is not available or lower than forecast. National Grid is requesting that 227-3.7(b)(3) be modified to identify that in this limited situation, emissions that result from this scenario would be exempt from the emission standards of Part 227-3.5(b). (Commenter: 1969)

Response to Comments 78-79: The Department does not agree that SCCTs that cannot comply with the requirements should be allowed to operate to provide the services that the commenters describe. The intent of the regulations was to capture all SCCTs that provide energy to the grid. Consistent with this intent, the applicability section has been revised accordingly. The Department expects that the NYISO and/or transmission/distribution owners will plan for these services based on the information contained in each facility's compliance plan and outcomes from the NYISO's 2020 RNA by looking for market solutions, utilizing other sources or by adding technology to support those services. In addition, the regulation provides for a reliability extension when solutions cannot be put into place within the time requirements of the regulation and a reliability need has been identified.

Comment 80: Do not allow old peaker plants to be replaced with new fossil-fuel burning peakers.

(Commenters: 14-1955, 2003-2015)

Response to Comment 80: The Department consulted with stakeholders including, EJ organizations, environmental groups, impacted source owners, the NYISO, DPS and NYSERDA during the development of this regulation. The Department believes that allowing the flexibility for multiple compliance pathways, including repowering with significantly lower emitting sources will result in lowered NO_x emissions while ensuring electric grid reliability.

It should be noted that such repowering projects would also require environmental review pursuant to the State Environmental Quality Review Act, ECL Article 8 (SEQRA) or may be subject to review and approval by the State Board on Electric Generation Siting and the Environment pursuant to Article 10 of the Public Service Law (Article 10). Both the SEQRA and Article 10 review process would consider carbon dioxide (CO₂) emissions as well as additional potential environmental impacts associated with any repowering proposal. The Department participates as a statutory party in all Article 10 proceedings, including to ensure compliance with all applicable environmental standards. In addition, the Article 10 process includes numerous opportunities for public input.

Comment 81: The term “sources” is not defined but is used in 227-3.5 in reference to averaging renewable and electric storage resources with emissions of all SCCTs at the permitted facility. However, the permitted facility may also have electric steam units and therefore the effective rate should account for the MWh of steam units in the denominator and the corresponding NO_x emissions each day of the steam units at the permitted facility in the numerator. Providing for these other units at the same

facility allows for obtaining the NO_x reductions sought by the proposed peaker rule from the facility at potentially lower cost to ratepayers. (Commenter: 1975)

Response to Comment 81: In the proposed revisions to the regulation, the term ‘sources’ has been replaced with the term ‘emission sources’ which is defined at 6 NYCRR Part 200.1(f) as: “Any apparatus, contrivance or machine capable of causing emission of any air contaminant to the outdoor atmosphere, including any appurtenant exhaust system or air cleaning device. Where a process at an emission unit uses more than one apparatus, contrivance or machine in combination, the combination may be considered a single emission source.”

To better address emissions from SCCTs, the emissions averaging provisions under Subpart 227-3 are limited to only SCCTs at each facility.

Comment 82: Additional flexibility should be incorporated to allow for performance-based compliance alternatives. For example, New Jersey’s compliance demonstration protocol allowed for “[a]ny other measure, approved by the Department that provides NO_x emission reductions and ozone air quality benefits to New Jersey. The Model OTC Rule provides for an alternative RACT determination. Similarly, the Department should provide flexibility for an alternative of net air quality benefit projects under common control upon demonstration that the cost exceeds an economic threshold of \$5,885 per ton of NO_x removed, which is the Department’s inflation adjusted cost effectiveness threshold for RACT. (Commenter: 1975)

Response to Comment 82: The regulation places additional ozone season requirements on SCCTs. It is not a RACT regulation. The Department believes that it has provided sufficient flexibility in the

regulation which allows for multiple compliance pathways including averaging with renewable and storage resources.

Comment 83: Compliance with Subpart 227-3 should not occur simply by averaging emissions from existing SCCTs with battery storage (Commenter: 2029).

Response to Comment 83: Averaging emissions of SCCTs with battery storage is only one compliance option of this proposed regulation. The NOx limits in the proposed regulation are stringent and the Department provides multiple compliance options in the proposed regulation.

Electric System Reliability

Comment 84: We want to express our strong support for Part 227-3.6 and granting the NYISO the ability to designate resources and permitting them to continue to operate if necessary to maintain electric grid reliability. (Commenter: 11)

Comment 85: National Grid recommends that the DEC retain the provisions of 227-3.6 Electric System Reliability. (Commenter: 1969)

Comment 86: The New York State Reliability Council (NYSRC) respectfully requests that the DEC implement the final rule as expeditiously as possible. The timely implementation of the final rule will provide the NYISO's Reliability Planning Process and the state's utilities and energy providers the ability to ensure that the resources necessary to maintain electric system reliability are available. (Commenter: 11)

Comment 87: Timely adoption of a final rule that includes the proposed compliance schedule is necessary for the NYISO and affected transmission owners to develop effective plans to maintain electric system reliability. (Commenter: 1964)

Comment 88: The DEC should adopt the proposed rule provision enabling the NYISO to select generators needed for reliability to continue operating until permanent solutions can be built. (Commenter: 1964)

Comment 89: The Long Island Power Authority (LIPA) and Public Service Electric and Gas – Long Island (PSEG-LI) recommend that the DEC coordinate with NYISO such that the timing and implementation of these regulations coincide with the NYISO Comprehensive Resource Planning and Generator Deactivation Processes. (Commenter: 1973)

Comment 90: Approximately 3,300 MW of generation could be impacted by the rule. If this generation were to withdraw from NYISO's market as a result of the implementation of the rule, the addition of substantial resources in both New York City and on Long Island may be necessary in order to maintain the reliability of the state's bulk power electric system. These needed resources could be in the form of new generation or transmission facilities, or load reduction measures. The planning and development of these resources could take years to complete. (Commenters: 11, 13)

Comment 91: The NYISO 2019-2028 Comprehensive Reliability Plan (CRP) addresses the possible requirements of this proposal and concluded that if all affected sources chose to shut down that there

would be reliability issues with respect to transmission and capacity. These concerns must be incorporated in the implementation of this rule. (Commenter: 1960)

Comment 92: My biggest concern is that NYISO has identified numerous reliability issues, the schedules for retiring Indian Point, the NYISO RNA process and implementing solutions may be incompatible with the compliance plan in Part 227-3.6. I encourage DEC to ensure that they are compatible. (Commenter: 1960)

Response to Comments 84-92: The Department thanks you for your comments. The March 2, 2020 compliance date for submitting Compliance Plans was coordinated with stakeholders, including the NYISO, to support the upcoming NYISO 2020 RNA and allow flexibility to maintain reliability of the electrical grid.

The Department expects that the NYISO and/or transmission/distribution owners will plan for any issues based on the information contained in each facility's compliance plan and outcomes from the NYISO's 2020 RNA by looking for market solutions, utilizing other sources or by adding technology to ensure reliability. In addition, the regulation provides for a reliability extension when solutions cannot be put into place and a need has been identified.

Comment 93: Section 227-3.6 "Electric System Reliability" should be altered because it hinders the conversion of the electrical grid towards renewable energy. (Commenter: 2)

Response to Comment 93: The Department consulted with stakeholders including EJ communities, environmental groups, impacted source owners, the NYISO, DPS and NYSERDA during the development

of this regulation. The Department has provided multiple compliance options including averaging with renewable and storage resources to ensure reduced NOx emissions while maintaining electric grid reliability. The Department disagrees with the commenter that the proposed regulation hinders the conversion of the electrical grid to renewable energy. Incentives for installing renewable energy and energy storage are included in the proposed regulation and if utilized, would result in a step towards reaching the goal cited in the comment.

Comment 94: A provision should be included in the rule to account for the inevitable delays of permitting in New York City that could easily delay implementation of solutions to all the reliability issues detailed by NYISO in the CRP and that may arise in the NYISO RNA. (Commenter: 1960)

Comment 95: It is important for the Department to retain the latitude to address the potential for unforeseen events beyond the four-year extension period described. We recommend the addition of a new paragraph 227-3.6(c) as follows:

“(c) On a case-by-case basis, the Department may extend the compliance deadlines beyond the time frames allotted in 227-3.6(a) and (b) if all of the provisions of those sections have been met but the permanent solution is not yet online.” (Commenter: 1967)

Response to Comments 94-95: The Department consulted with stakeholders including impacted source owners, the NYISO, DPS and NYSERDA during the development of this regulation. The Department believes that the provisions set forth in paragraph 227-3.5(b) reflect the outcome of the stakeholder process and allows for multiple options for compliance without the need for additional extensions and delayed compliance. Subpart 227-3 requires a compliance plan in 2020 and NOx emission limit

requirements beginning in 2023 and 2025. With an up to four-year extension, this would result in compliance in 2027 and 2029 and the Department believes that this gives affected sources enough time to comply.

Comment 96: Compliance options should only be considered in the context of addressing electric system reliability and an overarching, compelling and independent demonstration that such continued operation of any given peaking unit is critical to system reliability. This analysis must demonstrate energy storage and other clean energy resources could not feasibly meet the system needs.

(Commenter: 1972)

Response to 96: The short- and long-term solutions to system reliability issues will be developed as part of the NYISO's Comprehensive Reliability Plan (CRP).

Comment 97: The proposed rule should make clear that the local transmission/distribution owner may designate an SCCT as a "reliability source" even where an owner has not self-identified its SCCT as such in the compliance plan submitted under proposed 227-3.3(b). (Commenter: 1967)

Comment 98: As SCCTs providing power to a local transmission/distribution owner comply with proposed Part 227-3, circumstances may arise that lead to a new determination that a specific unit has become a "reliability source" needed to temporarily resolve a reliability need after a compliance plan is submitted. Proposed 227-3.6(b) as written could be interpreted to require NYISO to separately determine that a reliability need exists so as to preclude a transmission/distribution owner from triggering the additional two-year extension it deems necessary. Since NYISO would have a role in designating both a reliability source and the selection of a permanent solution, Con Edison requests that

clause (b)(1) be deleted to remove this potential conflict and obstacle to an orderly phase out of non-compliant SCCTs. (Commenter: 1967)

Response to Comments 97-98: To clarify its intent, the Department has added transmission/distribution owner to Subpart 227-3.6(b)(1) in the proposed revisions to the regulation.

Comment 99: We urge DEC to further ensure the meaningful inclusion of Environmental Justice communities in exceptions for reliability, actual and substantial reductions in NOx emissions and just transition to a fossil-fuel free future. (Commenter: 1968)

Comment 100: Exceptions for reliability must require stakeholder involvement and agency transparency. (Commenters: 1968, 2031)

Comment 101: The process by which NYISO and electric utilities may designate an SCCT as a “reliability source” so as to permit temporary noncompliance must require consultation with Environmental Justice community stakeholders, transparency, and mitigation. (Commenter: 1968)

Response to Comments 99-101: The NYISO’s CRP is developed through an open stakeholder process where EJ groups may participate. During the CRP process, the issues which the commenters raised are typically addressed. The CRP is typically developed over many months offering multiple meetings where Environmental Justice community stakeholders may participate and offer feedback.

Comment 102: Another compliance option would be to allow an affected source to demonstrate compliance by showing that its total NO_x emissions were reduced during the ozone season as a result of energy storage being dispatched either on-site or nearby. Importantly, we believe that such an alternative compliance option should be limited to only those units determined necessary for reliability in an effort to minimize the public health impacts of their continued operations. (Commenter: 1972)

Response to Comment 102: As discussed in the Needs and Benefits Section of the RIS, in order to reduce the design values, emissions on high ozone days must be reduced. Therefore, a daily emissions standard has been proposed. Limiting the NO_x emissions from SCCTs subject to this regulation on a seasonal basis (rather than daily) will likely have little impact on the ozone design values. The Department believes that by adopting stringent emission rates as set forth in the proposed regulation, the design values may be reduced significantly.

Electric System Reliability: Extension timing

Comment 103: DEC should implement a process to allow further extension of individual SCCT compliance deadlines in the event that the NYISO determined that additional time is needed to complete a permanent reliability solution. (Commenter: 1973)

Comment 104: While the proposed peaker rule provides resources necessary for reliability an additional 2-4 years to operate beyond the May 1, 2023 effective date, the 2-4 year extension is arbitrary. (Commenter: 1975)

Comment 105: Resources necessary for reliability should be able to continue to operate until appropriate solutions are put into place. (Commenter: 1975)

Comment 106: The 2-4 year extension for continued operation of units needed for reliability should be extended to allow those units to operate until a solution is in place. (Commenter: 1975)

Response to Comments 103-106: The Department consulted with stakeholders including source owners, the NYISO, DPS and NYSERDA during the development of this regulation. The Department believes that new resources needed to resolve a reliability need(s) will be on line within the schedule set forth in Subpart 227-3.

Comment 107: Do not allow a blanket exemption from emission limits for reliability concerns. Instead, allow facility specific emission limits or alternative emission limits. (Commenter: 1976)

Comment 108: The regulation should be clarified to state that the emission limits in Section 227-3.4 do not apply to an SCCT while it is continuing to operate under Section 227-3.6 (i.e. that it is not operating out of compliance.) (Commenter: 1975)

Response to Comments 107-108: The Electric System Reliability section supports renewable and storage resources in preparation for a future electrical grid with lower or zero emitting electricity generating resources. SCCTs that operate pursuant to 227-3.6 will be operating for a limited period of time to address a reliability need(s). The Department added language in Section 227-3.6 to clarify that the emission limits in 227-3.4 do not apply to an SCCT while it is continuing to operate under 227-3.6.

Comment 109: It is unclear if the common control definition and this requirement of the compliance plan apply to restrict management of an electric energy storage resources state of charge. If it is intended to restrict the management of the state of charge to the owner or operator then it may conflict with what is eventually approved for NYISO's compliance with FERC Order 841. The Department should make it clear that the proposed peaker rule does not require that an electric storage resource self-manage its state of charge. (Commenter: 1975)

Response to Comment 109: The Department consulted with stakeholders including impacted source owners, the NYISO, PSC and NYSERDA during the development of this regulation. As written the regulation language does not require that an electric storage source must self-manage its state of charge.

Compliance Plan: Schedule

Comment 110: The DEC should make sure that the timing of this regulation enables the development of appropriate resources after a full evaluation of the impact of Indian Point closure. (Commenter: 1960)

Comment 111: The DEC should adopt the compliance schedule in the proposed rule to enable the NYISO to plan for the long-term reliability of the New York bulk power system. (Commenter: 1964)

Comment 112: The Department's regulations should not, in effect, impose a deadline on the PSC in adopting and implementing a plan to address unit retirement. The extension in section 227-3.6(b) of

proposed peaker rule should coincide with the period actually required for the permanent solution coming online. (Commenter: 1975)

Response to Comments 110-112: The Department consulted with stakeholders including impacted source owners, the NYISO, DPS and NYSERDA during the development of this regulation. The March 2, 2020 compliance plan date was selected specifically to coincide with the development of NYISO's 2020 RNA schedule which begins in March of 2020. The extension in Subpart 227-3.6(b) was developed with the consideration of the amount of time required for a permanent solution to come online.

Compliance Plan: Modifications

Comment 113: LIPA and PSEG-LI recommend that the DEC consider adding provisions to the regulations which would allow owners to amend or update their compliance plans to account for changing conditions and unforeseeable events. (Commenter: 1973)

Comment 114: The Department should clarify if the March 2, 2020 compliance plan submission statement can be amended. (Commenter: 1975)

Response to Comments 113-114: The March 2, 2020 date for submitting compliance plans corresponds with NYISO's 2020 RNA schedule. The Department expects that the NYISO will use these compliance plans in the development of the 2020 RNA. To ensure that the 2020 RNA produces a meaningful and dependable analysis, the Department does not believe that provisions to amend compliance plans should be included in the regulation.

Permitting

Comment 115: I encourage DEC to fully support active proposals for re-powering projects.

(Commenter: 1960)

Response to Comment 115: The Department thanks you for your comment and will continue to review permit applications as set forth in the Environmental Conservation Law and applicable regulations.

Comment 116: We recommend that the term “common control of the permittee” be modified to “common control.” The compliance plan submitted by the affected facility owner would then be required to identify the entity that has common control. (Commenter: 1969)

Comment 117: LIPA and PSEG-LI propose that the phrase “of the permittee” be deleted in order to be compatible with the concept of common control in section 227-3.3(b)(5), which refers to the entity to whom dispatch rights have been provided. (Commenter: 1973)

Response to Comments 116-117: The Department’s relationship with affected sources is through a permit with the associated permittee. The Department disagrees with the requested removal of the phrase “of the permittee” from the regulation language. However, the Department did make changes to Subpart 227-3.3 to address any confusion with entities by removing the language referencing the ability to bid into the NYISO wholesale market.

Comment 118: It is not clear if the Department intends to limit the corporate entity undertaking the development of renewable or storage resources to the permittee. The requirements in 227-3.3(b)(5), that the “entity that owns the asset must provide a letter regarding dispatch rights,” suggest that this is not the intent. Restricting ownership to the permittee would unnecessarily restrict intra-company organization and project development. The use of special purpose entities for project development is not unusual and in many instances required. The Department should clarify that common control by an ultimate parent entity is sufficient for the compliance option of average output-based emission limits. (Commenter: 1975)

Response to Comment 118: The Department does not intend to limit the corporate entity undertaking the development of renewable or storage resources to the permittee. As stated in the regulation, the output-based emission averaging may include resources under common control with the affected SCCT. The Department has revised the language in Subpart 227-3.3(b)(5) to clarify that both emission sources and renewable/storage resources may be averaged.

A permittee is not required to own or operate a renewable energy or energy storage resource. However, it would need to have the ability to control the quantity of energy, renewable energy or energy storage resources inject into the grid in order to comply with the provisions of Subpart 227-3.5.

