

ORIGINAL

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UTILITY AIR REGULATORY GROUP,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

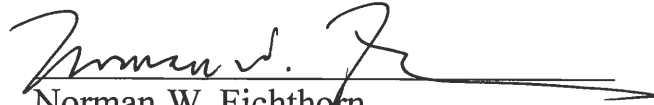
Respondent.

No. 16-1410

PETITION FOR REVIEW

Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1), and Rule 15 of the Federal Rules of Appellate Procedure, the Utility Air Regulatory Group hereby petitions this Court for review of the action of respondent United States Environmental Protection Agency under the Clean Air Act that is published at 81 Fed. Reg. 67,190 (Sept. 30, 2016), entitled “Availability of Data on Allocations of Cross-State Air Pollution Rule Allowances to Existing Electricity Generating Units,” and designated by EPA as “Final rule; notice of data availability (NODA).” This petition is being filed within the 60-day period established by 42 U.S.C. § 7607(b)(1). A copy of the Federal Register notice is attached hereto.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Norman W. Fichthorn", with a long horizontal line extending to the right.

Norman W. Fichthorn
E. Carter Chandler Clements
HUNTON & WILLIAMS LLP
2200 Pennsylvania Ave., N.W.
Washington, D.C. 20037
(202) 955-1500

Counsel for Petitioner
Utility Air Regulatory Group

Dated: November 29, 2016

Dated: September 19, 2016.
Robert A. Kaplan,
Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.770 the table in paragraph (c) is amended by adding an entry under “Article 5. Opacity Regulations” “Rule 1. Opacity Limitations” for 5–1–8 in numerical order to read as follows:

§ 52.770 Identification of plan.
 * * * * *
 (c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
*	*	*	*	*
Article 5. Opacity Regulations Rule 1. Opacity Limitations				
5–1–8	Site-specific temporary opacity limitations.	alternate	12/6/2014	9/30/2016, [insert Federal Register citation].
*	*	*	*	*

* * * * *
 [FR Doc. 2016–23296 Filed 9–29–16; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 97

[EPA–HQ–OAR–2015–0500; FRL–9953–30–OAR]

Availability of Data on Allocations of Cross-State Air Pollution Rule Allowances to Existing Electricity Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of data availability (NODA).

SUMMARY: Under the Cross-State Air Pollution Rule (CSAPR) trading program regulations, the EPA allocates emission allowances to existing electricity generating units (EGUs) as provided in a notice of data availability (NODA). In the CSAPR Update promulgated earlier this year, the EPA finalized default allocations of CSAPR NO_x Ozone Season Group 2 allowances for the control periods in 2017 and subsequent years to existing EGUs in 22 eastern states for which the EPA finalized Federal Implementation Plans (FIPs)—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee,

Texas, Virginia, West Virginia, and Wisconsin. Through this NODA, the EPA is providing notice of the availability of data on these allowance allocations to existing units, as well as the data upon which the allocations are based.

DATES: September 30, 2016.

FOR FURTHER INFORMATION CONTACT:

Questions concerning this notice should be addressed to Michael Cohen, at (202) 343–9497 or cohen.michael@epa.gov; or Robert Miller, at (202) 343–9077 or miller.robertl@epa.gov. The mailing address for each of these individuals is U.S. Environmental Protection Agency, Clean Air Markets Division, MC 6204M, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The CSAPR allowance trading programs require affected EGUs to hold emission allowances sufficient to cover their emissions of nitrogen oxides (NO_x) and/or sulfur dioxide in each control period. In the CSAPR Update for the 2008 ozone National Ambient Air Quality Standards (NAAQS), the EPA established new emissions budgets for ozone season NO_x emissions in 2017 and subsequent years for 22 eastern states and promulgated FIP provisions requiring affected EGUs in those states to participate in the CSAPR NO_x Ozone Season Group 2 Trading Program.¹ Beginning with the 2018 control period, each covered state

generally has the option to determine how the CSAPR NO_x Ozone Season Group 2 allowances in its state emissions budget should be allocated among the state’s EGUs through a State Implementation Plan (SIP) revision.² However, for the 2017 control period, and by default for subsequent control periods in situations where a state has not provided the EPA with the state’s own allocations pursuant to an approved SIP revision, the allocations are made by the EPA.

In the case of units that commenced commercial operations before January 1, 2015, termed “existing” units for purposes of this trading program, the EPA determined default allocations for all control periods in the CSAPR Update rulemaking, according to a methodology finalized in the rulemaking but not included in the regulatory text.³ Through this NODA, the EPA is providing notice of the availability of unit-level default allocations of CSAPR NO_x Ozone Season Group 2 allowances for EGUs that commenced commercial operation before January 1, 2015, as required by the CSAPR regulations.⁴ The data are contained in an Excel spreadsheet titled “Unit-Level Allocations and Underlying Data for the

² See 40 CFR 52.38 and 52.39.

³ See CSAPR Allowance Allocations Final Rule TSD, available at <https://www.epa.gov/airmarkets/final-cross-state-air-pollution-rule-update>.

⁴ See 40 CFR 97.811(a)(1). The approach of allocating emission allowances to existing EGUs as provided in a NODA was established in the original CSAPR and was unchanged in the CSAPR Update. See, e.g., 40 CFR 97.511(a)(1).

¹ See Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (September 7, 2016), available at <https://www.epa.gov/airmarkets/final-cross-state-air-pollution-rule-update>.

