

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 1, 2015.

**Debra H. Thomas,**

*Acting Regional Administrator, Region 8.*

[FR Doc. 2015-23075 Filed 9-11-15; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

[Regional Docket No. II-2012-01; FRL-9933-81-Region 2]

#### Petition for Objection to State Operating Permit; NY; Seneca Energy II, LLC

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

**ACTION:** Notice of final action.

**SUMMARY:** Pursuant to Clean Air Act (CAA) Section 505(b)(2) and 40 CFR 70.8(d), the Environmental Protection Agency (EPA) Administrator signed an Order, dated June 29, 2015, granting in part and denying in part a petition filed by Gary A. Abraham on behalf of Finger Lakes Zero Waste Coalition, Inc. (dated December 22, 2012) asking the EPA to object to the Title V operating permit (Permit No. 8-3244-00040/00002) issued by the New York State

Department of Environmental Conservation (DEC) to Seneca Energy II, LLC (Seneca) relating to the Ontario County Landfill Gas-to-Energy Facility (Facility) in western New York. Sections 307(b) and 505(b)(2) of the CAA provide that the petitioner may ask for judicial review by the United States Court of Appeals for the appropriate circuit of those portions of the Order that deny objections raised in the petition.

**DATES:** Any such petition for review of this Order must be received by November 13, 2015 pursuant to section 307(b) of the CAA.

**ADDRESSES:** You may review copies of the final Order, the petitions, and other supporting information during normal business hours at EPA Region 2, 290 Broadway, New York, New York. If you wish to examine these documents, you should make an appointment at least 24 hours before the visiting day. Additionally, the final Order is available electronically at: [http://www.epa.gov/region7/air/title5/petitiondb/petitions/seneca\\_response2012.pdf](http://www.epa.gov/region7/air/title5/petitiondb/petitions/seneca_response2012.pdf).

**FOR FURTHER INFORMATION CONTACT:** Steven Riva, Chief, Permitting Section, Air Programs Branch, Clean Air and Sustainability Division, EPA, Region 2, 290 Broadway, 25th Floor, New York, New York 10007, telephone (212) 637-4074, email address: [Riva.Steven@epa.gov](mailto:Riva.Steven@epa.gov), or the above EPA Region 2 address.

**SUPPLEMENTARY INFORMATION:** The CAA affords the EPA a 45-day period to review, and object to, as appropriate, a title V operating permit proposed by a state permitting authority. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator, within 60 days after the expiration of this review period, to object to a Title V operating permit if the EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or that the grounds for the objection or other issues arose after this period. The claims are described in detail in Section IV of the Order. In summary, the issues raised are that: (1) The Title V permit does not consider the Ontario County Landfill (Landfill) and the Facility a single source even though they together meet the 3-factor source determination test; and (2) the Facility's Title V permit is a "sham permit." The EPA's rationale for partially granting and partially denying the claims raised in the petition are described in the Order.

Dated: August 26, 2015.

**Catherine McCabe,**

*Deputy Regional Administrator.*

[FR Doc. 2015-23076 Filed 9-11-15; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9933-86-OAR]

### 40 CFR Part 97

#### Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for 2015 Control Periods

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

**ACTION:** Notice of data availability (NODA).

**SUMMARY:** The Environmental Protection Agency (EPA) is providing notice of the availability of preliminary lists of units eligible for allocations of emission allowances under the Cross-State Air Pollution Rule (CSAPR). Under the CSAPR federal implementation plans (FIPs), portions of each covered state's annual emissions budgets for each of the four CSAPR emissions trading programs are reserved for allocation to electricity generating units that commenced commercial operation on or after January 1, 2010 (new units) and certain other units not otherwise obtaining allowance allocations under the FIPs. The quantities of allowances allocated to eligible units from each new unit set-aside (NUSA) under the FIPs are calculated in an annual one- or two-round allocation process. EPA previously completed the first round of NUSA allowance allocations for the 2015 control periods for all four CSAPR trading programs and is now making available preliminary lists of units eligible for allocations in the second round of the NUSA allocation process for the CSAPR NO<sub>x</sub> Ozone Season Trading Program. EPA has posted a spreadsheet containing the preliminary lists on EPA's Web site. EPA will consider timely objections to the lists of eligible units contained in the spreadsheet and will promulgate a document responding to any such objections no later than November 15, 2015, the deadline for recording the second-round allocations of CSAPR NO<sub>x</sub> Ozone Season allowances in sources' Allowance Management System accounts. This notice of availability may concern CSAPR-affected units in the following states: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky,

Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

**DATES:** Objections to the information referenced in this notice of availability must be received on or before October 14, 2015.