Comment 119: Under the proposed peaker rule, the compliance plan must be submitted by March 2, 2020 and incorporated into the facilities existing operating permit prior to May 1, 2023. Similarly, the proposal requires that the “ozone season stop” compliance option be incorporated into the permit by the applicable compliance deadline. However, applicants do not control the issuance of the permits. It should be sufficient that the applicant submits an application by a date certain. (Commenter: 1975)

Comments 120: The proposed peaker rule should be modified to incorporate an assurance provision that after a regulated entity has committed the resources to attain compliance, rather than elect to retire a unit, that delays that can arise in obtaining the necessary governmental approvals or equipment procurement and construction will not result in non-compliance. Section 227-3.4(a) can be modified to provide the Department with this flexibility by inserting “unless the Department has approved a phased compliance plan or an order or the permit provides otherwise,” in Sections 227-3.4(a) and (b)(1).

(Commenter: 1975)

Response to Comments 119-120: The Department believes that enough time has been allowed in the regulation to address permitting and reliability. In the event that a Title V permit is not issued by the 2023 or 2025 compliance date for a specific SCCT such SCCT must be operated or retired as specified in the compliance plan.

Comment 121: The proposed peaker rule should include sufficient flexibility so as not to undermine mechanisms adopted by PSC to advance the integration of energy storage and distributed energy resources and to adapt to the development of the NYISO’s compliance with FERC Order 841.

(Commenter: 1975)

Response to Comment 121: The Department consulted with DPS during this rulemaking process and will continue to do so during the implementation phase of Subpart 227-3. As such, the Department does not believe that any provisions of the regulation will impact or undermine the mechanisms adopted by PSC to advance the integration of energy storage and distributed energy resources. Rather, the Department believes that this regulation will support DPS goals.

Comment 122: A renewable energy or energy storage project under development for purposes of compliance with Section 227-3.5 may not yet have completed the interconnection process by March 2, 2020. The Department should clarify that this requirement does not limit renewable resources and electric storage resources available to averaging only to those that already have completed the interconnection process by March 2, 2020. (Commenter: 1975)

Response to Comment 122: As written, the regulation allows for renewable and storage resources to be used in averaging regardless of the date that they complete the interconnection process.

Comment 123: The proposed peaker rule should be revised to encourage new investment by acknowledging that not all development plans proceed according to schedule or achieve the desired results. A review of the pace and outcome of the Article 10 proceedings bears out that such implementation flexibility is warranted. (Commenter: 1975)

Response to Comment 123: The compliance timeframes in the regulation were developed with multiple stakeholders including DPS and offers implementation flexibility. The Department believes that there is sufficient time to comply with the regulatory requirements even when considering the current Article 10 process. The Department believes that the provisions set forth in paragraph 227-3.5(b) reflect the outcome of the stakeholder process and allows for multiple options for compliance without the need for additional extensions and delayed compliance. Subpart 227-3 requires a compliance plan in 2020 and NOx emission limit requirements beginning in 2023 and 2025. With an up to four-year extension, this would result in compliance in 2027 and 2029 and the Department believes that this gives affected sources enough time to comply.

Comment 124: The installation of emission controls for NO_x on existing units, particularly front-end controls such as water injection, will likely result in increased CO emissions. The Department should consider exempting the installation of the NO_x reduction controls in compliance with the proposed peaker rule from Part 231 as a pollution control project. Absent clarity on the exemption of such controls from modeling, the undertaking of the investment in front end controls also face a highly uncertain timeline. Companies cannot begin site preparation without a revised permit. There will not be enough time to complete engineering, procurement, construction, and start-up of any conceivable installations to meet the schedule absent such steps to facilitate permitting. (Commenter: 1975)

Response to Comment 124: 6 NYCRR Part 231 does not allow exemptions for pollution control projects. However, the Department has determined, as part of the development of Subpart 227-3, that reductions in NO_x emissions were environmentally beneficial and that associated potential and minor increases in other pollutants (e.g., CO) are acceptable. Based on this determination, no new source review evaluations under Part 231 will be required for increases in emissions of another pollutant. Regardless of whether a facility is subject to Part 231, modeling is required to demonstrate that activities at a facility do not contravene a NAAQS.

Environmental Justice

Comment 125: SCCTs subject to Subpart 227-3 are clustered in EJ communities, where poor air quality has the highest health impacts. This proposed regulation will directly improve the lives of some of the City's most vulnerable residents. (Commenters: 1959, 2030)

Response to Comment 125: The Department considered this when formulating the regulation and agrees that it will help to improve air quality in environmental justice communities.

Clean Air Act

Comment 126: DEEP encourages DEC to finalize this rule, and others proposed in its August 2018 state implementation plan to reduce interstate pollution transport, without further delay. (Commenters: 1957)

Response to Comment 126: The Department intends to finalize the regulation as expeditiously as practicable while ensuring all SAPA requirements are met.

Comment 127: The timeframe for implementation of the rule should be condensed to be more consistent with the attainment dates for the nonattainment area. (Commenter: 1957)

Response to Comment 127: The Department consulted with stakeholders including EJ communities, environmental groups, impacted source owners, the NYISO, DPS and NYSERDA during the development of this regulation. The proposed timeframe includes considerations for improving air quality while striving to maintain electric system reliability. The Department has factored in permitting and other issues, such as stack testing and has determined that the timing in the regulation is appropriate.

Comment 128: The downstate peaking turbines need to be replaced as part of the process of ozone attainment. (Commenter: 1960)

Response to Comment 128: The Department has provided multiple compliance pathways including averaging with renewable and storage resources. Each affected source has the flexibility to determine how best to comply with the regulation. One possible option may involve the replacement of peaking turbines.

Comment 129: The Department has not shown the proposed rule will put the State in compliance with the regional ozone requirements. (Commenter: 1975)

Comment 130: NYSDEC needs to adopt control measures for the area to move towards attainment of both, 2008 75 ppb and 2015 70 ppb, ozone NAAQS as expeditiously as possible. (Commenter: 1976)

Response to Comments 129-130: As stated in the RIS, the proposed regulation is a step towards attaining the ozone standards in the New York City metropolitan area. It is estimated that this regulation could reduce ozone levels at downwind monitors by as much as 4.8 parts per billion on high ozone days.

It should be noted that the Department has a number of regulatory initiatives in progress to further reduce ozone precursor emissions of both NO_x and volatile organic compounds. In addition, the Department, working with the Office of the Attorney General and other states in the northeast, is pursuing a number of remedies under the Clean Air Act to press EPA to address transport into New York.

Comment 131: Ensure that emission sources comply with requirements of all NAAQS, including 1-hour NO₂ and 1-hour sulfur dioxide. (Commenter: 1976)

Response to Comment 131: Thank you for your comment. The Department has proposed this Subpart to address air quality with respect to nonattainment of the ozone standard and recognizes that reduced NOx emissions will positively impact other NAAQS.

Comment 132: What is the magnitude of the emissions on the high ozone days (2011-2017) from older SCCTs that are not subject to the rule? (Commenter: 1956)

Response to Comment 132: This regulation and the analysis associated with it focused on emissions on what are sometimes known as high electric demand days or high ozone days. These sources input electricity into the grid. The Department does not believe that there are significant emission sources outside of these parameters, the Department focused on known and permitted SCCTs with emissions data known to impact downwind air monitors.

Comment 133: DEEP cautions NYDEC that this rule may not preclude the need for Clean Air Act petitions against these sources. (Commenter: 1957)

Response to Comment 133: The Department takes note of the comment and believes that this regulation will result in significant NOx reductions from these sources.

Replace SCCTs with storage and renewables only

Comment 134: The rule must be framed as a step towards the goal of phasing out fossil fuel burning infrastructure and justly transitioning to renewable and resilient energy resources in a manner that achieves equitable air quality and community resilience. (Commenter: 1968)

Comment 135: The proposed regulation must be paired with aggressive efforts to promote energy storage, distributed solar, utility scale solar, energy efficiency, and offshore wind to ensure older, dirty fossil fuel peakers are not replaced with newer, dirty fossil fuel peakers. (Commenter: 1971)

Comment 136: We urge the Department to close New York City's gas-fired peaker plants and replace them with energy storage and electricity from renewable sources. (Commenters: 1979, 1980, 1981, 1982, 1983, 1984, 1989)

Comment 137: Please also consider requiring replacing SCCTs with battery storage in order to reduce NOx emissions. (Commenters: 5, 6, 1958, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2027, 2028, 2029, 2030, 2031)

Comment 138: Go further by mandating a transition to renewable, non-polluting energy generation in order to alleviate the unfair burden that these plants impose on the communities faced with disproportionate cumulative and aggregate impacts from multiple polluting sources. (Commenters: 1959)

Comment 139: We urge DEC to commit to phasing out fossil fuel-burning infrastructure. (Commenter: 1968)

Response to Comments 134-139: The purpose of this rulemaking is to lower NOx emissions from SCCTs. As a result, it is not in the scope of this rulemaking to require a phase-out of a specific type of electricity generation or to require a specific type of electricity generation.

Beyond the Scope

Comment 140: The use of biodiesel as a replacement for distillate oil or natural gas would yield the additional benefit of reducing greenhouse gas emissions. (Commenter: 1962)

Comment 141: The earning of Renewable Energy Credits under the New York Renewable Energy Standard could provide an economic incentive for the use of biodiesel in place of distillate oil or natural gas. (Commenter: 1962)

Comment 142: DEC should install an ozone monitoring station in Nassau County. (Commenter: 2007, 2017)

Comment 143: Subpart 227-3 will also lead to a reduction in cooling water used by SCCTs. This in turn will prevent larval fish and eggs from being entrained in the cooling water systems. (Commenter: 2023)

Response to Comments 140-143: These comments are beyond the scope of this rulemaking.

Combustion Turbines

LIST OF COMMENTERS

Commenter Number	Name	Organization
1	Sandra Meier	Environmental Energy Alliance of New York
2	Kieren Rudge	
3	Sandra Meier	Environmental Energy Alliance of New York
4	Chara	
5	Leontine Greenberg	
6	Colette Montoya-Sloan	
7	Amanda Vender	
8	Alexander Zamarro	Enel Green Power North America
9	Victoria Adler	
10	Meredith Faltin	
11	Paul L. Gioia/ Roger Clayton	Whiteman Osterman & Hanna LLP/ New York State Reliability Council (NYSRC)
12	Imij Seven	
13	Paul L. Gioia/ Roger Clayton	Whiteman Osterman & Hanna LLP/ New York State Reliability Council (NYSRC)
14	Teresa Gomez	
15	Sang Takieddim	
16	Eddie Cuesta	DUJA
17	Jarod Ruiz	
18	Eileen King	
19	Grace Ulerio	
20	Lillian Erias	
21	Stephan Roundtree	WEACT
22	Davia Prego	Time Bank
23	Tara Gitter	
24	Natalia Quiroz	
25	James Picrora	DSA
26	Frances Hall	
27	Sara A. Fisher	
28	Hilda Perez	
29	Aurielle Miller	
30	Luis Hernandez	
31	Isreal Rodriguez	
32	MaryEllen Fishbein	
33	Sally Jones	
34	Brandon Bell	
35	Kathlees Harris	
36	Louise Lessard	

37	Tim Brown-Martinez	
38	Leigh Goldstein	
39	Jacquelyn Krogh	
40	Katie Fahey	
41	Matt Flick	
42	Andrew Zuppari	
43	Elaine Lipcan	
44	Dan Lipcan	
45	Iryna Ivleva	
46	Tony Hoffman	
47	Will Greenwalt	
48	Dan Costa	
49	Melissa Miller	
50	Ellen Niz	
51	Joanna Taylor	
52	Stewart Weiss	
53	Joseph Donofrio	
54	David Rosenberg	
55	Fiona Taylor	
56	Rachel Goldstein	
57	Janna Beckler	
58	Solomon Beckler	
59	Marha Elder	
60	Alexandra Martin	
61	Atha Brown	
62	Meryl Ranzer	
63	Paul Johnson	
64	Mark Crane	
65	Marcy Lynn	
66	Marjorie-Helene L. Dijean	
67	Joseph Draguy	
68	Eden O'Clair	
69	Corinne McDonald	
70	Aliyah Reinisch	
71	Daniel Reinisch	
72	Diene Aronsa	INDIVIS
73	Wendy Viola	INBK
74	Isabella Gomez	
75	Carl D Nolek	
76	Paul Tropea	
77	Sarah Renner	
78	Jessica Bartolini	
79	Sara Gronim	
80	Nancy Cavanan	

81	illegible	
82	Sascha Segan	
83	Erik Wicker	DEM
84	Leontine Greenberg	
85	Lauren Green	
86	Jen Varbalaun	DEM
87	Diana de la Pava	DEM
88	Laura Fine	DEM
89	Michele Petitt	Libertarian
90	Kristin Sposito	Independent
91	Alison Collins	Dem
92	Patrice Duffy-Jacobson	Dem
93	Kristin Ames	Dem
94	Maribel Ruiz	
95	Hyellyong Lee Kim	
96	Karla Lorenzana	
97	Migdalia Reyes	
98	Maria Bermudez	
99	Jennifer Alves	
100	Alyssa Del Soldato	
101	Melissa Segarra	
102	Elizabeth Caro	
103	Chloe Yaccarino	
104	Caroline Murphy	
105	Desiree Gallardo	
106	Cindy Corchado	
107	Patricia Ramirez	
108	Kelly Aguilar	
109	Lori Brossde	
110	Kaliopi Kontaroudis	
111	Narayan Roy	
112	Husnara Ahmed	
113	Lesvia Vascurez	
114	Katie Giraghty	
115	Brittany Lambroschi	
116	Rachel Szalkowski	
117	Victoria Adler	
118	Jan Kleinmuntz	
119	Ben Tausig	
120	Serena Roth	
121	Paul Carrella	
122	Chania French	
123	David French	
124	Erika Hooper	

125	David D. Hanlon	
126	Leslie Hertzog	
127	Stepha Hanmer	
128	Ron Nutkevitz	
129	JacklynTavarez	
130	Inid Spahiu	
131	Jennifer Cobena	
132	C. Megaro	
133	Chris Scanlon	
134	Nancy Scanlon	
135	Linda Ganjian	
136	Patricia Hirschler	
137	Alan Wolpert	
138	Rachel Wiss	
139	Anna Persaud	
140	Mary Ellen Tang	
141	Eliza Cooney	
142	James Nichols	
143	Lilla Toke	
144	Jonathan Garcia	
145	Aime Doddy	
146	Tashi Paljor	
147	Bheir T. Oka	
148	Joel Papo	
149	Gail Fitzer	
150	Antonella D/ Saverio	
151	Nuala O'Doherty	
152	Janeth Naranjo	
153	Lisa Koss	
154	Beatriz Gil	
155	Carlos Martinez	
156	John Maier	
157	William Blueher	
158	Anita Powell	
159	Luna Dun	
160	Sherrel Deas	
161	AJ Greiner	
162	Rachel H. Wang	
163	Charles Haubn	
164	JoAnn Lashley	
165	Mark Gordon	
166	illegible	
167	Betsy LoDestro	
168	Andrew Holler	

169	Aura miranda	
170	Nick Nyhan	
171	Lena Dushay	
172	Adriana Drakos	
173	Billy Grijalva	
174	Sandra Lugo	
175	Mya Monay	
176	Samuel Rodriguez	
177	Isabella Martinez	
178	Angelo Martinez	
179	Elizabeth knox	
180	Amelia Straight	
181	Ana Sofia Remis	
182	Amy Chapman	
183	Michael Dobson	
184	Narayan Subramanian	
185	Tony Johnson	
186	Victoria Lamb	
187	Natalie Zamanillo	
188	Addie Golden	
189	Janice kastendieck	
190	Gladis Moscoso	
191	Narcisa Salinas	
192	Jen James	
193	Kelly Caffey	
194	Adam Bryant	
195	Rudi Klein	
196	Annie Weinmayr	
197	Ryan Tomczyk	
198	M Burgess	
199	Lilia Bartolotta	SFCC
200	Adam Heller	SB SC
201	Nancy Schulman	
202	Kirb Pyle	
203	Valerie McGovern	
204	Mary White	
205	Diane Stark	Long Island Activist
206	Phil Rinaldi	Nom
207	Kyle Pfalzer	DSA/Sunrise
208	Karen Higgins	
209	Andrea Wilson	
210	Jessica Enzmann	S.C.
211	Kay Lustig	S.C.
212	Jose Tonini	S.C./LIPC

213	Tim Muench	S.C.
214	Felicia Crivello	Foundation
215	Rebecca Cyr	
216	Mike Voss	
217	David Wasniewski	
218	Brian Venus	
219	Eric Leggo	
220	Peggy Lyons	Sierra UUCCN
221	illegible	
222	William Wiggins	
223	Joan Wolf	
224	Jamie Fieger	
225	Helene Manas	
226	Mark Manas	
227	Mark Murray	
228	Krisztina Schuscter	
229	Andrea Wilson	Sunrise
230	John Wilson	Sunrise
231	illegible	
232	J. Flora	
233	Lisa Perez	
234	Phyllis Gibberg	
235	Patricia Oliver	
236	Peter Auer	
237	Rosemary Signorielli	
238	Mahveer Rehel	
239	Krishna Arya	
240	Carleen Brandon	Orkestai Farm
241	Alethea Vasilas	Orkestai Farm
242	Mary Pisacano	
243	Peggy Lyons	UUCCN Sierra Club
244	Sharon Boykin	
245	Linda Chernow	
246	Rosalie Lopez	
247	Shar F kelly	
248	Michelle Murney	
249	James Hamilton	
250	Danita Miller Frisby	
251	Komlan Badala	
252	Mervyn Daniels	
253	Yolanda Moorjaney	
254	Joseph A. Luy	
255	Lauren Lichtman	
256	Val Kostinenko	

257	Sharon Longyear	
258	Michael Gelfer	
259	Sandra Thorn	
260	Jeff Reagan	
261	Cecil Hoge	
262	Lynda Strecker	
263	Jesse Kessler	
264	Claude Thouret	
265	Loren Fox	
266	John Andreykovic	
267	Kara Huberman	
268	Kathy Dyas	
269	Richard Guier	
270	Lynn Teplin	
271	Pritpal Singh	
272	Jeff Schiller	
273	Newton Koltz	
274	helene Stoller	
275	Michael Jordan	
276	Michael Madden	
277	Arthur Meyer	
278	Helen Smart	
279	Marge Dakouzlian	
280	Dorothy Donovan	
281	Mike Dolan	
282	Zoe Strassfield	
283	Laura Koulish	
284	Natalie Surving	
285	Sharon Douglass	
286	Patricia Burton	
287	Carol Lipsky	
288	Pete Friedrich	
289	Joann Pedersen	
290	Robert Scneck	
291	Philip Speakes	
292	Anton Feokhari	
293	Nathali Camus	
294	Lori Colon	
295	Alexandra Lifshin	
296	Jane Ahearne	
297	Arthur Formari	
298	Taylor Plimpton	
299	D. Reichert	
300	Helen Kotzky	

301	Cave Man	
302	Ilene Cento	
303	Leslie Mlawski	
304	Mitchell Stachowicz	
305	Bobbie Flowers	
306	Robert H. Feucher	
307	Marta Schaaf	
308	Sarnmi Van Der Veldt	
309	Chris Scanga	
310	Janina Lem	
311	Valerie Miller	
312	Kathleen Keske	
313	Rachel-Anne Younger	
314	N Nadine Godwin	
315	Rj Happel	
316	Courtney Weida	
317	Gail Fread	
318	Irene Franck	
319	Rebecca Berlant	
320	Peter Mathews	
321	Gilbert Sabater	
322	Kelly Conforti	
323	Ellen Ross	
324	Michael Evans	
325	Emma Finkelstein	
326	Laura Quigley	
327	Rosemary & Mi Neidenberg	
328	Anna Surban	
329	Kathy Kearns	
330	Dwight Bodycott	
331	Joan Langué	
332	Roberta Waddell	
333	Dan Conner	
334	Amanda Parker	
335	Fawn King	
336	James Jones	
337	Arleen Kalenich-Pace	
338	Marc Klopert	
339	Hobert Stewart	
340	Diane Stark	
341	Renee Rizzo	
342	Patricia Adamo	
343	M Lopez	
344	Megan Krieman	

345	Ned Milligan	
346	Linda Agoston	
347	Jessica Cabrera	
348	Vivian Del Valle	
349	Molly Rushefsky	
350	Kenneth Strong	
351	Shannon Barbone	
352	Sandy Dalcais	
353	Terri Schneider	
354	Loretta Ryan	
355	Patricia Ellner	
356	Kathleen Margulis	
357	Tammy Ebers	
358	Max Schmid	
359	Afrodity Voyiatzoglou	
360	Lynne Simeone	
361	Liz Diamond	
362	Rebecca Cobb	
363	Judith Wilson	
364	Joyce Adams	
365	Thomas Tyson	
366	Janet Moser	
367	Milo Mottola	
368	Vera Depalma	
369	Joanna Taylor	
370	James & Yvoni Tittle	
371	Phyllis Corcacas	
372	Arthur Schurr	
373	X O	
374	Loli Vilo	
375	Caroline Carver	
376	Bil Badolato	
377	Christine Harvey	
378	Vincent Ditizio	
379	Elaine Janko	
380	Clare Halloran	
381	Marge Dakouzlian	
382	Aimee Whitman	
383	Pete Klosterman	
384	Leona Newman	
385	Rhonda Cooper	
386	Hank Maiorino	
387	Cecilia Williams	
388	Yuxiao Lei	

389	Susan Emery	
390	Caridad Romaine	
391	Michael Stocker	
392	Joan McGillicuddy	
393	Dragana Lisonek	
394	Bartholomew Horn	
395	Stephane Lin	
396	Alix Nunez	
397	Seth Schneider	
398	Vivian Kasen	
399	Caren Flashner	
400	Bayard Faithfull	
401	Michael Mullaley	
402	Jennifer Falk	
403	Vivian Tom	
404	Susan Zimmermann	
405	Nicole Bohlman	
406	Karen Brenner	
407	John Bosman	
408	Doris Buxbaum	
409	J. Diamond	
410	Nicola Auriema	
411	Jeanne Joe Perrone	
412	Felicia Hodgson	
413	Chris Proctor	
414	Susan Wald	
415	C Rothberg	
416	Agnes Chao	
417	Vanessa Holden	
418	Erma Gluck	
419	Alanna Floreck	
420	Amrita Nandakurnar	
421	William Roberson	
422	Astrid Jarvis	
423	Janice Bernard	
424	Deborah Thelen	
425	Rabbi Michael	
426	Harold Jacobowitz	
427	Christopher Weston	
428	Emily Fano	
429	Lisa Tolan	
430	Bill Rosenthal	
431	Susan Shafer	
432	Demetra Tsantes	

433	Ann Baker Exner	
434	Daniel L. Harris	
435	Phyllis Tarlow	
436	Erin Perullo	
437	Danxian Liu	
438	James Gray	
439	Teresa Beutel	
440	Giancarlo Vacca	
441	Dana S Moriarty	
442	Jerry Rivers	
443	Yaakov Stern	
444	Carol Robins	
445	Marie Garescher	
446	Philippe Chambadal	
447	Ruth Flores Ehrlich	
448	Laura Rheinstein	
449	Conney Joa	
450	Kirsten E	
451	Nassima Karroum	
452	Chuck Donegan	
453	Margaret Deleon	
454	Chris Ness	
455	Phillip Hope	
456	Erik Kolb	
457	Mark Hollinrake	
458	Phillip McMurray	
459	Michele Ternple	
460	Lauryn Slotnick	
461	Tova Cohen	
462	Lynda Hegmann	
463	Sonia Goldstein	
464	Paul Petruccelli	
465	Roni Unger	
466	Susan Cox	
467	Linda Rudrnan	
468	Sheila Geist	
469	Celeste Winkle	
470	A Russel	
471	Vincent Bracy	
472	Gery Kouni	
473	Ann Hollinger	
474	Anna Gasner	
475	Julia Byrne	
476	Robert Verity	

477	Lisa Leontovich	
478	Julia Wilson	
479	Elizabeth Cronin	
480	Timothy Ciccone	
481	Christine Castro	
482	Elizabeth Mohony	
483	Robert Draper	
484	Janet Hicks	
485	Arthur Heubner	
486	Morgan Gartner	
487	Jai Parekh	
488	Camillo Musumeci	
489	Gene Polito	
490	William Morel	
491	Ellen Evans	
492	Patricia Duran	
493	G. Paxton	
494	Lois Cartmell	
495	Alice Shao	
496	Victoria Catandella	
497	Mark Lukens	
498	Daniel Janczewski	
499	Scemin Oayurn	
500	David Randall	
501	Lilli Ross	
502	Robert Tefft	
503	Richaid Stern	
504	Andreo Leresche	
505	Edwin Dean	
506	Thomas Dempsey	
507	Brian Mclaughlin	
508	Ainhua Perez	
509	Carol Endrody	
510	Janet Downey	
511	Andrea Zinn	
512	Marybeth Diss	
513	Peter Tesoro	
514	Kate Sherwood	
515	Ilana Laporte	
516	laura Silverman	
517	Danielle Serratore	
518	Susanna Ward s< Itini	
519	Jeanne Fox·Friedrnan	
520	Donald Reidlinger	

521	Alan Eisenberg	
522	Caren Rabinowitz	
523	Michael Testa	
524	Yanisa Anaya	
525	Elvisa Mahmutovic	
526	Cynthia Lopreto	
527	Joanne Lubchenko	
528	Raymond Swierczynski	
529	Alan Brown	
530	Joan McDougall	
531	Mary Troland	
532	Carl Darrigo	
533	Andrew & Kath Wittenborn	
534	Antonio Caniano	
535	Kevin Mcaleer	
536	Sasha Gibbons	
537	A. S. Evans	
538	Linnea Roy	
539	Pablo Bobe	
540	Nam	
541	Emma Lou Sailors	
542	Joel Leitner	
543	Joyce Shiffrin	
544	Shani Schulman	
545	Melissa Paige	
546	Laxmi Banerjee	
547	Annie Bien	
548	Michael Lowry	
549	Gabino Alvarez	
550	Carole Forman	
551	Susan Castelli-Hill	
552	Audrey Peltz	
553	Sahley Rivers	
554	Charles Lewitz	
555	Vincent Bradbury	
556	Sarn Miake-I.ye	
557	Rex Mixon	
558	Liz Galst	
559	Carol StE'lnspir	
560	Dency Kane	
561	Richard Mansfield	
562	Rosanne Gaylor	
563	Susan Gomes	
564	Claudio Henriques	

565	Evelyn Maher	
566	Stacey Skole	
567	St1alm Knutsen	
568	Hita Kasuba	
569	Sarah Fredericks	
570	Christopher McDonough	
571	Danielle Buckley	
572	Jamie Bryan	
573	Lyn Capurro	
574	Sue Oshinsky	
575	Nick Calabro	
576	M Lach	
577	Carmen Bosque	
578	Denise Shapiro	
579	Rena Shapiro	
580	Allison Berget	
581	Lee Michalsky	
582	Candice Martin	
583	Dolores Congdon	
584	Jackie Lamps	
585	Judy Basse	
586	Lauren Felicione	
587	Virginia Myung	
588	Maureen McGeever	
589	Meagan Fastuca	
590	Denis Gorman	
591	Eric McClure	
592	David Gould	
593	Kimberly Perry	
594	Sarah Burns	
595	Ilan Gluck	
596	Arefur Chowdhury	
597	Jennifer Barton	
598	Heather Turbush	
599	Judith Wands	
600	Heloisa Henriques	
601	Anne Bucher	
602	Anne Bucher	
603	Francisco Velez	
604	Jackie Raven	
605	Susan Bernat	
606	Claudia Ford	
607	First_newyork Last_newyork	
608	Elizabeth Hegarty	

609	Adam Zoldessy	
610	Laurrle Cozza	
611	Benjamin Gantcher	
612	Marvin Blaustein	
613	Jane Zimmernan	
614	Leon Clingman	
615	David Gasset	
616	Tonia Leon	
617	Lisa Joyce	
618	Lorraine Speirs	
619	Blake Pruitt	
620	Barry Spielvogel	
621	Robyn Matra	
622	Sharone David	
623	Katherine Brown	
624	Aleta Davies	
625	Mary Herbert	
626	Curtiss Durand	
627	Michael Jaffe	
628	Michael Scarola	
629	Lawrence Nash	
630	Adam Baer	
631	Jerry Bowen	
632	Diane Parmigiani	
633	Sue Ellen Plaza	
634	Dan Khanna	
635	Julianne Chen	
636	Julia Farhat	
637	Ljubica Stefancic	
638	Carole Fudin	
639	Pamela Lubell	
640	Mary Levitt	
641	Sarah Mullins	
642	Gretchen Dean	
643	Lawrence Rickard	
644	Clifford Provost	
645	Beth Connor	
646	Stacey Pfaff	
647	Claudia Leff	
648	Laurie Snell	
649	Maric-Christine Giordzino	
650	R Farer	
651	Justin Cohen	
652	Theresa Wiecezak	

653	Chris Carson	
654	Camden Zylar	
655	Juliette Smith	
656	Hagit Halperin	
657	David Patil	
658	Madelon Rosen-Solomor	
659	Fern Stearncy	
660	E. Eng	
661	Jane Salgado	
662	Julie Takatsch	
663	Sheilah Schumann	
664	Wayne Mirabella	
665	Marianne Langston	
666	Dorian Fulvio	
667	J Baum	
668	Adam Cooper	
669	Maria Teresa Ferrero	
670	Michael Rosenberg	
671	Paulette Pollio	
672	Jessica Wasserman	
673	Angela Badami	
674	Hab Berry	
675	Sue Rosen	
676	Bettina Br,ning	
677	Lisa Stimpson	
678	Carolyn Brod	
679	Noreen Stevenson	
680	George Boggs	
681	Christine Dimmick	
682	Sylvia Foley	
683	Karen Esposito	
684	Nancy Schulman	
685	Elana Levinson	
686	Patricia Rexer-Euvrard	
687	Casey Libonate	
688	Jill Mcmanus	
689	Karen Greenspan	
690	Jeigh Duran	
691	Ludovic Ledein	
692	David Bosch	
693	Judy Rothman	
694	Gwynne Mccue	
695	Michael Farley	
696	Alison Nicholls	

697	Brooke Rosenzweig	
698	Alexandra Hata	
699	Liane Pei	
700	Mara Szalajda	
701	Peter Smith	
702	Karen Defalco	
703	Michael Andrea	
704	Matthew Adams	
705	Rahul Lyer	
706	Caro! Schiff	
707	Daniel Grulich	
708	Jennifer R	
709	Noreen Caughey	
710	Beth Estergomy	
711	JackDavid Marcus	
712	Mariana lever	
713	Riva Naimark	
714	Hope Carr	
715	Marilyn Platt	
716	Vincenza Ercole	
717	Bonnie Bernstein	
718	Bill Roscenthal	
719	Susan Starker	
720	Albert Novak	
721	Sylvie Husso	
722	Columbine Macher	
723	John Hogan	
724	Michael Kolassa	
725	Thomas Holman	
726	Jeannine Lowenkron	
727	Marley Mcdermott	
728	Holiday Dmitri	
729	Nancy Nardella	
730	Steven Pollock	
731	Joran Caiazzo	
732	Emily Seay	
733	Guy W Montgomery	
734	Martha Perlmutter	
735	Jesse Wemyss	
736	Jack Polonka	
737	Madelaine Haberman	
738	Carol Kessler	
739	Mark Daitsman	
740	James Peloquen	

741	Patti My	
742	BMbara Thomas	
743	Sasha Hampton	
744	Megan Pearlman	
745	Iristan Sheridan	
746	Renee Last	
747	Jim Eigo	
748	Shannon Barnsley	
749	Allan Carson	
750	Joseph Tronolone	
751	Samantha Block	
752	Victor Ortiz	
753	Alexa Sferrazza	
754	Edward Dorson	
755	Ellen Luborsky	
756	Rosemarie Flanagan	
757	Sara Brandt	
758	Michael Berlind	
759	Paul Wortman	
760	Shari Irewin	
761	Barbara Milrod	
762	Irene Labella	
763	Kathryn Schneider	
764	Jason Parkin	
765	Joan Heilman	
766	Patsy Di Leo	
767	Javier Rivera-Diaz	
768	George Greller	
769	Brian Cronin	
770	Mary Hurson	
771	Ruth Vargas	
772	Jan Emerson	
773	Helen Shaskan	
774	Michele Durivage	
775	Florian Haefner	
776	Marie DeBonis	
777	Tess Fraad	
778	Ilene Budin	
779	Edward Collaku	
780	Martha Rowen	
781	Wilfredo H. Santiago	
782	Juan Chacon	
783	Frank Demarco	
784	Susan Gill	

785	Carolee Reagan	
786	Monica Rangne	
787	Christopher Jackson	
788	Susan Gayle	
789	Ellen Fleishrnan	
790	Dani Ortolano	
791	Rita Jaskowitz	
792	Cary Appenzeller	
793	Seena Karunakaran	
794	Wendi Cohen	
795	Diane Mason	
796	Mary F. Leonard	
797	Adriano Chinellato	
798	Warren Reich	
799	Jonathan Glass	
800	Rhoda Levine	
801	Peter Piazza	
802	Catherine Nettesheirn	
803	Davindranauth Shiwratan	
804	Devora Unger	
805	Ann Barnett	
806	Olivia Match	
807	Sheila Palevsky	
808	Ben Indig	
809	Mary Boniello	
810	Nancy English Manfrer	
811	Flo Ceravolo	
812	Sandra Parra	
813	Charlotte Maier	
814	Rebecca Welz	
815	Willa Carroll	
816	Donna Robin Lippman	
817	Fran Malsheinier	
818	Robert Bamcone	
819	S Bahary	
820	Joseph Rosta	
821	Audrey Gurlman	
822	Harold Cohen	
823	Ernest Hammer	
824	Ellen Pomeroy	
825	Kirsten Egenes	
826	Jack Pliskin	
827	Maggie Mandzuk	
828	Oliver Lu	

829	Daniel Northrop	
830	Regina Riesenburger	
831	Michelle Kupfer	
832	Alan Fairbairnu	
833	Liz Piercey	
834	Mary Blanchett	
835	Justine King	
836	Nicole Lemaire	
837	Neal Halloran	
838	Maria Elena Beros	
839	Gregory Vignapiano	
840	John Doyle	
841	Robert Madorran	
842	Danielle Bolander	
843	Ellen Siracusa	
844	Linda Reens	
845	Md Dakouzlian	
846	Lourdes Andino	
847	Rosemary Tejeda	
848	Fredlyn Botwin	
849	Ruth Sherman	
850	Maiybeth Ward	
851	Eric Lehman	
852	Mimi Rosenfeld	
853	MaryGrace Brown	
854	Christy Sacks	
855	Irene Miller	
856	Angela Duque	
857	Kenneth Kaufman	
858	Lydia Believue	
859	Danielle Cohn	
860	Michelle Davidson	
861	Orlando Melendez	
862	Gabriel Bobek	
863	Greg Paxton	
864	Anne Marie Bucher	
865	Joel Shufto	
866	Mike Glick	
867	David Bercow	
868	Soretta Rodack	
869	Catherine Miller	
870	Elizabeth Dimarco	
871	Michele Turner	
872	Michael Hovsepien	

873	Gabrielle Marks	
874	Chris Pan Launois	
875	Nan Schmid	
876	Janet Harmon	
877	Carlos Luna	
878	Joseph Massey	
879	Kevin Hughes	
880	Michele Kurtz	
881	Thomas Yarnall	
882	Ceil Lavan	
883	Carol Denison	
884	Scott Bernstein	
885	Crystal Knorr	
886	Camala Projansky	
887	Joy Coletti	
888	Julien Byrnes	
889	Virginia Hetterich	
890	Miriam Wisbert	
891	Elissa Landes Spagnolo	
892	Veronica Dinovi	
893	Benjamin Kester	
894	Rabi Whitaker	
895	Becky Moroney	
896	Ann Aguanno	
897	Steven Botticelli	
898	Fran Perlstein	
899	Ben Dumbauld	
900	Alfred Cammisa	
901	Helen Bowers	
902	William Artz	
903	Marissa Ferraro	
904	Laura Burkhardt	
905	Eugene Lynch	
906	Anthony Cotangeli	
907	Barbara Forbes	
908	Frank Braio	
909	Marc Dorwitt	
910	John Kim	
911	Orna Safer	
912	Susan West	
913	Maggie d'Arcy	
914	Aviva Maxwell	
915	Gene Lubow	
916	John C Casper	

917	Alison Bateman-HOUSE	
918	Elaine Halay	
919	John Redling	
920	Joseph Hanania	
921	Joyce Conklin	
922	Mary Macedonio	
923	James Owen	
924	Dorothy White	
925	Spyro Karagiannis	
926	Norman Leonarczyk	
927	Lydia Saderman	
928	Susan Silver	
929	Thomas Faust	
930	Christine O'Hanlon	
931	Susanna Ward Saltini	
932	Bryon Whitley	
933	Ralf Hepp	
934	Sean Carpenter	
935	Judi Bird	
936	Edwin Brooks	
937	Ruth Gitto	
938	Pepe Rocco	
939	Sarah Maca	
940	Marion Lakatos	
941	Val A	
942	Stephen Grove	
943	Randi Barritl	
944	W Carey	
945	Rita Persichetty	
946	Giancarlo Vinciguerra	
947	David Kubicka	
948	Sr. Barbara King	
949	Ronnie Gfeenberg	
950	John Rybicki	
951	Angela Starita	
952	Flora Huang	
953	Madison Mcglone	
954	Judith Moderacki	
955	Eileen Clyne	
956	Kathleen Guiliano	
957	Michael Perez	
958	Nathalie Camus	
959	Clare Bishop	
960	Nora Gaines	

961	Theresa Febles	
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963	Joanna Dragich	
964	Kristen Piccolo-Brophy	
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968	Natasha Brenner	
969	Mel Calleguri	
970	Rebecca Hahn	
971	Ronald Garner	
972	Andy Chapman	
973	Mark Hollinrake	
974	Hank Broege	
975	Geraldine Martin	
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977	Daniel Crowley	
978	Chad Rabinowitz	
979	Rose Backer	
980	Judith Levinton	
981	Sharon Nanas	
982	Carol Henderson	
983	Sheila Meehan	
984	Daisy Trelles	
985	John Skelly	
986	Barbara Drecker	
987	Diana Schmertz	
988	Emily Cumrnings-Nel	
989	Marilu Cain	
990	John Prekurat	
991	David Walker	
992	Serena Berger	
993	Jack Harrower	
994	Ben Berkowitz	
995	Hilda Di Biase	
996	Michele Kaplan	
997	Clare Rakshys	
998	Daniela Adams	
999	Christine Lemme	
1000	Phyllis Brachman	
1001	Leonidas Gucciardo	
1002	Victoria Khazzam	
1003	Laxmi Banerjee	
1004	Audrey David	

1005	Gail Burns	
1006	Yuko Nakanishi	
1007	Sue Gillis	
1008	Jose Lopez	
1009	Gambino Alvarez	
1010	Hiroko Ishigo	
1011	Louise Calabro	
1012	Melvii1 Siegel	
1013	Barbara Valente	
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1015	Les Forman	
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1017	Kristel Juriloo	
1018	Sheila Kelley	
1019	Neil Farbstein	
1020	Gail Miller	
1021	Delos Humphrey	
1022	Adrian Schnell	
1023	Karen Rogers	
1024	L. Adams	
1025	Tom Mooney	
1026	Elizabeth Mooney	
1027	Blossom Regan	
1028	Maryann Morace	
1029	Irene Feldman	
1030	Chrisanthos Vlasiadls	
1031	Gene Hetz	
1032	Katherine Krader	
1033	Marie Weinstein	
1034	Roy G. Inniss	
1035	Rebecca Levinson	
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1048	Susan Carey	

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1053	Laurie Puca	
1054	David Hand	
1055	Lily Pink	
1056	Alexandra Bonomo	
1057	Leah Helmer	
1058	Lauren Goldfarb	
1059	Nytia Jenkins	
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1061	Claudia Ford	
1062	Lynne Boehm	
1063	Nellie Diaz	
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1066	Volodia Georgiev	
1067	Stephen Slivinsky	
1068	Cory Rouillard	
1069	Nick Byrne	
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1072	Angelina Gonzalez	
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1075	Elizabeth Shepherd	
1076	Mauricio Salgado	
1077	Benjamin Delfin	
1078	Lee Margulies	
1079	Robert Williams	
1080	Arnold Gore	
1081	Aldana Santto	
1082	Judith Lasko	
1083	Lilly Knuth	
1084	Linda Givers	
1085	Kelly DeVine	
1086	Laura Duchon	
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1095	Patti Weinberg	
1096	Joslyn Pine	
1097	Helen Goodspeed	
1098	Emily Greenspan	
1099	Patricia Foster	
1100	Cindy Salgado	
1101	Nicolae Mosu	
1102	Sandra Cais	
1103	Al Krause	
1104	Burton Thelander	
1105	Michael Brandes	
1106	Michele K.	
1107	Suzanne Tow	
1108	Howard Levitsky	
1109	Stan Janzick	
1110	Peter Anuth	
1111	Karen Coe	
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1113	Alex Stavis	
1114	Phyllis Siciliano	
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1118	Susan Santilli	
1119	Mil Drysdale	
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1122	Lynne Gordon-Watsor	
1123	Stephen Smith	
1124	Jessica de Marville	
1125	Panagiotas Aggelakos	
1126	Javier Rivera	
1127	S. Arroyo	
1128	Jeremy Spiegel	
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1130	Rai Montalvo	
1131	Suzanne Lamuniere	
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1135	Nick Macdonald	
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1145	Cindy Schultz	
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1148	Tricia Toliver	
1149	Harold Hidalgo	
1150	Nancy Preston	
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1152	Any Rodriguez	
1153	Gerald Garner	
1154	Suzanne Schaern	
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1168	Amy Winter	
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1170	Victor Ortiz	
1171	Gregory Danzker	
1172	Bruce Armour	
1173	Mark Hochman	
1174	Mark Daitsman	
1175	Judith Bernhang	
1176	Tony Salvatore	
1177	Jerrold Schlessel	
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1179	Megan Ryan	
1180	Pat Barnes	

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1183	Joseph Lawson	
1184	David Baum	
1185	Adam Degroot	
1186	Mary Noll	
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1188	Cionin Lorenzo	
1189	Laura Napoleon	
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1191	Anne Bozza	
1192	Cynthia Bonnes	
1193	Kathteer Rolla	
1194	Susan Cunningham	
1195	Joan Rattner Heilman	
1196	Federico Burgos	
1197	Shanti Holland	
1198	Heidi Wendel	
1199	Geoffrey Peckover	
1200	Peter Shurman	
1201	Paul Finker	
1202	Stuart Braman	
1203	Emmalia Harrington	
1204	Chris Lord	
1205	William Wurtz	
1206	Joanne Lipton	
1207	Ko Tanaka	
1208	Angelo Madrigale	
1209	E. B.	
1210	Destiny Orantes	
1211	Linda Fighera	
1212	K. Laurence	
1213	Barbara Rosen	
1214	Stanley Becker	
1215	Brendan Connor	
1216	Carol Allen	
1217	Elizabeth Peterson	
1218	Spencer Holloway	
1219	Eli Watts	
1220	Debbie Keith	
1221	Linda Lefkowitz	
1222	Susan Buerkle	
1223	Ruth Siekevitz	
1224	Myra Dremeaux	

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1226	William Sarovec	
1227	Louisa Tine	
1228	Robert Beck	
1229	John Lally	
1230	Duncan Fowler	
1231	Blanche Abram	
1232	Maria Mcgrath	
1233	Christina Camacho	
1234	Wendy Sands	
1235	K .Julianne Jackson	
1236	Rashida Paul	
1237	Rosemarie Pace	
1238	Alex Zackrone	
1239	Pataky Pataky	
1240	Denise Jennings	
1241	Cree Maxson	
1242	Barbara Cabana	
1243	Artie Kunhardt	
1244	Liz Keefe	
1245	Claire Berslow	
1246	Shirley Smith	
1247	Charles Gates	
1248	William Sharfman	
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1250	Marleen Schussler	
1251	Nancy D'Angelo	
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1253	Kathleen Anderson	
1254	Dan Casner	
1255	Jennifer Alberghini	
1256	Carl Grimm	
1257	Gerald Wal	
1258	Herbert Cooper	
1259	Susan Goldman	
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1261	Jennifer Baratta	
1262	Wendy Ryden	
1263	Benjamin Gardner	
1264	Alexandra Torres-Krushins	
1265	Carol Mcloughlin	
1266	Audrey Huzenis	
1267	Jasper Cunneen	
1268	Lee Kirkpatrick	

1269	Robert Sorensen	
1270	Marilyn Kaggen	
1271	Madeline Moroff	
1272	Marlene Phelan	
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1274	Dody Decker	
1275	Sylvia O.	
1276	Arthur Heiserman	
1277	Christina D.	
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1279	Giulia Delucchi	
1280	Noah Grossman	
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1282	Barbarn Voros	
1283	Anne Palombo	
1284	Eric Angelosanto	
1285	Barry Smith	
1286	Dorothy Fox	
1287	Jacy Good	
1288	Joel Tarantowicz	
1289	Gerd Schubert	
1290	Kristin Bebelaar	
1291	Michael Pittelli	
1292	Patricia Mcgrath	
1293	Kristina Mori	
1294	Michela Galante	
1295	Sharinne Lercara	
1296	Pedro Mier	
1297	Garry Sisco	
1298	Michael Ach	
1299	Corinne Italiano	
1300	Perry Harris	
1301	Janice Cechony	
1302	Kathryn Carey	
1303	Francisca Sabadie	
1304	Al Rodriguez	
1305	Susan Downes	
1306	Mary Piercey	
1307	Matt Stedman	
1308	Sr. Mary Ellen Oboyle	
1309	Joel Shaw	
1310	Marcia Ruiz	
1311	Elisabeth Bauer	
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1313	Lawrence Stromwasser	
1314	Maribel Jerez	
1315	Andrei Harabadji	
1316	Ron Przybycien	
1317	Carol Vericker	
1318	Susan Fraidin	
1319	Anastasia Hanifan	
1320	Tami Shalourn	
1321	Huth Gitto Gitto	
1322	Claire Mccurdy	
1323	Lynne Minore	
1324	Dorothy Mayerhofer	
1325	Cynthia Raha	
1326	Vincent Morgan	
1327	Kathleen Wittenborn	
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1329	Steven Goldstein	
1330	Sandra Naidich	
1331	Pat Foster	
1332	Kevin Fitzgerald	
1333	Karin Sachs	
1334	Lee	
1335	Fb Maass	
1336	Clara Weinstein	
1337	Denise Insinga	
1338	Stephanie Sauer	
1339	Magdalena Czech	
1340	Ray Torres	
1341	Cassandra Singleton	
1342	Susan Rothman	
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1344	Alexander Goasdoue	
1345	Georgia Schoonmaker	
1346	Addie Smock	
1347	Diane Basile	
1348	Diane Martella	
1349	Beverley Shields	
1350	Eileen Miller	
1351	Elaine Shuster	
1352	Melanie Hanan	
1353	Evan Giller	
1354	Julianne Yao	
1355	Lois Klein	
1356	Fran Unkown	

1357	Carol Jackson	
1358	Thomas Maurer	
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1362	Patricia Loannides	
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1365	Ashley Ecklund	
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1369	Adarn Nazimowitz	
1370	John Rhodes	
1371	Lois Simson	
1372	Frank Silagy	
1373	Elena Cothalis	
1374	Laura Lee	
1375	Elsie Balducci	
1376	Sue Oshinsky	
1377	Stephen Hopkins	
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1379	Kimberly Wade	
1380	Tatyana Syrova	
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1382	Becca Stumpf	
1383	Sean Smith	
1384	Adam Cooperstock	
1385	Eric Esposito	
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1387	Karin Gluth	
1388	Erma Lewis	
1389	Vaish B	
1390	Tiffany K	
1391	Jane Murphy	
1392	Arielle Beckman	
1393	Tara Mae	
1394	Susan Cember	
1395	Janet Duran	
1396	Nancy Parsons	
1397	Arlene Rabenbauer	
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1399	Cameron Quincy	
1400	Jason Catalano	

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1402	Gray Anderson	
1403	Vernetta Taylor	
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1405	Gerry Curran	
1406	Priscilla Macduf	
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1408	Monica Notarnicola	
1409	Brigid Vele	
1410	Kelly DeVine	
1411	Eve Gold	
1412	Kirsten Andersen	
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1414	Laxmi Banerjee	
1415	Animae Chi	
1416	Javier Rivera	
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1419	Steven Rolston	
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1423	Danielle Zrnodlinski	
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1425	Alphonzina Waters	
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1427	Tatiana Cardona	
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1432	Lily Rocco	
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1434	Nancy Schulman	
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1440	Lisa Jablow	
1441	Tricia Hamilton	
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1445	Kate Glazer	
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1451	Jillian Flynn	
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1462	Kevin Mcaleer	
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1464	Charles Thorne	
1465	Zannah Mass	
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1467	Carolyn Steinhoff	
1468	Anne Benroubi	
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1470	Kyle Waszczak	
1471	David Latham	
1472	Carolyn Garmmerman	
1473	Christopher Dohrmann	
1474	Nancy Porcino	
1475	Kerrie Pons	
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1477	Frances Iger Laterman	
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1485	Rose Emma	
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1491	Colleen Meagher	
1492	Jesse Kessler	
1493	William Velapoldi	
1494	Ada Frasca	
1495	Catherine Repice	
1496	John Lisa	
1497	Tyler Holmes	
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1499	Daniel Yafet	
1500	Dean Stallone	
1501	Kristen Boyer	
1502	Alison Macheras	
1503	Jason Catalano	
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1505	Joel Spiegelman	
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1518	Richard Casper	
1519	Kelly Regan	
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1526	Jennifer Falsetta	
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1528	Patricia Maher-Brisen	
1529	Hannah Newburn	
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1531	Heidi Russell	
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1546	John Papandrea	
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1548	Alexandra Zarzycka	
1549	Arline Brown	
1550	Fred Arthur Tenzer	
1551	Donna Kalif	
1552	Israel Martinez	
1553	Lee Martinez	
1554	Tricia Hamilton	
1555	Buguslaw Kulesza	
1556	Phyllis Stewart	
1557	Andrei Harabadji	
1558	Joane Formisano	
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1561	Deirdre Aherne	
1562	Maria Gregory	
1563	June Vassallo	
1564	Matthew Mason	
1565	Angela Vega-Lavinio	
1566	Wilder Kingsley	
1567	Peter Joannidis	
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1569	Fran Jacobsohn	
1570	Leslie Jackson	
1571	Sanoma Kellogg	
1572	Amanda Goodman	
1573	Lauren Litchman	
1574	Elise Vetere	
1575	Kevin Kilner	
1576	Joseph Slater	

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1578	Lucy West	
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1581	George Kaufman	
1582	Marielle Sorensen	
1583	Suresh Dianand	
1584	Benjamin Diccico-Bloom	
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1586	Gayan Arampath	
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1589	Ivonne Sanchez	
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1591	Nina Insardi	
1592	Brice Douma	
1593	Patricia Jensen	
1594	Nikhil Shimpi	
1595	Jamilah Elder	
1596	Patricia Maher-Brisen	
1597	Robert Markuske	
1598	Monka Lafaye	
1599	Shara Maso	
1600	Jane Ragno	
1601	Demi Fortuna	
1602	Jordan B. Weiner	
1603	Mary Walsh	
1604	Angela Larios	
1605	Lizbeth Miron	
1606	Denise Cayenne	
1607	Glenda Spencer	
1608	Morgan Crawford	
1609	Dereck Skeete	
1610	Gabrielle Cayenne	
1611	Maureen Cunningham	
1612	Valerie Shapiro	
1613	Selina Li	
1614	Alonzo Jordan	
1615	Elena Ellis	
1616	Andrise Bass	
1617	Lila Attrino	
1618	Steve Attrino	
1619	Evan Attrino	
1620	Rebecca Taylor	

1621	Kristen Rubino	
1622	Susan Kolbiner	
1623	Susan Cooper	
1624	Anne Doherty	
1625	Jeannete Lovetri	
1626	David Limburg	
1627	Myrella Triana	
1628	Jasmine Smith	
1629	Michele Kurtz	
1630	Steven Nasta	
1631	Edward Temple	
1632	Ellen Cantarow	
1633	Marjorie Naidich	
1634	Beth Livensperger	
1635	James Giordano	
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1638	Kathy Elsibay	
1639	Marzena Wolert	
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1642	Leyanna Dessauer	
1643	Ro Santiesteban	
1644	Aaron Moulin	
1645	Francesca Heller	
1646	Frederick Stepkin	
1647	Dori Dietz	
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1650	Marianne Dietricj	
1651	Teresa Fox	
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1653	Jayesh Sheth	
1654	Natasha Roemer	
1655	Catherine Neville	
1656	Julia Herzberg	
1657	Edna Gruvman	
1658	Elisa Hendrey	
1659	Lynne Hsu	
1660	Pamela Miller	
1661	Amelia Hennighausen	
1662	Dorothy Maxwell	
1663	Patrick Corr	
1664	Jannie Spector	

1665	Merri Parola	
1666	Liza Wilcox	
1667	Lori Somma	
1668	Andrew Weisman	
1669	Doris Buxbaum	
1670	Tracy Griswold	
1671	Raymond Firestone	
1672	Mari Beckman-Lau	
1673	Eena-Mai	
1674	Philip Craig	
1675	David Boehm	
1676	Irene Christopher	
1677	Amy Harlib	
1678	Jean Young	
1679	Kristine Schroeder	
1680	Jade Monahan	
1681	Angel Garcia	
1682	Sharon Moore	
1683	Jeanne Majors	
1684	Bathami Rosenberg	
1685	Adriana Maestas	
1686	Netania Steiner	
1687	Madeline Salino	
1688	David Santos	
1689	Michael Savage	
1690	Jane Lowry	
1691	Daniel Borchard	
1692	Joyse Whitby	
1693	John Boyle	
1694	Martha Chapman	
1695	Jocelyn Dicrescenzo	
1696	Anne Renda	
1697	Gerald Hasett	
1698	Nora Mccauley	
1699	Mary Mallonee	
1700	Christiane Hayward	
1701	Stephanie Atkinson	
1702	Susan Didrichsen	
1703	Oliver Yourke	
1704	Magda Rojas	
1705	Olga Aguayo	
1706	Stephanie Llinas	
1707	J. Cowan	
1708	Dennis Rigdon	

1709	Rachel Coloff	
1710	Peter Callaway	
1711	Mary Teegarden	
1712	Gloria L. Munsch-Clark	
1713	Cathy Prager	
1714	Peter Gollon	
1715	Susan Poliacik	
1716	Jane Rapaport	
1717	Henriet Cohen	
1718	Mark Gorsetman	
1719	Angela Hong	
1720	Marilise Tronto	
1721	Alix Keast	
1722	Shyama Orum	
1723	Nancy Wellman	
1724	Anika Selhort	
1725	Paul Rothman	
1726	Rochelle Davidson	
1727	Vesa Kakkuriniemi	
1728	Ralph Baker	
1729	Manna Call	
1730	Grace and James Betts	
1731	Judy Katz	
1732	Josh Heffron	
1733	Kiara Nazario And	
1734	Michael Zullo	
1735	Edgar Leon	
1736	David Studer	
1737	Michael Amenta	
1738	John Papandrea	
1739	Elena Lam	
1740	Barbara Federman	
1741	Ronald Lemmert	
1742	Scott Wasserman	
1743	Edgan Leon	
1744	Karen Mussette	
1745	Cressida Wasserman	
1746	Arthur Leibowitz	
1747	Melissa Beauchemin	
1748	Pat Mcvie	
1749	Amie Karp	
1750	Phyllis Cahn Carr	
1751	Marjorie Berk	
1752	Barbara Meli	

1753	Andrea Katz	
1754	Alisa Eilenberg	
1755	Susan Kline	
1756	Catherine Guzman	
1757	Patricia Canini	
1758	Katherine Wessling	
1759	Nicholas Cookson	
1760	Dennis Gagomiros	
1761	Susan Wilcenski	
1762	Marjorie McMeniman	
1763	Elizabeth Rubin	
1764	Miguel Ferreira	
1765	Michael Friedman	
1766	Elisabeth Jakab	
1767	Greg Todd	
1768	Leigh Smith	
1769	Judith Frey	
1770	Katherine Bini	
1771	Helen Beichel	
1772	Roy Cohen	
1773	Edgar Fernandez	
1774	Tina Bongar	
1775	Claire Ullman	
1776	Christine Dimmick	
1777	FABY Inc	
1778	David Kiinke	
1779	Pat Hackbarth	
1780	Douglas Feinstein	
1781	Alexa Bradley	
1782	Irwin Cantos	
1783	Leigh Gold	
1784	Brian Jones	
1785	Melissa Parrott	
1786	Flo Kaczorowski	
1787	Lew Enker	
1788	Jean Naples	
1789	Svetiana Wasserman	
1790	Sheila Swigert	
1791	Roberta Smith	
1792	Barbara Unger	
1793	Susan Halperin	
1794	Elaine Weir	
1795	Tuck Milligan	
1796	Barbara Bartley-Baldwir	

1797	Tate Beech	
1798	Kiana Medina-Kerr	
1799	Al Zimmerman	
1800	Lela Nargi	
1801	Marlena Lange	
1802	Jonathan Putterman	
1803	Marion Howard	
1804	Alexander Fermin	
1805	Tatiana Leopold	
1806	Judy Leon	
1807	Noah Plofker	
1808	Bettina Hansel	
1809	Claudia Bernstein	
1810	Margaret Chen	
1811	Rollie Bland	
1812	Cat Basciano	
1813	Monette Sachs, Ph D	
1814	Robin Chappelle	
1815	Michael & Pam Kestenbaum	
1816	Lin Polito	
1817	Judith Schlebecker	
1818	Chloe Breyer	
1819	Jim Navarre	
1820	Stacey Wizel Saal	
1821	Lauren Vigna	
1822	Robert Puca	
1823	Steven Ralph	
1824	Rose Grieco	
1825	Laurie Aron	
1826	Bob Dibenedetto	
1827	Stuart Selip	
1828	Iris Arno	
1829	Diane Wade	
1830	Roseanne Gully	
1831	Jeffery Brown	
1832	Jared Harris	
1833	Barbara Aubrey	
1834	Josine Shapiro	
1835	Phoebe Alexander	
1836	Fisher Stevens	
1837	Rebecca Levinson	
1838	Lauren Steinfeld-Cavuc	
1839	Caroline Schimmenti	
1840	Whitney Wilson	

1841	Cynthia Schegel	
1842	Lisa North	
1843	Mary Bautista	
1844	Ginger Berman	
1845	Michael Chait	
1846	Claire Stenger	
1847	Holly Hester-Reilly	
1848	Christine Arroyo	
1849	Lisa Rubinstein	
1850	Dana Bordsen	
1851	Ben Beckley	
1852	Andrea Browne	
1853	Janet Matthews	
1854	Carol Keegan	
1855	Laura Fleischer	
1856	Daphne Trakis	
1857	Christianna Nelson	
1858	Nancy Hayes	
1859	Susan Karbiner	
1860	J. Patricia Connolly	
1861	Kristianna Thomas	
1862	Jesisca Tomb	
1863	Lynne Mehalick	
1864	Penny Zahler	
1865	Amy G.	
1866	Gem Marquez	
1867	Gale Pisha	
1868	Barbara Spencer	
1869	Fred Wright	
1870	Stacey Clarfield Newm	
1871	Katherine Maxwell	
1872	Harriet Spear	
1873	Jane Fasullo	
1874	Pei Liane	
1875	Liz Giletto	
1876	Glori Ordon	
1877	Thomas Rowan	
1878	William Lewis Wexler	
1879	Joshua Belknap	
1880	Dd Maucher	
1881	Arthur Heubner	
1882	Stewart Wolf	
1883	Radha Korman	
1884	Carlton Hobbs	

1885	Merle Molofsky	
1886	Frances McGee	
1887	Arlene Forward	
1888	Pricislla August	
1889	Rita Berman	
1890	Kathleen Jeremiah	
1891	Charlotte Gross	
1892	Bruce Rosen	
1893	Catherine Wright	
1894	Ruann England	
1895	Diane O'Donnel	
1896	Jane Taylor	
1897	Calor Yost	
1898	Paul Pugliani	
1899	Susan Watins	
1900	Karen Michel	
1901	Marisa Malone	
1902	Peter Hobbs	
1903	Sam Empstein	
1904	Abby Pariser	
1905	Zubaudah Chowdhury	
1906	Vivian Bond	
1907	Peter Kohlberger	
1908	Robert Rosenthal	
1909	Thomas Pienkos	
1910	Al Chazin	
1911	Joan Kiok	
1912	Paula Speer	
1913	Stephen Armstrong	
1914	Paul Lipton	
1915	Kirsteri Andersen	
1916	Brenda Lehman	
1917	Jennifer Horowitz	
1918	Andriette Redmann	
1919	Greta Schiller	
1920	Bree Sharp	
1921	T. Kundmueller	
1922	Jay Sullivan	
1923	Maria Martinez	
1924	Michael Chabler	
1925	Ji Son Choi	
1926	Kevin Oldham	
1927	Katharina Munjuk	
1928	Jim Gross	

1929	Donna Dholakia	
1930	Jenny Walker	
1931	Jessica Clark	
1932	Linda Brovsky	
1933	Daniel Ambrosio	
1934	Beth Olszewski	
1935	Eleanor Bader	
1936	Janet Aptaker	
1937	Dorian Berger	
1938	Lucy Fan	
1939	Evelyn Espinosa	
1940	Andrew Taylor	
1941	Jeanne Cruz	
1942	Linneah Dalmus	
1943	Elizabeth Rubin	
1944	Catherine Regenhard	
1945	Rosemary Corbett	
1946	Sunita Prasad	
1947	John Catherine	
1948	Sara Gentzler	
1949	Judith McElwain	
1950	Paula Grande	
1951	Aubrey Peterson	
1952	Rosemary Dantone	
1953	Olivia G.	
1954	Richenda Kramer	
1955	Steven Ercole	
1956	Anthony Gardella	US EPA Region 2
1957	Kiernan Wholean/ Tracy Babbidge	Connecticut Department of Energy and Environmental Protection
1958	Aviram Cohen	
1959	Rebecca M. Bratspies	CUNY Center for Urban Environmental Reform
1960	Roger Caiazza	
1961	John Paul Reese	Astoria Generating Company L. P./ Eastern Generation LLC
1962	Ray Albrecht, P. E.	National Biodiesel Board
1963	Elaine O'Brien	
1964	Joy Zimmerlin/ Zachary G. Smith	New York Independent System Operator
1965	Allyson Sand/ Alex Fraenkel	Plus Power, LLC
1966	Amanda De Vito Trinsey/ Susanne DesRoches	Couch White, LLP/ NYC Mayor's Office of Sustainability
1967	William V Slade/ Andrea Schmitz	Consolidated Edison Company of New York
1968	Rachel Spector	New York Lawyers for Public Interest

1968a	NYC Environmental Justice Alliance	NYC Environmental Justice Alliance
1968b	Environmental Advocates of New York	Environmental Advocates of New York
1968c	El Puente	El Puente
1968d	UPROSE	UPROSE
1968e	The Point CDC	The Point CDC
1969	Cathy Waxman/ James Flannery	National Grid
1970	John J. Borchert	Central Hudson Gas & Electric Corporation
1971	Josh Berman	Sierra Club Environmental Law Program
1971a	Miles Farmer	Natural Resources Defense Council
1971b	Lisa Dix	Sierra Club
1971c	George Povall	All Our Energy
1971d	Adrienne Esposito	Citizens Campaign for the Environment
1971e	Lisa Tyson	Long Island Progressive Coalition
1971f	Pete Sikora	New York Communities for Change
1971g	Patrick McClellan	New York League of Conservation Voters
1971h	Elizabeth Broad	New Yorkers for Clean Power
1971i	Francesca Rheannon	PEER/NYPAN
1971j	Gordian Raacke	Renewable Energy Long Island
1971k	Kim Frazek	Sane Energy Project
1971l	Sister Karen Burke	Sisters of St. Joseph
1972	Denise M. Sheehan/ Dr. William Acker	New York Battery and Energy Storage Technology Consortium, Inc.
1973	Alex Pozdnyakov/ Rick Shansky	Long Island Power Authority
1973a		PSEG Long Island
1974	Elizabeth B. Stein	Environmental Defense Fund
1975	Shawn Konary	NRG
1976	State of New Jersey	State of New Jersey Department of Environmental Protection
1977	Brian Paul	
1978	Patti Witz	
1979	Leontine Greenberg	
1980	Viclona Adler	
1981	Mariah Fredericks	
1982	Amanda Vender	
1983	Jennifer O'Leary	
1984	Anthony Ng	
1985	Alsum Senevratng	
1986	Unknown	
1987	Nina	
1988	Jacob Kaplan-Lavine	
1989	Lottie Anne Probst	
1990	Chara Jegah	
1991	Eilean Falthh	

1992	Kayla E. Miller	
1993	Wren C	
1994	Lenny	
1995	Daniel Henry Comwim	
1996	Atticus	
1997	Jade Jackson	
1998	Raif-Henok E. Kendrick	
1999	Abby	
2000	Unknown	
2001	Johoan Singh Hahlon	
2002	Unknown	
2003	Martha Gifford	Sierra Club
2004	Saul Berger	Sierra Club
2005	Valerie Guthrie	Sierra Club
2006	Arija Flowers	Sierra Club
2007	Joseph Tonini	Sierra Club
2008	Judith Kubicki	Sierra Club
2009	Karen Carlisle	Sierra Club
2010	Renee Purse	Sierra Club
2011	VJ Furio	Sierra Club
2012	Raymond Berrios	Sierra Club
2013	Cynthia Roberts	Sierra Club
2014	David Arky	Sierra Club
2015	Fitzie Ism	Sierra Club
2016	Charles Bevington	Sierra Club
2017	Joe Tonini	Sierra Club
2018	James Haggerty	Sierra Club
2019	Jessica Enzmann	Sierra Club
2020	Karen Miller	OR Energy
2021	Bridget Foley	Sierra Club
2022	Jan Heubner	Sierra Club
2023	Roger Downs	Sierra Club
2024	Gail Pisha	Sierra Club
2025	Samantha Wilt	NRDC
2026	Joe Tonini	Sierra Club
2027	Elaine O'Brien	Sierra Club
2028	Leontine Greenberg	
2029	Shay O'Reilly	Sierra Club
2030	Andrew Wasserman	
2031	Rachel Spector	NY Lawyers for the Public Interest

6 NYCRR Part 227-3, Ozone Season Oxides of Nitrogen (NO_x) Emission Limits for Simple
Cycle and Regenerative Combustion Turbines

Assessment of Public Comments

Comments received from August 21, 2019 through 5:00 P.M., October 7, 2019

General Comments

Comment 1: Supports the revised proposed rule. (Commenters 2, 3, 6, 7, 8)

Comment 2: Supports the compliance option “ozone season stop” whereby the owner or operator of a simple cycle and regenerative combustion turbine (SCCT) may opt to comply by not operating during the ozone season. (Commenter 7)

Comment 3: We commend the Department of Environmental Conservation (DEC) for its efforts to coordinate with the New York State Public Service Commission (NYSPSC) and the New York State Independent System Operator (NYISO) to understand the reliability impact of this regulation and to work to incorporate the reliability provision. (Commenter 13)

Response to comments 1-3: The Department thanks you for your support of this rulemaking.

Comment 4: The compliance scheduled should not be delayed. (Commenters 2, 3, 6, 9)

Response to comment 4: The Department is keeping the schedule as proposed.

Comment 5: While the commenter generally supports the Department's effort to develop a rule to reduce NOx emissions, they are concerned that the Proposed Peaker Rule will jeopardize reliability in the State, particularly in New York City, while still not putting the State in compliance with the regions ozone requirement. (Commenter 13)

Response to comment 5: The Department has worked extensively with stakeholders including the NYISO, the Department of Public Service (DPS) and the New York State Research and Development Authority (NYSERDA) to develop a regulation that considers emissions reduction needs as well as reliability. The regulation requires emissions reductions from SCCTs and eliminates the ability to average with other types of combustion sources (other than SCCTs). In addition, the regulation requires a compliance plan that will be considered by the NYISO during the 2020 Reliability Needs Assessment (RNA). DEC anticipates that the results of that analysis may identify reliability concerns that can be addressed either through the development of market solutions or, if necessary, through the reliability provisions in section 227-3.6.

Comment 6: Because of the Climate Leadership and Community Protection Act (CLCPA) and other impacts on energy generation it will be necessary for the DEC to timely approve the air permits of replacement peaking resources. (Commenter 13)

Response to Comment 6: The Department will continue to review permit applications as set forth in the Environmental Conservation Law and applicable regulations.

Black Start Resources

Comment 7: The definition of black start resources (paragraph 227-3.2(b)(2)) should include language clarifying that such resources cannot inject electricity into the grid for any other purpose other than restoring service following an actual blackout. (Commenter 1)

Comment 8: The definition of black start resources does not make clear that such resources are exempt only when they are providing energy for a facility restart. Commenter recommends that the definition be rewritten as follows: ‘Black start resource.’ The testing or use of an SCCT to bring a facility from shutdown to operational without reliance on external supplies or the electrical system. (Commenter 5)

Comment 9: The definition of black start resources needs to be clarified so that it is clear that the source is intended to bring a facility from shutdown to operational without reliance on external supplies or the electric system and perform periodic black start service testing consistent with applicable reliability criteria as needed to provide black start service. (Commenter 6)

Comment 10: As drafted, the black start exception is broad and may serve to undermine the intent of the regulation. Limitations regarding when and how a black start resource may be used must be included in the rule. (Commenter 8)

Response to comments 7-10: The black start exception in Subpart 227-3 was developed so that black start resources would not operate except when testing or to bring a facility from shutdown to operational without reliance on external supplies or the electrical system. The Department

believes the definition, as written, conveys this intention.

Comment 11: Are black start resources allowed to operate for testing and maintenance purposes? (Commenter 12)

Response to comment 11: Yes.

Energy Storage & Renewable Energy

Comment 12: A proposal by an SCCT owner to install energy storage equipment as a replacement option for a particular turbine may be inadequate to meet reliability requirements in some locations. (Commenter 5)

Response to comment 12: The Department has worked extensively with stakeholders including the NYISO, DPS and NYSERDA to develop a regulation that considers emissions reduction needs as well as reliability. The regulation requires emissions reductions from SCCTs and eliminates the ability to average with other types of combustion sources (other than SCCTs). In addition, the regulation requires a compliance plan that will be considered by the NYISO during the 2020 RNA. DEC anticipates that the results of that analysis may identify reliability concerns that can be addressed either through the development of market solutions or, if necessary, through the reliability provisions in section 227-3.6.

Comment 13: Commenter does not agree that electric storage resources should be required to be either directly connected to the same substation or within a half-mile radius of the SCCT with which it is being averaged. Regardless of whether the energy storage resource is located within the half-mile radius of the SCCT or not, so long as the storage resource is connected to the same substation as the SCCT, the energy storage's impact on emissions reductions will be equivalent. Commenter recommends that this provision be amended to allow the electric storage resource to be averaged with the SCCT as long as it is electrically proximate to the SCCT and substation regardless of physical distance. (Commenter 7)

Comment 14: We urge the Department to revise Section 227-3.5 "Compliance Options" to enable "electrically connected" resources to be averaged. We recommend that the first subclause be revised as follows: (1) The renewable generation resource and/or the electric storage resource must be directly connected to the same physical substation as the SCCT with which it is being averaged or to a circuit or substation that is electrically proximate to the SCCT substation as certified by the NYISO or the local distribution system operator (proposed new text underlined). (Commenters 9, 10)

Comment 15: A renewable energy resource and/or storage resource that is located more than ½ mile radius from an SCCT, if it is electrically proximate to the SCCT, can result in emissions reductions within a ½ mile radius, conversely, a zero-emitting resource within a ½ mile radius of the SCCT that is not electrically connected in such a way as to affect the operation of the SCCT will not reduce emissions within the ½ mile radius of the SCCT. (Commenters 9, 10)

Response to comments 13-15: The Department, in consultation with stakeholders, developed the language in the proposal and believe it to be the best balance of the discussed issue as to where to allow placement of renewable and storage resources under this compliance option. Please see previous Assessment of Public Comment dated August 21, 2019 for more detail.

Emissions Averaging

Comment 16: Data from facilities that average emissions over a 24-hour period should be made publicly available so that interested members of the public may evaluate how facilities are utilizing the renewable energy and energy storage averaging compliance option. (Commenter 3)

Response to comment 16: The Department does not plan on posting average emissions on the Department's website, however pursuant to the State's Freedom of Informal Law (FOIL) process, anyone interested in this information may file a FOIL request with the Department.

Comment 17: What averaging option is available for a facility which has two SCCTs, but only one is equipped with CEMS? (Commenter 12)

Comment 18: What averaging option is available for a facility which has two SCCTs, where one only fires oil and the other fires both oil and gas? (Commenter 12)

Comment 19: What equations are to be used to conduct the facility-level weighted average? (Commenter 12)

Response to Comments 17-19: The formulas for calculating average emission rates are set forth in paragraph 227-3.5(b) and averaging options are defined in 227-3.5(a).

Comment 20: Are the emission limits in 227-3.4(a) based on a one-hour average or a daily average when using CEMS? (Commenter 12)

Response to comment 20: Emission limits set in subdivision 227-3.4(a) are based on a one-hour average consistent with previous reporting requirements under subdivision 227-2.4(e).

Emissions during Startup and Shut down of SCCTs

Comment 21: The rule should be revised to clarify that compliance with the emission limits will be at steady state operations and not include startup and shutdown. (Commenter 4)

Response to comment 21: Compliance with Subpart 227-3 is consistent with the compliance requirements in Subpart 227-2 which SCCTs are already complying with. The testing methodology for stack tests requires the measurement of emissions at normal operating conditions (steady state).

Compliance Plans

Comment 22: The proposal is missing a description of how compliance plans are to be structured, or how, once compliance plans have been submitted to the Department, they will be forwarded to the NYISO and transmission/distribution owners for evaluation. (Commenter 5)

Comment 23: The Department should establish a defined process, either in proposed Subpart 227-3 or within an implementation guide completed concomitantly with proposed Subpart 227-3, describing how filed compliance plans will be shared with parties responsible for electric system reliability. (Commenter 5)

Response to comments 22-23: The requirements for compliance plans are presented in Section 227-3.3. The Department will make the compliance plans available to the NYISO to inform the 2020 RNA once they have been received and processed. It is the Department's understanding that the NYISO, the transmission/distribution owners and others will use the information from the plans to inform their work on the RNA.

Comment 24: Commenter recommends that the Department post all of the filed compliance plans on the Department's website immediately upon receipt. (Commenter 5)

Response to comment 24: The Department does not plan on posting filed compliance plans on the Department's website, however pursuant to the State's FOIL process, anyone interested in this information may file a FOIL request with the Department.

Comment 25: The DEC should clarify that its position on compliance plan modifications does not preclude coordination among SCCT owners, utilities, and NYISO to assure that reliability planning remains current. (Commenter 11)

Comment 26: It would be appropriate to also review and consider the updates to compliance

plans as part of the RNA process so that designation of reliability needs would continue to be based on the best available information. (Commenter 11)

Response to comments 25-26: The Department is not precluding coordination among SCCT owners, utilities and NYISO to assure reliability planning remains current. The March 2, 2020 date for submitting compliance plans corresponds with NYISO's 2020 RNA schedule. The Department will accept compliance plans through March 2, 2020 and expects that the NYISO will use these compliance plans in the development of the 2020 RNA. It is reasonable to allow those sources that have a changed compliance plan due to a reliability concern to submit a revised compliance plan after the March 2, 2020 submittal for the 2022 RNA process.

Reliability

Comment 27: With respect to the designation of SCCTs as a reliability source, the language of proposed Subpart 227-3.6 is clear and the commenter wants to be clear that they interpret the language that reliability extensions are to be designated, determined and granted solely by the NYISO or the transmission/distribution owner, not by the Department. Is this understanding correct? (Commenters 5, 6)

Comment 28: The DEC should confirm that a generator may continue to operate in accordance with 227-3.6 of the Proposed Rule once it is designated as a reliability source by the NYISO or the local transmission/distribution owner without further discretionary evaluation of whether the resource should be permitted to operate past its applicable compliance date. This clarification is sought because the Assessment of Public Comment provides that "[i]f a reliability need is

determined by the NYISO or transmission/distribution owner, then an extension to comply *may* be granted to the source. By comparison, the Proposed Rule provides that “a designated reliability source may continue to operate without complying with the applicable emissions limits of this Subpart until one of the following provisions are met...” The commenter supports the language of the proposed rule. (Commenter 6)

Comment 29: Absent from the regulation is a defined, or clearly identified, process that will be followed when designating a generation unit a reliability source. (Commenter 8)

Response to Comments 27-29: The Department conducted a thorough stakeholder process and as a result of that process the Department will rely on the expertise of those responsible for reliability planning to determine if a source is a reliability resource. The regulation does not provide language allowing the Department to overrule a reliability determination made by the NYISO or transmission/distribution utilities.

Comment 30: If an SCCT chooses to shut down but the NYISO determines it must stay open for reliability reasons, new energy storage projects will be thwarted or, at a minimum, delayed from entering the NYISO market. An example is that storage projects located in zones G-J seeking to enter the NYISO 2019 Class Year must pass NYISO’s Buyer-Side Mitigation (BSM) test to participate in the capacity market and realistically offset peaking assets. If the NYISO projects that SCCTs will retire, the ability for a new project to pass the BSM test will improve and allow more new resources to pass the BSM test, however, if the NYISO projects that SCCTs will not retire, the additional capacity offered by new storage resources must be tested along with the

SCCTs, making the BSM test much harder to pass for new resources. To rectify this, commenter recommends the following language for Section 227-3.6(c)(1):

(a) An SCCT may be designated as a reliability source by the NYISO or by the local transmission/distribution owner to temporarily resolve a reliability need, except that such designation cannot be used to prevent or penalize new market entrants. The Department may reject such designation if it determines, in conjunction with the Department of Public Service, that alternative projects have been constructed or proposed but have been prevented from participating in NYISO markets due to market mitigation (proposed new text underlined).

(Commenter 9, 10)

Response to comments 30: The Department believes that the current language is adequate and will not overrule a reliability determination made by the NYISO or transmission/distribution utilities. The BSM process tests are in place to “... provide the means for the ISO to mitigate the market effects of conduct that would substantially distort competitive outcomes in the ISO Administered Markets, while avoiding unnecessary interference with competitive price signals.”¹ Based on consultation with the NYISO it is the Department’s understanding that those SCCTs that are planned for retirement will not be included in the BSM test for storage projects.

Comment 31: It is important for the DEC to recognize the NYISO’s finding that replacement generation resources are necessary and needed within the New York City Load pockets beginning in 2023. (Commenter 13)

¹ NYISO. July 26, 2019 presentation:
[https://www.nyiso.com/documents/20142/7768815/BSM%20Information%20Session%20Sliddeck%20\(final\)%2020190726.pdf/a7c1271a-ce71-2d39-c0cd-ce3c361b6d8b](https://www.nyiso.com/documents/20142/7768815/BSM%20Information%20Session%20Sliddeck%20(final)%2020190726.pdf/a7c1271a-ce71-2d39-c0cd-ce3c361b6d8b)

Response to comment 31: The Department understands that reliability is of concern and as a result provided several compliance options in this rulemaking to ensure that these high emitting sources may be removed and replaced with cleaner or non-emitting sources without adversely impacting grid reliability.

Comment 32: With the advent of the CLCPA, the reliability provision alone will be insufficient without other mechanisms within the Department's control and working with the NYISO to support a market-based response to the reliability needs. (Commenter 13)

Response to comment 32: The Department disagrees and believe that sufficient mechanisms are in place to maintain reliability while reducing NO_x emissions. The Department worked extensively with the NYISO, DPS and NYSERDA to ensure that both emissions reductions are achieved, and that system reliability is maintained.

Emission Limits

Comment 33: A commenter asked if the calculation for a source which would be able to meet the lb/MWh limitations using the equations provided and counting zero for MWh_{ST} and MWh_{RE}, are the lb/MWh compliance options available for SCCTs at facilities which do not utilize electric storage or renewable energy resources? (Commenter 12)

Response to comment 33: Subdivision 227-3.5(b) offers the lb/MWh calculation to those sources that opt to average with electric storage and/or renewable energy resources. If those

sources are not utilized in the calculation of the effective rate then it is likely that the SCCTs are already compliant.

Beyond the Scope

Comment 34: Because of CLCPA and other impacts on energy generation it will be necessary for the NYISO market to appropriately reflect the window in which a new peaking unit must recover its investment. (Commenter 13)

Commenter List

1. Astoria Generating Company L.P.
2. Connecticut Department of Energy & Environmental Protection
3. Sierra Club and Natural Resources Defense Council
4. National Grid
5. Con Edison of New York
6. NYISO
7. Key Capture Energy
8. NYC Mayor's Office of Sustainability
9. Plus Power, LLC
10. New York Battery and Energy Storage Technology Consortium, Inc.
11. Long Island Power Authority
12. AECOM
13. NRG

OFFICE OF THE COMMISSIONER

New York State Department of Environmental Conservation
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STATE OF NEW YORK

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

CERTIFICATE OF ADOPTION

AGENCY ACTION: 6 NYCRR Subpart 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines"

Pursuant to the provisions of Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103, and 71-2105 of the Environmental Conservation Law, I, Basil Seggos, Commissioner of the Department of Environmental Conservation (DEC), hereby certify that the amendments to 6 NYCRR Subpart 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines" be adopted to read as on the attached original, and certify that this is the original thereof, as adopted by me on December 11, 2019, to be effective 30 days after filing with the Department of State.

I further certify that prior notice, as required under the State Administrative Procedure Act, was published in the State Register on February 27, 2019 under Notice No. ENV-09-19-00015-P. I also further certify that prior notice of public hearings, scheduled for and held on May 6 in Albany, NY, May 13 in Stony Brook, NY; and on May 14 in Long Island City, NY was published in the State Register on February 27, 2019 and DEC's Environmental Notice Bulletin on February 27, 2019 and in local newspapers in the State on February 27, 2019. I further certify that prior notice of revised Rule Making was published in the State Register on August 21, 2019 under Notice No. ENV-09-19-00015-RP and was published in newspapers throughout the State on August 21, 2019. No other publication of prior notice was required by statute.



Basil Seggos
Commissioner
Department of Environmental Conservation

DATED: December 11, 2019

Albany, New York



Department of
Environmental
Conservation

Express Terms

6 NYCRR Subpart 227-3, Ozone Season Oxides of Nitrogen (NO_x) Emission Limits for Simple Cycle and Regenerative Combustion Turbines

227-3.1 Applicability.

- (a) The provisions of this Subpart apply to owners or operators of simple cycle and regenerative combustion turbines (SCCTs) that are electric generating units with a nameplate capacity of 15 megawatts (MW) or greater and that inject power into the transmission or distribution systems.
- (b) The provisions of this Subpart only apply during the ozone season.
- (c) The provisions of this Subpart do not apply to ‘black start resources.’

227-3.2 Definitions.

- (a) To the extent that they are not inconsistent with the specific definitions in subdivision (b) of this section, the general definitions of Part 200, Part 201, and Subpart 227-2 of this Title apply.
- (b) For the purposes of this Subpart, the following specific definitions apply:
 - (1) ‘Black start resource.’ An electric generating unit used to bring a facility from shutdown to operational without reliance on external supplies or the electrical system.
 - (2) ‘Common control.’ Refers to two or more emission sources and/or electric storage and/or renewable generation resources that are under the control of a single corporate entity. The corporate entity must:
 - (i) have the right to decide when to operate the plant; or

- (ii) have the right to enter into a power purchase agreement or other agreement with the entity that owns the emission source and/or electric storage and/or renewable generation resources and provides the necessary paperwork required under subdivision 227-3.3(b) of this Subpart.
- (3) 'Electric storage resource.' A resource capable of receiving electric energy from the grid and storing it for later injection of electric energy back to the grid.
- (4) 'Hydroelectric energy.' The conversion of potential and kinetic energy in the form of falling or fast-flowing water into mechanical energy which drives turbines producing electricity.
- (5) 'MWh.' Megawatt hour of electricity.
- (6) 'NYISO.' New York Independent System Operator.
- (7) 'ORISPL.' Office of Regulatory Information Systems Plant Code assigned by the Energy Information Administration to electric generating units.
- (8) 'Ozone season.' May 1 through September 30 of each calendar year.
- (9) 'Power purchase agreement.' A contract between two entities pursuant to which one entity agrees to produce electricity, or some other power source, for the other entity over a defined period of time.
- (10) 'Renewable generation resources.' Solar photovoltaic energy, wind energy, tidal energy or hydroelectric energy electricity generating systems.
- (11) 'Solar photovoltaic energy.' Technology that directly converts the energy radiated by the sun as electromagnetic waves into electricity by means of solar panels.
- (12) 'Substation.' An area or group of equipment to transform power from one voltage to another or from one system to another.

(13) ‘Tidal energy.’ The conversion of kinetic energy in the form of tide movement into mechanical energy which drives turbines connected to a generator to produce electricity.

(14) ‘Wind energy.’ The conversion of kinetic energy in the form of wind or air flows into mechanical energy which drives turbines connected to a generator to produce electricity.

227-3.3 Permitting requirements and compliance plan submittal.

(a) Each facility containing an SCCT subject to this Subpart must have or obtain a permit pursuant to Parts 201 and 621 of this Title that reflects the implementation of the compliance plan required in subdivision 227-3.3(b) of this Subpart prior to the May 1, 2023 compliance date of this Subpart in order to operate on and after the applicable compliance date.

(b) Each facility containing an SCCT subject to this Subpart must submit a compliance plan to the Department by March 2, 2020. Each compliance plan must, at minimum, contain:

(1) a list of each SCCT subject to the requirements of this Subpart that includes any identifying numbers such as ORISPL number, emission source number and nameplate capacity.

(2) a schedule outlining how the owner or operator will comply with the requirements set forth in this Subpart including which SCCTs will install controls, controls to be installed, the expected NOx emission rates, SCCTs to be replaced or repowered, and/or SCCTs to be shut down.

(3) a list of renewable resources to be installed under common control of the permittee to be used in the compliance option described in subdivision 227-3.5 (b) of this Subpart. This list shall include, for each renewable resource:

(i) location;

(ii) nameplate capacity or equivalent; and

(iii) documentation demonstrating common control.

(4) A list of electric storage resources to be installed under common control of the permittee to be used in the compliance option described in subdivision 227-3.5 (b) of this Subpart. This list shall include, for each electric storage resource:

- (i) location;
- (ii) nameplate capacity or equivalent;
- (iii) duration of discharge; and
- (iv) documentation demonstrating common control.

(5) Pursuant to subparagraph 227-3.2(b)(2)(ii) the entity that owns the emission source asserting control over an electric storage and/or renewable generation resource must provide a letter, as part of a compliance plan or permit modification application, that the bidding and/or dispatch rights have been provided to the entity asserting common control.

227-3.4 Control Requirements.

(a) The following NOx emission limits on a parts per million dry volume basis (ppmvd), corrected to fifteen percent oxygen must be met as a facility-level weighted average of all applicable SCCTs at a facility:

(1) By May 1, 2023

	NOx Emission Limit (ppmvd)
All SCCTs	100

(2) By May 1, 2025

Fuel Type	NOx Emission Limit (ppmvd)
Gaseous fuels	25
Distillate oil or other liquid fuel	42

(3) Compliance with these emission limits must be determined by conducting stack tests, as set forth in subdivision 227-2.6(c) of Subpart 227-2 of this Title, at a minimum of once per permit term. Alternatively, the owner or operator may choose to use a Continuous Emissions Monitoring System (CEMS) consistent with the provisions of subdivision 227-2.6(b) of Subpart 227-2 of this Title.

227-3.5 Compliance options.

(a) ‘Ozone season stop.’ An owner or operator of an existing SCCT may opt to comply with this Subpart by not operating the SCCT during the ozone season. The ozone season stop provision must be included as an enforceable permit condition in a final permit or permit modification issued prior to the applicable compliance deadline of this Subpart.

(b) ‘Electric storage and renewable energy resources.’ An owner or operator of an SCCT may opt to comply with this Subpart by meeting the following weighted average output-based emission limits on a daily basis pursuant to the following:

(1) Owners and operators must meet the following facility-level daily weighted average emission limits on a pounds of NOx per megawatt hour (lb/MWh) basis for all applicable SCCTs, electric storage resources and/or renewable generation resources at a facility.

(i) By May 1, 2023:

	Emission Limit (lb NO _x /MWh)
All SCCTs	3.0

(ii) By May 1, 2025:

Fuel Type	Effective Daily Emission Limit (lb NO _x /MWh)
Gaseous fuels	1.5
Distillate oil or other liquid fuel	2.0

(2) The owner or operator of an SCCT that uses electric storage or renewable energy resources to inject electricity to the transmission and distribution system may demonstrate compliance with the applicable effective daily NO_x emission limits by including the electrical energy, in MWh, injected to the transmission and distribution system from electric storage and/or renewable generation resources in the emission rate calculation provided that:

- (i) The renewable generation resource and/or the electric storage resource must be directly connected to the same physical substation as the SCCT with which it is being averaged; or
- (ii) within one-half mile radius of the SCCT with which it is being averaged.
- (iii) All sources that are averaged under this compliance option must be under common control.

(3) The effective emission rate may be calculated by:

(i) $Effective\ Rate = \frac{MassNO_x}{MWh_{CT} + MWh_{ST} + MWh_{RE}}$, where:

(‘a’) MassNO_x = NO_x emissions (pounds) each day from all applicable SCCTs at the permitted facility.

(‘b’) MWh_{CT} = electrical energy delivered to the transmission and distribution system (in MWh) from applicable SCCTs at the permitted facility each day.

(‘c’) MWh_{ST} = electrical energy delivered to the transmission and distribution system (in MWh) from storage resources over each day.

(‘d’) MWh_{RE} = electrical energy delivered to the transmission and distribution system (in MWh) from renewable generation each day.

(4) If the owner or operator burns both gaseous fuel and liquid fuel during the same day, a facility electrical energy (MWh) weighted average must be calculated to determine a resultant mix fuel emission rate. The mix fuel rate must first be calculated to determine the allowable emission rate and then calculated again to determine the actual mix fuel emission rate.

(i) $Allowable\ Mix\ Fuel\ Rate = \frac{RateG \times GenG + RateO \times GenO}{GenG + GenO}$ where:

(‘a’) RateG = Effective daily emission limit (lb NO_x/MWh) burning gas as defined in 227-3.5(b) of this Subpart.

(‘b’) RateO = Effective daily emission limit (lb NO_x/MWh) burning oil as defined in 227-3.5(b) of this Subpart.

(‘c’) GenG = electrical energy (MWh) generated burning gas each day

(‘d’) GenO = electrical energy (MWh) generated burning oil each day

(ii) $Actual\ Mix\ Fuel\ Rate = \frac{RateG \times GenG + RateO \times GenO}{GenG + GenO + GenR + GenS}$ where:

(‘a’) RateG = lb NO_x/MWh burning gas

(‘b’) RateO = lb NO_x/MWh burning oil

(‘c’) GenG = electrical energy (MWh) generated burning gas each day

(‘d’) GenO = electrical energy (MWh) generated burning oil each day

(‘e’) GenR = electrical energy (MWh) injected to the transmission and distribution system from renewable energy resources each day

(‘f’) GenS = electrical energy (MWh) injected to the transmission and distribution system from electric storage resources each day

227-3.6 Electric System Reliability

(a) An SCCT may be designated as a reliability source by the NYISO or by the local transmission/distribution owner to temporarily resolve a reliability need.

(b) A designated reliability source may continue to operate without complying with the applicable emissions limits of this Subpart until one of the following provisions are met:

(1) a permanent solution is placed online as determined by the NYISO, the local transmission/distribution owner or the New York State Public Service Commission; or

(2) two years after the designated compliance date under this Subpart has lapsed.

(c) A designated reliability source may operate an additional two years without complying with the applicable emissions limits of this Subpart if:

(1) the NYISO or transmission/distribution owner determines that the reliability need still exists,

(2) the source is designated by the NYISO or the transmission/distribution owner as a reliability source, and

(3) a permanent solution has been selected by the NYISO, the transmission/distribution owner or the New York State Public Service Commission and that solution is in the process of permitting or construction but not yet online.

227-3.7 Testing, monitoring, and reporting requirements

(a) The owner or operator of each SCCT must measure or monitor daily NO_x emissions in accordance with paragraphs (1) or (2) below.

(1) Measure in accordance with the emission test requirements described in subdivision 227-2.6(c) of Subpart 227-2 of this Title, or

(2) Monitor with a CEMS as described in subdivision 227-2.6(b) of Subpart 227-2 of this Title or with an equivalent monitoring system acceptable to the Department.

(b) The owner or operator of each SCCT must report operational data to the Department as part of their annual compliance report. The report must be in a form prescribed by the Department. The operational data must include:

(1) NO_x emissions from each SCCT for each compliance period.

(2) If the electric storage and renewable resources compliance option is used:

(i) daily electrical generation in MWh injected into the transmission or distribution system from each SCCT, electric storage resource, renewable generation resource,

(ii) each hour of the 24-hour period which the electric storage resource is charged,

(iii) each hour of the 24-hour period which the electric storage resource injects power into the transmission or distribution system, and

(iv) each hour of the 24-hour period when a renewable generation resource injects power into the transmission or distribution system.

(3) In the event that emissions of air contaminants in excess of any emission standard in this Subpart occur, the facility owner or operator shall compile and maintain records of the exceedance and notify the Department as soon as possible during normal working hours, but not later than two working days after becoming aware that the exceedance occurred. When requested

by the Department, the facility owner or operator shall submit a written report to the Department describing the malfunction, the corrective action taken, and an estimate of the emission rates.

227-3.8 Severability

Each provision of this Subpart shall be deemed severable, and in the event that any provision of this Subpart is held to be invalid, the remainder of this Subpart shall continue in full force and effect.

Notice of Adoption

New York State Department of Environmental Conservation

6 NYCRR Subpart 227-3, Ozone Season Oxides of Nitrogen (NO_x) Emission Limits for Simple Cycle and Regenerative Combustion Turbines

Pursuant to Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105 of the Environmental Conservation Law (ECL), the New York State Department of Environmental Conservation (Department) hereby gives notice of the following:

The Department has adopted new 6 NYCRR Subpart 227-3, “Ozone Season Oxides of Nitrogen (NO_x) Emission Limits for Simple Cycle and Regenerative Combustion Turbines.” This regulation lowers the allowable NO_x emission rates from simple cycle and regenerative combustion turbines during the ozone season. The lower emissions from these sources will help address Clean Air Act requirements, ozone nonattainment and protect the health of New York State residents. This regulation only applies to simple cycle and regenerative combustion turbines during the ozone season. This is not a mandate on local governments. It applies to any entity that owns or operates a subject source. Further, the Department will submit Subpart 227-3 to the United States Environmental Protection Agency as a revision to the State Implementation Plan for New York State.

Documents pertaining to this adopted rule making can be found on the Department’s website at <http://www.dec.ny.gov/regulations/propregulations.html#public>.

For further information regarding this regulation, contact:
Ona Papageorgiou, P.E.

New York State Department of Environmental Conservation

625 Broadway, 11th Floor

Albany, NY 12233-3251

(518) 402-8396

E-mail: air.regs@dec.ny.gov

Requests for information related to the SIP revision may be obtained from Robert D. Bielawa, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: air.regs@dec.ny.gov.

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice.
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after fling.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

State Commission of Correction

NOTICE OF ADOPTION

Necessary Age for Admission to an Adult Lockup

I.D. No. CMC-41-19-00002-A

Filing No. 1151

Filing Date: 2019-12-17

Effective Date: 2019-12-31

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

Action taken: Amendment of section 7501.1(c) of Title 9 NYCRR.

Statutory authority: Correction Law, section 45(6) and (15)

Subject: Necessary age for admission to an adult lockup.

Purpose: To ensure that individuals under 18 years old are not admitted to an adult lockup.

Text or summary was published in the October 9, 2019 issue of the Register, I.D. No. CMC-41-19-00002-EP.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Brielle Christian, NYS Commission of Correction, 80 S. Swan St., 12th Floor, Albany, New York 12210, (518) 485-2346, email: Brielle.Christian@scoc.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2024, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

NOTICE OF ADOPTION

Set Nitrogen Oxide (NOx) Emission Rate Limits for Simple Cycle and Regenerative Combustion Turbines During the Ozone Season

I.D. No. ENV-09-19-00015-A

Filing No. 1156

Filing Date: 2019-12-17

Effective Date: 30 days after fling

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

Action taken: Addition of Subpart 227-3 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105

Subject: Set nitrogen oxide (NOx) emission rate limits for simple cycle and regenerative combustion turbines during the ozone season.

Purpose: Reduction of nitrogen oxide (NOx) emissions from simple cycle and regenerative combustion turbines during the ozone season.

Text or summary was published in the February 27, 2019 issue of the Register, I.D. No. ENV-09-19-00015-P.

Final rule as compared with last published rule: No changes.

Revised rule making(s) were previously published in the State Register on August 21, 2019.

Text of rule and any required statements and analyses may be obtained from: Ona Papageorgiou, NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: air.regs@dec.ny.gov

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file.

Summary of Revised Regulatory Impact Statement

The New York State Department of Environmental Conservation (DEC) is proposing 6 NYCRR Subpart 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NOx emissions from simple cycle and regenerative combustion turbines during the ozone season. The lower emissions from these sources will help to address Clean Air Act (CAA) requirements, ozone nonattainment and protect the health of New York State residents. This proposal is only applicable to simple cycle and regenerative combustion turbines. This is not a mandate on local governments. It applies to any entity that owns or operates a subject source.

STATUTORY AUTHORITY

The statutory authority for the promulgation of Subpart 227-3 is found in the New York State Environmental Conservation Law (ECL), Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105.

LEGISLATIVE OBJECTIVES

Article 19 of the ECL was enacted to safeguard the air resources of New York from pollution and ensure the protection of the public health

and welfare, the natural resources of the State, physical property, and integrating industrial development with sound environmental practices.

NEEDS AND BENEFITS

In March of 2008, the United States Environmental Protection Agency (EPA) lowered the eight-hour ozone National Ambient Air Quality Standard (NAAQS) from 0.08 parts per million (ppm) to 0.075 ppm.¹ Subsequently, on October 1, 2015, the EPA signed a rule that lowered this standard to 0.070 ppm.² Ozone NAAQS attainment status is demonstrated by measurements recorded from a monitoring network set up across the United States.

EPA designated the New York-Northern New Jersey-Long Island-Connecticut metropolitan area (New York metropolitan area, or NYMA) as a “marginal” nonattainment area for the 2008 ozone NAAQS effective July 20, 2012. On August 23, 2019 EPA reclassified the NYMA to “serious” nonattainment.³ The area was designated as “moderate” nonattainment for the 2015 ozone NAAQS.⁴ NYMA monitors are currently reporting ozone concentrations of 0.082 ppm, well above the standard.

Simple cycle and regenerative combustion turbines (SCCTs) sometimes referred to as peaking units, run to meet electric load during periods of peak electricity demand. They typically run on hot summer days when there is a strong likelihood of high ozone readings. Many peaking units in New York have high NOx emission rates, are inefficient and are approaching 50 years of age. It is difficult to install after-market controls on most of these units because of their age and site limitations.

New York must fulfill its CAA “good neighbor” obligations which require states to include adequate measures in its state implementation plans (SIPs) prohibiting emissions of air pollutants “in amounts which will... contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to” a NAAQS. In addition, New York must meet the 2008 and 2015 ozone NAAQS, for which the New York-Northern New Jersey-Long Island, NY-NJ-CT area is in nonattainment.

Because high ozone days significantly impact human health in the NYMA and because older units significantly contribute on these days, DEC assessed the 99 high ozone days between 2011 and 2017. Analysis shown in Table 1.

	NOx (tons)	Heat Input (MMBtu)	Gross Load (MWh)
Pre-1986 SCCT*	1,849	7,193,633	580,109
Post-1986 SCCT*	73	6,908,887	1,040,831

*Values are the sum of high ozone days 2011 - 2017

Table 1: NOx emissions from NY SCCTs.⁵

As demonstrated in Table 1, on high ozone days newer SCCTs produced 64 percent of the electricity generated from SCCTs while emitting only 4 percent of NOx emissions from these sources⁶.

If the older sources were replaced with newer sources, the total NOx emissions from those older sources on the 99 high ozone days assessed would drop from the reported 1,849 tons to between 40 and 60 tons depending on efficiency. This would result in an approximate 1,800-ton reduction of NOx emissions over those high ozone days. A reduction of 18 tons of NOx emissions on an ozone season day would represent a reduction of over 10 percent of NYMA NOx emissions from the electricity generation sector and an overall reduction of 3.5 percent from all sources.⁷

Electric Grid Reliability:

To adequately assess future reliability needs associated with this rule making the Department is proposing that affected facilities submit compliance plans by March 2, 2020 so that the New York Independent System Operator (NYISO) may include the compliance solutions selected by facilities in its 2020 Reliability Needs Assessment (RNA).

Proposal:

To address NOx emissions on high ozone days from SCCTs, DEC is proposing to develop a new regulation, Subpart 227-3, that will apply to SCCTs with a nameplate capacity of 15 megawatts or greater that inject power into the transmission or distribution systems. This regulation will phase in lower emission limits for NOx and will limit the current averaging provision found in Subpart 227-2 during the ozone season. The sources subject to this proposal will continue to be subject to the requirements of Subpart 227-3 year-round. This rulemaking proposes additional requirements for SCCTs during the ozone season while allowing more flexibility outside of the ozone season. Black start resources, defined in paragraph 227-3.2(b)(1) of Subpart 227-3 as electric generating units used to bring a facility from shutdown to operational without reliance on external supplies or the electrical system, will not be subject to Subpart 227-2. The requirements of the proposed rule are presented in the following paragraphs.

Control Requirements:

The NOx emission limits for SCCTs will be phased in as shown in Tables 2 and 3 below. These limits may be met by averaging SCCTs, electric storage resources and/or renewable generation resources on a facility-wide basis.

By May 1, 2023

	NOx Emission Limit (ppmvd ⁸)
All SCCTs	100

Table 2: NOx emission limits for SCCTs beginning 5/1/2023

By May 1, 2025

Fuel Type	NOx Emission Limit (ppmvd)
Gaseous fuels	25
Distillate oil or other liquid fuel	42

Table 3: NOx emission limits for SCCTs beginning 5/1/2025

Also beginning May 1, 2023, SCCTs will only be able to average emissions with other SCCTs at the facility or, if the facility opts to utilize the electric storage and renewable energy resources compliance option, then those SCCTs may also average with approved electricity storage or renewable energy resources during the ozone season.

Compliance Options:

Owners and operators may elect to meet the limits as proposed. To offer flexibility, this rule is proposing two additional compliance options:

1) Owners and operators may elect an ozone season stop where it is recorded in the operating permit that the source may not operate during the ozone season.

2) Owners and operators may elect to adhere to an output-based NOx daily emission rate that includes electric storage and renewable energy under common control with the SCCTs with which they are averaging.

COSTS

Older SCCTs are typically not conducive to the addition of retrofit control technology. DEC expects that most impacted facilities will choose to replace or shutdown the non-compliant older SCCTs. To estimate replacement costs DEC looked to information provided by the NYISO and Department of Energy’s Energy Information Administration (EIA).

Table 4 presents costs developed by EIA and NYISO for full replacement of an SCCT.

Source	Overnight Cost (\$/kW)	Notes
EIA	\$1,054 - \$1,558 ⁹	Range is specific for the Long Island and New York City area and includes conventional and advanced combustion turbines.
NYISO	\$1,314 - \$1,357 ¹⁰	Range is specific for the Long Island and New York City area and represents replacement with a dual fuel peaking turbine.

Table 4: Estimated range of overnight costs for full replacement of an SCCT

Most SCCTs have a capacity factor of less than 5 percent, meaning that they generate less than 5 percent of the electricity output that it is capable of generating. In addition, with the implementation of several New York State initiatives,¹¹ demand for these units should continue to decline so the entire SCCT fleet would likely not need to be replaced.

Owners and operators may opt to install after-market emission control devices such as water injection technology. While costs vary widely depending on location, operation and siting, it has been reported to DEC, anecdotally, that the cost of adding after-market water injection to these older sources is approximately \$2,000,000. Other sources report costs of \$10,000 - \$15,000 per megawatt,¹² however, this data does not include installation and other associated costs.

Cost of Nonattainment:

This proposal is part of a suite of New York State efforts to bring the NYMA into attainment of the ozone NAAQS, in order to protect human health. EPA projected a wide array of benefits that would be realized on a national level, excluding California, if ozone attainment is achieved.¹³ The human cost of nonattainment to New York State residents is presented in Table 5.

Attainment Provides Prevention of:

Deaths from effects of ozone	13 - 22
Deaths from effects of PM _{2.5}	31 - 70
Nonfatal heart attacks	4 - 36
Hospital admissions & emergency room visits	134
Acute bronchitis events	48
Upper & lower respiratory symptom events	1,540
Exacerbated asthma events	32,200
Missed work & school days	26,320
Restricted activity days	86,800

Table 5: Summary of Total Number of Annual Ozone and PM-Related Premature Mortalities and Premature Morbidity: 2025 National Benefits (adapted from EPA, 2015 RIA, p. ES-16)

LOCAL GOVERNMENT MANDATES

The proposed regulation does not contain a mandate on local governments.

PAPERWORK

This proposal will require each affected facility to submit a compliance plan to DEC. The compliance plan will state how each facility plans to comply with the new requirements.

Those facilities required to meet new emission limits will be required to submit permit applications to modify their Title V or State Facility permits to incorporate the newly applicable requirements by the May 1, 2023 compliance date.

Subject facilities that do not use a continuous emissions monitoring system (CEMS) will be required to perform an emissions test to assure compliance with the applicable NO_x emission limits. Every subject facility will be required to submit test protocols and test reports to the Department for approval.

DUPLICATION

The proposed Subpart 227-3 does not duplicate or conflict with any other state or federal requirements.

ALTERNATIVES

DEC considered two alternatives in assessing this proposal, leave the emission rates as they are and just lowering emission rate requirements. The first option would leave New York open to CAA Section 126 petitions and if acted upon by EPA could require controls within three years. The second option does not allow for the compliance flexibility and reliability considerations included in the proposal that were developed during the stakeholder process.

FEDERAL STANDARDS

The proposed rule does not exceed any minimum federal standards.

COMPLIANCE SCHEDULE

March 2, 2020: All impacted sources must submit a compliance plan that must contain minimum data to demonstrate compliance will be achieved.

May 1, 2023: First phase of NO_x emission limits set at 100 ppmvd¹⁴ for all SCCTs.

May 1, 2025: Second phase of NO_x emission limits set at 25 ppmvd for gaseous fuels and 42 ppmvd for liquid fuels.