CSAPR Update for the 2008 Ozone NAAQS” that is included in the docket for the CSAPR Update final rule and has been posted on the EPA’s Web site at <https://www.epa.gov/airmarkets/final-cross-state-air-pollution-rule-update>. The spreadsheet contains the default allocations of allowances for each control period starting with 2017. For EGUs in all covered states except Arkansas, the unit-level allocations in the spreadsheet are the same for each year. For EGUs in Arkansas, the unit-level allocations for many EGUs are higher for the 2017 control period because Arkansas’ 2017 ozone season NO_x emissions budget is higher than its emissions budget for the control period in 2018 and subsequent years. The spreadsheet also contains the data used to compute the allocations and describes how the computations are performed. The EPA is not requesting comment on the allocations, underlying data, or allocation methodology.

The EPA notes that an allocation or lack of allocation of emission allowances to a given EGU does not constitute a determination that CSAPR does or does not apply to the EGU.⁵ The EPA also notes that allocations are subject to potential correction under the rule.⁶

In accordance with the allowance recordation deadlines set forth in the regulations, the EPA will record allocations of CSAPR NO_x Ozone Season Group 2 allowances to existing units for the 2017 control period by January 3, 2017 (the first business day after January 1, 2017).⁷ The EPA will also record allocations for the 2018 control period by that same date except in instances where a state has provided the EPA with timely notice of the state’s intent to submit a SIP revision with state-determined allowance allocations replacing the EPA’s default allocations for the 2018 control period.⁸

For units commencing commercial operation on or after January 1, 2015, termed “new” units for purposes of the CSAPR NO_x Ozone Season Group 2

Trading Program, the EPA’s default allocations for each control period are annually determined during and after the control period based on current and prior year emission data, using a methodology set out in the regulatory text.⁹

Dated: September 22, 2016.

Reid P. Harvey,

Director, Clean Air Markets Division.

[FR Doc. 2016–23434 Filed 9–29–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 435

[EPA–HQ–OW–2016–0598; FRL–9953–26–OW]

RIN 2040–AF68

Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category—Implementation Date Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to extend the implementation deadline for certain facilities subject to the final rule establishing pretreatment standards under the Clean Water Act (CWA) for discharges of pollutants into publicly owned treatment works (POTWs) from onshore unconventional oil and gas (UOG) extraction facilities (81 FR 41845; June 28, 2016). EPA is making this revision in response to new information suggesting that there are likely facilities subject to the final rule not presently meeting the zero discharge requirements in the final rule.

DATES: This direct final rule is effective on November 29, 2016 without further notice, unless EPA receives adverse comment by October 31, 2016. If EPA receives adverse comment, we will

publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. [EPA–HQ–OW–2016–0598], at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: For more information, see EPA’s Web site: <https://www.epa.gov/eg/unconventional-oil-and-gas-extraction-effluent-guidelines>. For technical information, contact Karen Milam, Engineering and Analysis Division (4303T), Office of Water, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone: 202–566–1915; email: milam.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

Entities potentially regulated by this final action include:

Category	Example of regulated entity	North American Industry Classification System (NAICS) code
Industry	Crude Petroleum and Natural Gas Extraction	211111
Industry	Natural Gas Liquid Extraction	211112

II. Why is EPA issuing a direct final rule?

EPA is publishing this direct final rule without a prior proposed rule

because we view this as a noncontroversial action and anticipate no adverse comment. This direct final rule merely extends the implementation

deadline for existing onshore UOG extraction facilities that were discharging to POTWs on or between the date of the **Federal Register** Notice

⁵ See 40 CFR 97.811(a)(1).

⁶ See 40 CFR 97.811(c).

⁷ See 40 CFR 97.821(a).

⁸ See 40 CFR 52.38(b)(7) and 97.821(b).

⁹ See 40 CFR 97.812.

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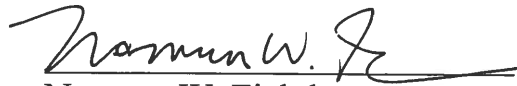
No. _____

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Petitioner Utility Air Regulatory Group (“UARG”) states as follows:

UARG is a group of individual electric generating companies and national trade associations. UARG’s purpose is to participate on behalf of its members collectively in administrative proceedings under the Clean Air Act that affect electric generators and in litigation arising from those proceedings. UARG has no outstanding shares or debt securities in the hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in UARG.

Respectfully submitted,



Norman W. Fichthorn
E. Carter Chandler Clements
HUNTON & WILLIAMS LLP
2200 Pennsylvania Ave., N.W.
Washington, D.C. 20037
(202) 955-1500

Counsel for Petitioner
Utility Air Regulatory Group

Dated: November 29, 2016

CERTIFICATE OF SERVICE

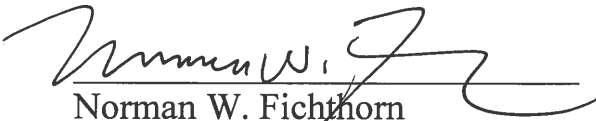
I hereby certify that on this 29th day of November, 2016, one copy of the foregoing Petition for Review and one copy of the foregoing Corporate Disclosure Statement were served by certified mail, return receipt requested, on each of the following:

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code 1101A
Washington, D.C. 20460

Correspondence Control Unit
Office of General Counsel (2311)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

The Honorable Loretta E. Lynch
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

John C. Cruden
Assistant Attorney General
United States Department of Justice
Law and Policy Section
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