**ADDRESSES:** Submit your objections via email to *CSAPR\_NUSA@epa.gov*. Include “2015 NUSA allocations” in the email subject line and include your name, title, affiliation, address, phone number, and email address in the body of the email.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this action should be addressed to Robert Miller at (202) 343-9077 or *miller.robert1@epa.gov* or Kenon Smith at (202) 343-9164 or *smith.kenon@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Under the CSAPR FIPs, the mechanisms by which initial allocations of emission allowances are determined differ for “existing” and “new” units. For “existing” units—that is, units commencing commercial operation before January 1, 2010—the specific amounts of CSAPR FIP allowance allocations for all control periods have been established through rulemaking. EPA has announced the availability of spreadsheets showing the CSAPR FIP allowance allocations to existing units in previous notices of availability.<sup>1</sup>

“New” units—that is, units commencing commercial operation on or after January 1, 2010—as well as certain older units that would not otherwise obtain FIP allowance allocations do not have pre-established allowance allocations. Instead, the CSAPR FIPs reserve a portion of each state’s total annual emissions budget for each CSAPR emissions trading program as a new unit set-aside (NUSA)<sup>2</sup> and establish an annual process for allocating NUSA allowances to eligible units. States with Indian country within their borders have separate Indian country NUSAs. The annual process for allocating allowances from the NUSAs

and Indian country NUSAs to eligible units is set forth in the CSAPR regulations at 40 CFR 97.411(b) and 97.412 (NO<sub>x</sub> Annual Trading Program), 97.511(b) and 97.512 (NO<sub>x</sub> Ozone Season Trading Program), 97.611(b) and 97.612 (SO<sub>2</sub> Group 1 Trading Program), and 97.711(b) and 97.712 (SO<sub>2</sub> Group 2 Trading Program). Each NUSA allowance allocation process involves up to two rounds of allocations to new units followed by the allocation to existing units of any allowances not allocated to new units. EPA provides public notice at certain points in the process.

EPA has already completed the first round of allocations of 2015 NUSA allowances for all four CSAPR trading programs, as announced in notices of availability previously published in the **Federal Register**.<sup>3</sup> The first-round NUSA allocation process was discussed in those previous notices of availability.

In the case of second-round allocations of NUSA allowances, the annual allocations for the CSAPR NO<sub>x</sub> Ozone Season Trading Program occur before the annual allocations for the other three CSAPR trading programs because of differences in the emissions reporting and compliance deadlines for the various programs. This notice of availability concerns the second round of NUSA allowance allocations for the CSAPR NO<sub>x</sub> Ozone Season Trading Program for the 2015 control period.<sup>4</sup>

The units eligible to receive second-round NUSA allocations for the CSAPR NO<sub>x</sub> Ozone Season Trading Program are defined in §§ 97.511(a)(1)(iii) and 97.512(a)(9)(i). Generally, eligible units include any CSAPR-affected unit that commenced commercial operation between May 1 of the year before the control period in question and August 31 of the year of the control period in question. In the case of the 2015 control period, an eligible unit therefore must have commenced commercial operation between May 1, 2014 and August 31, 2015 (inclusive).

The total quantity of allowances to be allocated through the 2015 NUSA allowance allocation process for each state and emissions trading program—in the two rounds of the allocation process combined—is generally the state’s 2015 emissions budget less the sum of (1) the total of the 2015 CSAPR FIP allowance allocations to existing units and (2) the amount of the 2015 Indian country

NUSA, if any.<sup>5</sup> The amounts of CSAPR NO<sub>x</sub> Ozone Season NUSA allowances may be increased in certain circumstances as set forth in § 97.512(a)(2).

Second-round NUSA allocations for a given state, trading program, and control period are made only if the NUSA contains allowances after completion of the first-round allocations.

The amounts of second-round CSAPR NO<sub>x</sub> Ozone Season allowance allocations to eligible new units from each NUSA are calculated according to the procedures set forth in § 97.512(a)(9), (10) and (12). Generally, the procedures call for each eligible unit to receive a second-round 2015 NUSA allocation equal to the positive difference, if any, between its emissions during the 2015 NO<sub>x</sub> ozone season (*i.e.*, May 1, 2015 through September 30, 2015) as reported under 40 CFR part 75 and any first-round allocation the unit received, unless the total of such allocations to all eligible units would exceed the amount of allowances in the NUSA, in which case the allocations are reduced on a pro-rata basis.

Any allowances remaining in the CSAPR NO<sub>x</sub> Ozone Season NUSA for a given state and control period after the second round of NUSA allocations to new units will be allocated to the existing units in the state according to the procedures set forth in § 97.512(a)(10) and (12).

EPA notes that an allocation or lack of allocation of allowances to a given EGU does not constitute a determination that CSAPR does or does not apply to the EGU. EPA also notes that allocations are subject to potential correction if a unit to which NUSA allowances have been allocated for a given control period is not actually an affected unit as of the start of that control period.<sup>6</sup>

The preliminary lists of units eligible for second-round 2015 NUSA allocations of CSAPR NO<sub>x</sub> Ozone Season allowances are set forth in an Excel spreadsheet titled “CSAPR\_NUSA\_2015\_NOx\_OS\_2nd\_Round\_Prelim\_Data” available on EPA’s Web site at <http://www.epa.gov/crossstaterule/actions.html>. The spreadsheet contains a separate worksheet for each state covered by that program showing each unit preliminarily identified as eligible for a second-round NUSA allocation.

<sup>5</sup> The quantities of allowances to be allocated through the NUSA allowance allocation process may differ slightly from the NUSA amounts set forth in §§ 97.410(a), 97.510(a), 97.610(a), and 97.710(a) because of rounding in the spreadsheet of CSAPR FIP allowance allocations to existing units.