¹ 73 FR 16436 (March 27, 2008), codified at 40 CFR section 50.15. Attainment of the 2008 ozone NAAQS is determined when the fourth highest daily maximum 8-hour average ambient air quality ozone concentration, averaged over three year, is less than or equal to 0.075 ppm.

² 80 FR 65292 (October 26, 2015).

³ 84 FR 44238 (August 23, 2019).

⁴ 83 FR 25776 (June 4, 2018).

⁵ EPA Air Markets Program Data. <https://ampd.epa.gov/ampd/>.

⁶ Percentages calculated from EPA Air Markets Program Data for days which exceeded the ozone NAAQS. <https://ampd.epa.gov/ampd/>.

⁷ "New York State implementation plan for the 2008 ozone national ambient air quality standards." <http://www.dec.ny.gov/chemical/110727.html>.

⁸ Parts per million on a dry volume basis at fifteen percent oxygen.

⁹ EIA, Capital Cost Estimates for Utility Scale Electricity Generating Plants, November 2016.

¹⁰ NYISO, Demand Curve Model – 2019-2020.xlsm. Retrieved (1/3/2019) from: <https://www.nyiso.com/search?time=last-year&sortField=score&resultsLayout=list&q=Demand%20Curve%20Model%202016>.

¹¹ Including energy efficiency and energy storage targets, Reforming the Energy Vision and the Clean Energy Standard.

¹² The data provided only includes capital cost. "Gas Turbine Combustion." Lefebvre & Ballal. CRC Press, April 26, 2010.

¹³ Regulatory Impact Analysis (RIA) for the 2015 ozone NAAQS.

¹⁴ Parts per million on a dry volume basis at fifteen percent oxygen.

Revised Regulatory Flexibility Analysis

The New York State Department of Environmental Conservation (DEC) is proposing new 6 NYCRR Subpart 227-3, "Ozone Season Oxides of Nitrogen (NO_x) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NO_x emission rates from simple cycle and regenerative combustion turbines (SCCTs) during the ozone season.

EFFECT OF RULE

DEC does not expect the requirements of this proposal to adversely impact employment opportunities with small businesses. Businesses and local governments subject to this proposed rule generate electricity that is injected into the electrical grid and those facilities are required to maintain generation compliant with reliability rules at the federal and state level. The facilities subject to the proposed rule are mostly large businesses and corporations.

The proposed regulation does not contain a mandate on local governments. Local governments have no additional compliance obligations. There are two SCCTs that are owned by local governments that are listed in the table below. While these sources will be subject to the requirements of this proposal, they already comply with the lower NO_x rates and so no changes will be required of the facilities. While the two sources will be required to submit compliance plans, as outlined below, their plan requirements are simplified because they already comply with the emissions limits.

Facility	Local Government
Freeport	Village of Freeport
SA Carlson	Town of Jamestown

Table 1: Local Governments Subject to the Proposed Rule

COMPLIANCE REQUIREMENTS

On or before March 2, 2020: All impacted sources must submit a compliance plan that must, at minimum, contain:

- Nameplate capacity;
- Ownership;
- A list of each emission source that includes identifying numbers such as facility number, source number and name;
- A schedule outlining how the owner or operator will comply with the requirements set forth in the rule;
- Which emission sources will install controls and what those controls will be; and
- Which emission sources will be replaced or repowered.

Effective May 1, 2023: The first phase of NO_x emission limits will be implemented during the ozone season and SCCTs will be limited to averaging with other SCCTs, storage or renewable energy resources. The first phase of emission limits will be:

By May 1, 2023

NO_x Emission Limit (ppmvd¹)

All SCCTs	100
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Table 2: NO_x emission limits for SCCTs beginning 5/1/2023

Effective May 1, 2025: The second and final phase of NO_x emission limits will be implemented during the ozone season as follows:

Beginning May 1, 2025

Fuel Type	NO _x Emission Limit (ppmvd)
Gaseous fuels	25
Distillate oil or other liquid fuel	42

Table 3: NO_x emission limits for SCCTs beginning 5/1/2025

PROFESSIONAL SERVICES

It is not expected that small businesses or local governments are likely to need professional services to comply with this rule. If an affected source currently utilizes professional services, such as consulting engineers, to comply with 6 NYCRR Subpart 227-2, they may continue to use those services to comply with the requirements of this proposal.

COMPLIANCE COSTS

Compliance costs discussed below are expected to impact larger power generation businesses, not small businesses or local governments. Discussion on the compliance costs to large generation businesses follows.

DEC is proposing to require each source owner to develop a compli-

ance plan to demonstrate how they intend to comply with the proposed rule. The SCCTs installed prior to 1986 are typically not conducive to the addition of retrofit control technology. As a result, DEC expects that most impacted SCCT owners will choose to replace or shutdown the non-compliant SCCTs. To estimate replacement costs DEC looked to information provided by the NYISO and Department of Energy (DOE), Energy Information Administration (EIA).

The EIA describes overnight costs for electricity generating facilities as including²:

- Civil and structural costs: allowance for site preparation, drainage, installation of underground utilities, structural steel supply, and construction of buildings on the site;
- Mechanical equipment supply and installation: major equipment, including but not limited to, boilers, fuel gas desulfurization scrubbers, cooling towers, steam turbine generators, condensers, photovoltaic modules, combustion turbines, and other auxiliary equipment;
- Electrical and instrumentation and control: electrical transformers, switchgear, motor control centers, switchyards, distributed control systems, and other electrical commodities;
- Project indirect costs: engineering, distributable labor and materials, craft labor overtime and incentives, scaffolding costs, construction management start up and commissioning, and contingency fees; and
- Owners costs: development costs, preliminary feasibility and engineering studies, environmental studies and permitting, legal fees, insurance costs, property taxes during construction, and the electrical interconnection costs, including a tie-in to a nearby electrical transmission system.³

Table 4 presents the full overnight costs developed by EIA and NYISO for full replacement of an SCCT.

Source	Overnight Cost (\$/kW)	Notes
EIA	\$1,054 - \$1,558 ⁴	Range is specific for the Long Island and New York City area and includes conventional and advanced combustion turbines.
NYISO	\$1,314 - \$1,357 ⁵	Range is specific for the Long Island and New York City area and represents replacement with a dual fuel peaking turbine.

Table 4: Estimated range of overnight costs for full replacement of an SCCT

DEC believes that the entire capacity of generation will likely not need to be replaced. Most SCCTs have a capacity factor of less than 5 percent, meaning that they generate less than 5 percent of the electricity output that they are capable of generating. In addition, with the implementation of several New York State initiatives, including the State's recently announced energy efficiency and energy storage targets, Reforming the Energy Vision and the Clean Energy Standard, demand for these units should continue to decline. There are over 3,400 MW of SCCT capacity listed in the NYISO Gold Book⁶ that are older, pre-1986 SCCTs.

Owners and operators may opt to install after-market emission control devices on sources that are unable to comply. Water injection technology is the after-market technology that a facility owner would likely consider for these older sources. The costs of adding after-market emission control devices varies widely depending on location, operation and land space availability. It has been reported to DEC, anecdotally, that the cost of adding after-market water injection to one of these older sources is approximately two million dollars. Other sources discuss a cost of \$10,000 - \$15,000 per megawatt,⁷ and many of the sources that would be impacted are 15 to 20 megawatts each. However, this data does not include installation and other associated costs.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY

It is not expected that small businesses will need to comply with this proposed rule. As noted above, the two local governments subject to the emission limits already comply. This is not a mandate on small businesses or local government.

MINIMIZING ADVERSE IMPACT

To minimize any adverse impacts DEC is proposing a phase-in of requirements as well as a reliability provision. The phase-in of requirements allows for power companies, with affected sources, to plan over a longer term. In addition, DEC is proposing several compliance options to offer compliance flexibility:

- 1) Owners and operators may elect an ozone season stop where it is recorded in their operating permit that the source may not operate during the ozone season.
- 2) Owners and operators may elect to adhere to an output-based NOx daily emission rate that includes electric storage and renewable energy under common control with the SCCTs with which they are averaging.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

DEC participated in several stakeholder meetings including those for impacted facilities and local environmental justice groups over a period of eighteen months. In addition, DEC posted a stakeholder outline on the DEC website to encourage stakeholder participation and comment.⁸ SCCTs, as applicable in this regulation, are electric generating sources and not considered small businesses. Sources identified to be government owned already comply with the proposed standard and had the opportunity to participate in the stakeholder process.

CURE PERIOD OR AMELIORATIVE ACTION

No additional cure period or other opportunity for ameliorative action is included in Subpart 227-3. This proposal will not result in immediate violations or impositions of penalties for existing facilities. To help reduce immediate impacts on affected sources, Subpart 227-3 requires a compliance plan due on March 2, 2020 followed by reduced NOx emission limits phased-in first on May 1, 2023 and later on May 1, 2025. This will allow owners and operators of affected sources time to comply with the proposed Subpart 227-3.

INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

¹ Parts per million on a dry volume basis at fifteen percent oxygen.

² Overnight costs include the costs for the physical power plant assuming it can be built overnight. As a result, interest on loans are not factored into the cost estimates.

³ EIA, Capital Cost Estimates for Utility Scale Electricity Generating Plants, November 2016.

⁴ EIA, Capital Cost Estimates for Utility Scale Electricity Generating Plants, November 2016.

⁵ NYISO, The New York Installed Capacity (ICAP) market Working Group. Available here: http://www.nyiso.com/public/markets_operations/market_data/icap/index.jsp.

⁶ NYISO, 2017 Load and Capacity Data.

⁷ The data provided only includes capital cost. "Gas Turbine Combustion." Lefebvre & Ballal. CRC Press, April 26, 2010.

⁸ <https://www.dec.ny.gov/chemical/113887.html>

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

A total of thirteen comment letters were submitted by the public in response to the Department's revised proposed rule for regulating simple cycle and regenerative combustion turbines, often referred to as "peakers" (Subpart 227-3). This document summarizes those comments into eight sections and provides the Department's response.

General Comments

The Department received general comments in support of the regulation as well as urging the Department to keep the schedule as outlined in the regulation. The Department thanked those commenters and agrees that the schedule should not be delayed.

Black Start Resources

Four commenters asked for the Department to clarify that a "black start resource" may only operate when testing or bringing a facility from shutdown to operational without the reliance on external supplies or the electrical system. The Department believes that the definition, as written, conveys this intention. More specifically, one commenter asked if it was allowable for a black start resource to operate for testing and maintenance purposes and the Department replied that it was.

Energy Storage & Renewable Energy

There were several comments that focused on the energy storage and renewable energy provision of the regulation. Specifically, one commenter stated energy storage as a replacement for a particular simple cycle combustion turbine (SCCT) may be inadequate to meet reliability requirements in some locations. The Department has worked with the New York Independent System Operator (NYISO), the Department of Public Service (DPS) and the New York State Energy Research and Development Authority (NYSERDA) to develop a regulation that considers emissions reductions as well as reliability. As a result, the Department expects a variety of compliance solutions which may or may not include storage as a partial replacement.

Another commenter expressed concern with the NYISO Buyer-Side Mitigation (BSM) process impacts on allowing storage resources in to the market and requested that the regulation allow the Department to overrule a reliability determination. The Department believes that the current

language is adequate and will not overrule a reliability determination made by the NYISO or transmission/distribution utilities. The BSM process tests are in place to "... provide the means for the ISO to mitigate the market effects of conduct that would substantially distort competitive outcomes in the ISO Administered Markets, while avoiding unnecessary interference with competitive price signals.¹³" Based on consultation with the NYISO it is the Department's understanding that those SCCTs that are planned for retirement will not be included in the BSM test for storage projects.

Three commenters did not believe that energy storage or renewable energy resources should be required to be directly connected to the same substation or within a half-mile radius of the SCCT with which it is being averaged. The Department worked extensively with stakeholders to develop the language in the proposal and believes it to be the best balance of the issues discussed as to where to allow renewable and storage resources to be sited under this compliance option. Please see previous Assessment of Public Comment dated August 21, 2019 for more detail.

Emissions Averaging

A commenter stated that data from facilities that average emissions over a 24-hour period should be made publicly available so that interested members of the public may evaluate how facilities are utilizing the renewable energy and energy storage averaging compliance option. The Department does not plan on posting average emissions on the Department's website, however the Freedom of Information Law (FOIL) request process is available to all individuals seeking information from the Department.

There were questions regarding the calculation of average emission rates under different scenarios. The Department responded with direction to the formulas for calculating average emission rates which are set forth in paragraph 227-3.5(b) and averaging options defined in 227-3.5(a).

A commenter also asked if the emission limits in 227-3.4(a) are based on a one-hour average or a daily average when using CEMS? The Department responded that emission limits set in subdivision 227-3.4(a) are based on a one-hour average consistent with previous reporting requirements under subdivision 227-2.4(e).

Emissions during Startup and Shut down of SCCTs

One commenter stated that the rule should be revised to clarify that compliance with the emission limits will be at steady state operations and not include startup and shutdown.

The Department responded that compliance with Subpart 227-3 is consistent with the compliance requirements in Subpart 227-2 which SCCTs are already complying with. The testing methodology for stack tests requires the measurement of emissions at normal operating conditions (steady state).

Compliance Plans

A commenter asked for a defined process for how compliance plans are structured and processed. The Department responded that the requirements for compliance plans are presented in Section 227-3.3. The Department will make the compliance plans available to the NYISO to inform the 2020 Reliability Needs Assessment (RNA) once they have been received and processed. It is the Department's understanding that the NYISO, transmission/distribution owners and others will use the information in the compliance plans to inform their work on the RNA.

One commenter recommended that the Department post all of the filed compliance plans on the Department's website immediately upon receipt. The Department does not plan on posting filed compliance plans on the Department's website, however, pursuant to the FOIL anyone interested in this information may file a FOIL request with the Department.

To comply with the regulation, affected source owners must submit a compliance plan by March 2, 2020. The Department expects the NYISO to use these plans as inputs to their 2020 RNA. To ensure the RNA is based on accurate information, the Department requires that compliance plans not be amended after submittal. Some stakeholders asked if they compliance plans may be changed or updated based on designations or other activity. The March 2, 2020 date for submitting compliance plans corresponds with NYISO's 2020 RNA schedule. The Department will accept compliance plans through March 2, 2020 and expects that the NYISO will use these compliance plans in the development of the 2020 RNA.

Reliability

The regulation offers a reliability extension to ensure that the reliability of New York's electric grid is not adversely impacted by the rule. Some commenters asked that the Department revise the regulation to give the Department the authority to override the NYISO and transmission/distribution operator determination of reliability. The Department conducted a thorough stakeholder process and as a result of that process the Department will rely on the expertise of those responsible for reliability planning to determine if a source is a reliability resource. The regulation does not provide language allowing the Department to overrule a reliability determination made by the NYISO or transmission/distribution utilities.

One commenter stressed the importance of the Department recognizing the NYISO's finding that replacement generation resources are necessary and needed within the New York City Load pockets beginning in 2023. The Department understands that reliability is of concern and as a result provided several compliance options in this rulemaking to ensure that replacement of these high emitting sources may be removed and replaced with cleaner or non-emitting sources without adversely impacting grid reliability.

A commenter stated that with the advent of the Climate Leadership and Community Protection Act (CLCPA), the reliability provision alone will be insufficient without other mechanisms within the Department's control and working with the NYISO to support a market-based response to the reliability needs. The Department disagrees and believe that sufficient mechanisms are in place to maintain reliability while reducing NOx emissions. The Department worked extensively with the NYISO, DPS and NYSERDA to ensure that both emissions reductions are achieved and that system reliability is maintained.

Emission Limits

A commenter asked if the calculation for a source which would be able to meet the lb/MWh limitations using the equations provided and counting zero for MWhST and MWhRE, are the lb/MWh compliance options available for SCCTs at facilities which do not utilize electric storage or renewable energy resources? No, Subdivision 227-3.5(b) offers the lb/MWh calculation available to those sources which average with electric storage and/or renewable energy resources.

Beyond the Scope

One comment was received beyond the scope of the regulation where a commenter stated that because of CLCPA and other impacts on energy generation it will be necessary for the NYISO market to appropriately reflect the window in which a new peaking unit must recover its investment.

¹ NYISO. July 26, 2019 presentation: [https://www.nyiso.com/documents/20142/7768815/BSM%20Information%20Session%20Sliddeck%20\(fnal\)%2020190726.pdf/a7c1271a-ce71-2d39-c0cd-ce3c361b6d8b](https://www.nyiso.com/documents/20142/7768815/BSM%20Information%20Session%20Sliddeck%20(fnal)%2020190726.pdf/a7c1271a-ce71-2d39-c0cd-ce3c361b6d8b)

NOTICE OF ADOPTION

Regulate Volatile Organic Compounds (VOCs) in Architectural and Industrial Maintenance (AIM) Coatings

I.D. No. ENV-10-19-00003-A

Filing No. 1144

Filing Date: 2019-12-12

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 200 and 205 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105

Subject: Regulate volatile organic compounds (VOCs) in architectural and industrial maintenance (AIM) coatings.

Purpose: To set new and lower VOC limits for certain coating categories. Update categories and methods.

Substance of final rule: Architectural and industrial maintenance (AIM) coatings, commonly referred to as paints, release volatile organic compounds (VOCs) into the atmosphere. VOC content is regulated in Part 205 for 52 coating categories. The major revisions to this proposal are to reduce the VOC limit on 12 coating categories, create VOC limits for 12 additional coating categories, eliminate 15 coating categories and eliminate the quart exemption. This proposal applies to any person who supplies, sells, offers for sale or manufactures architectural coatings for use in the State of New York.

Changes to Section 205.1, Applicability: The proposed revisions remove the exemption provided to coatings sold in one liter (1.057 quart) containers for floor coatings and also includes a language to prevent bundling of quart containers in a larger pail to be combined for use. This is often referred to as the "quart exemption."

Changes to Section 205.2, Definitions: Transitional language was added to all definitions which are proposed to be changed. The definitions contain language stating that categories eliminated on January 1, 2021 will be absorbed by another category.

The Department is also revising Section 205.2 by:

- The following categories were eliminated from Part 205: antenna