<sup>6</sup> See 40 CFR 97.511(c).

<sup>1</sup> The latest spreadsheet of CSAPR FIP allowance allocations to existing units, updated in 2014 to reflect changes to CSAPR’s implementation schedule but with allocation amounts unchanged since June 2012, is available at <http://www.epa.gov/crossstaterule/actions.html>. See Availability of Data on Allocations of Cross-State Air Pollution Rule Allowances to Existing Electricity Generating Units, 79 FR 71674 (December 3, 2014).

<sup>2</sup> The NUSA amounts range from two percent to eight percent of the respective state budgets. The variation in percentages reflects differences among states in the quantities of emission allowances projected to be required by known new units at the time the budgets were set or amended.

<sup>3</sup> 80 FR 30988 (June 1, 2015); 80 FR 44882 (July 28, 2015).

<sup>4</sup> At this time, EPA is not aware of any unit eligible for a second-round allocation from any Indian country NUSA.

Each state worksheet also contains a summary showing (1) the quantity of allowances initially available in that state's 2015 NUSA, (2) the sum of the 2015 NUSA allowance allocations that were made in the first-round to new units in that state (if any), and (3) the quantity of allowances in the 2015 NUSA available for distribution in second-round allocations to new units (or ultimately for allocation to existing units).

Objections should be strictly limited to whether EPA has correctly identified the new units eligible for second-round 2015 NUSA allocations of CSAPR NO<sub>x</sub> Ozone Season allowances according to the criteria described above and should be emailed to the address identified in **ADDRESSES**. Objections must include: (1) Precise identification of the specific data the commenter believes are inaccurate, (2) new proposed data upon which the commenter believes EPA should rely instead, and (3) the reasons why EPA should rely on the commenter's proposed data and not the data referenced in this notice of availability.

**Authority:** 40 CFR 97.511(b).

**Reid P. Harvey,**

*Director, Clean Air Markets Division.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 131

[EPA-HQ-OW-2015-0174; FRL-9932-03-OW]

**RIN 2040-AF56**

### Revision of Certain Federal Water Quality Criteria Applicable to Washington

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to revise the current federal Clean Water Act (CWA) human health criteria applicable to waters under the state of Washington's jurisdiction to ensure that the criteria are set at levels that will adequately protect Washington residents, including tribes with treaty-protected rights, from exposure to toxic pollutants. EPA promulgated Washington's existing criteria for the protection of human health in 1992 as part of the National Toxics Rule (NTR), (amended in 1999 for Polychlorinated Biphenyls (PCBs)) using the Agency's recommended

criteria values at the time. EPA derived those criteria using a fish consumption rate (FCR) of 6.5 grams per day (g/day) based on national surveys. However, the best available data now demonstrate that fish consumers in Washington, including tribes with treaty-protected rights, consume much more fish than 6.5 g/day. There are also new data and scientific information available to update the toxicity and exposure parameters used to calculate human health criteria. Therefore, EPA proposes to revise the federal human health criteria applicable to waters under Washington's jurisdiction to take into account the best available science, including local and regional information, as well as applicable EPA policies, guidance, and legal requirements, to protect human health.

**DATES:** Comments must be received on or before November 13, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OW-2015-0174, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. 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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Erica Fleisig, Office of Water, Standards and Health Protection Division (4305T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566-1057; email address: [fleisig.eric@epa.gov](mailto:fleisig.eric@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposed rule is organized as follows:

#### I. General Information

Does this action apply to me?

#### II. Background

A. Statutory and Regulatory Background

- B. General Recommended Approach for Deriving Human Health Criteria
- III. Necessity Determination for Washington
  - A. Existing Criteria Are Not Protective of Designated Uses of Waters in the State of Washington
  - B. CWA 303(c)(4)(B) Determination of Necessity
- IV. Derivation of Human Health Criteria for Washington
  - A. Tribal Reserved Fishing Rights and Washington's Designated Uses
  - B. Scope of EPA's Proposal
  - C. Washington-Specific Human Health Criteria Inputs
  - D. Proposed Human Health Criteria for Washington
  - E. Applicability of Criteria When Final
  - F. Alternative Regulatory Approaches and Implementation Mechanisms
- V. Economic Analysis
  - A. Identifying Affected Entities
  - B. Method for Estimating Costs
  - C. Results
- VI. Statutory and Executive Order Reviews
  - A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132 (Federalism)
  - F. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)
  - G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)
  - H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)
  - I. National Technology Transfer and Advancement Act of 1995
  - J. Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations)

### I. General Information

*Does this action apply to me?*

Entities such as industries, stormwater management districts, or publicly owned treatment works (POTWs) that discharge pollutants to waters of the United States under the state of Washington's jurisdiction could be indirectly affected by this rulemaking, because federal water quality standards (WQS) promulgated by EPA would be applicable to CWA regulatory programs, such as National Pollutant Discharge Elimination System (NPDES) permitting. Citizens concerned with water quality in Washington could also be interested in this rulemaking. Categories and entities that could potentially be affected include the following: