



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2013-0602; FRL-9958-45-OAR]

**Denial of Reconsideration and Administrative Stay of the
Emission Guidelines for Greenhouse Gas Emissions and Compliance
Times for Electric Utility Generating Units**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action denying petitions for
reconsideration and petitions for administrative stay.

SUMMARY: The U.S. Environmental Protection Agency (EPA) received
38 petitions for reconsideration of the final Carbon Pollution
Emission Guidelines for Existing Stationary Sources: Electric
Utility Generating Units, published in the **Federal Register** on
October 23, 2015. The agency is providing notice that it denied
the petitions for reconsideration except to the extent they
raise topics concerning biomass and waste-to-energy, and it is
deferring action on the petitions to the extent they raised
those topics. The EPA also received 22 petitions for an
administrative stay of this rule. The agency is providing notice
that it denied these petitions. The basis for the EPA's actions
is set out fully in letters sent to the petitioners and a
separate memorandum available in the rulemaking docket.

DATES: The EPA took final action to deny the petitions for
reconsideration except to the extent they raised certain topics,

and to deny petitions for an administrative stay, on January 11, 2017.

FOR FURTHER INFORMATION CONTACT: Joseph Goffman, Office of Air and Radiation (6101A), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone number (202)564-7400, facsimile number (202)564-1408; email address:

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SUPPLEMENTARY INFORMATION:

I. Where can I get a copy of this document and other related information?

A copy of this **Federal Register** notice, the petitions for reconsideration, the petitions for an administrative stay, the letters taking action on those petitions, and the separate memorandum describing the full basis for those actions will be available in the rulemaking docket (Docket ID EPA-HQ-OAR-2013-0602). In addition, following signature, an electronic copy of these documents will be available on the World Wide Web (WWW) at the following address: <https://www.epa.gov/cleanpowerplan>.

II. Judicial Review

Section 307(b)(1) of the Clean Air Act (CAA) specifies which Federal Courts of Appeal have venue over petitions for review of final EPA actions. This section provides, in part, that "a petition for review of action of the Administrator in promulgating . . . any standard of performance or requirement

under section [111] of [the CAA],” or any other “nationally applicable” final action, “may be filed only in the United States Court of Appeals for the District of Columbia.”

The EPA has determined that its actions denying the petitions for reconsideration or for an administrative stay are nationally applicable for purposes of CAA section 307(b)(1) because the action directly affects the Emission Guidelines for Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating Units, which are nationally applicable CAA section 111 standards. Thus, any petitions for review of the EPA’s decision to deny petitioners’ requests for reconsideration or for an administrative stay must be filed in the United States Court of Appeals for the District of Columbia by **[insert date 60 days after date of publication in the Federal Register]**.

III. Background and Summary of the Action

On October 23, 2015, pursuant to section 111 of the CAA, the EPA published the final rule titled “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units.” 80 FR 64661. Following promulgation of the final emission guidelines, the Administrator received petitions for reconsideration of certain provisions of the final rule pursuant to CAA section 307(d)(7)(B) and petitions for an administrative stay under the Administrative Procedure Act (APA), 5 U.S.C. section 705 and CAA section 307(d)(7)(B).

CAA section 307(d)(7)(B) requires the EPA to convene a proceeding for reconsideration of a rule if a party raising an objection to the rule "can demonstrate to the Administrator that it was impracticable to raise such objection within [the public comment period] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." The requirement to convene a proceeding to reconsider a rule is thus based on the petitioner demonstrating to the EPA both: (1) that it was impracticable to raise the objection during the comment period, or that the grounds for such objection arose after the comment period, but within the time specified for judicial review (i.e., within 60 days after publication of the final rulemaking notice in the **Federal Register**, see CAA section 307(b)(1)); and (2) that the objection is of central relevance to the outcome of the rule.

The EPA received 38 petitions for reconsideration of the CAA section 111(d) greenhouse gas emission guidelines from the following entities: Alabama Department of Environmental Management (DEM); Ameren Corporation (Ameren); American Electric Power System (AEP); Arkansas Office of the Attorney General (Arkansas); Basin Electric Power Cooperative (Basin); Biogenic CO₂ Coalition; Biomass Power Association (BPA), the Energy Recovery Council (ERC) and the Local Government Coalition for

Renewable Energy (LGCRE); Commonwealth of Kentucky (Kentucky); Dairyland Power Cooperative, Madison Gas and Electric Company, We Energies, Wisconsin Power and Light Company, Wisconsin Public Service Corporation, and WPPI Energy (Wisconsin utilities); Denbury Onshore, LLC (Denbury); Energy and Environment Legal Institute; ERC; Entergy; Hoosier Energy Rural Electric Cooperative, Eastern Kentucky Power Cooperative, and Minnkota Power Cooperative; Intermountain Power Agency; Kansas Department of Health and Environment (DHE); LGCRE; Louisville Gas & Electric Company (LG&E) and Kentucky Utilities Company (KU); Mississippi Department of Environmental Quality (DEQ); Mississippi Public Service Commission (PSC); National Alliance of Forest Owners (NAFO); National Association of Home Builders; National Rural Electric Cooperative Association (NRECA); Newmont Nevada Energy Investment LLC and Newmont USA Limited (Newmont); NorthWestern Energy; Oglethorpe Power Corporation (Oglethorpe); Prairie State Generating Company, LLC (Prairie State); Southern Company; State of Montana Office of the Attorney General (Montana); State of Nebraska Office of the Attorney General and Nebraska Department of Environmental Quality (Nebraska); State of New Jersey Department of Environmental Protection (DEP); State of North Dakota Office of the Attorney General (North Dakota); State of Texas Office of the Attorney General, Texas Commission on Environmental Quality, Public Utility Commission

of Texas, and the Railroad Commission of Texas (Texas); State of West Virginia Office of the Attorney General (West Virginia); State of Wisconsin, Wisconsin Department of Natural Resources, and Public Service Commission of Wisconsin (Wisconsin); State of Wyoming (Wyoming); Utility Air Regulatory Group (UARG); and Westar Energy Incorporated (Westar Energy).

In letters to petitioners, the EPA denied 31 of the petitions for reconsideration in full, and denied Kentucky's and Oglethorpe's petition for reconsideration except to the extent they raised the topic of biomass, as not satisfying one or both of the statutory conditions for compelled reconsideration. The EPA is deferring action on the petitions to the extent they cover the topics of biomass and waste-to-energy.¹ The EPA is deferring with respect to biomass pending our further on-going consideration of the underlying issue of whether and how to account for biomass when co-firing with fossil fuels.

We discuss each of the topics in the petitions we denied and the basis for those denials in a separate, docketed memorandum titled "Basis for Denial of Petitions to Reconsider and Petitions to Stay the CAA Section 111(d) Emission Guidelines for Greenhouse Gas Emissions and Compliance Times for Electric

¹ These topics were included in the petitions of the Biogenic CO₂ Coalition, Biomass Power Association, Kentucky, ERC, LGCRE, Oglethorpe, and NAFO.

Utility Generating Units.” For reasons set out in the memorandum, the EPA denied the petitions for reconsideration for the following petitioners: Alabama DEM; Ameren; AEP; Arkansas; Basin; Kentucky²; Wisconsin utilities; Denbury; Energy and Environment Legal Institute; Entergy; Hoosier Energy Rural Electric Cooperative, Eastern Kentucky Power Cooperative, and Minnkota Power Cooperative; Intermountain Power Agency; Kansas DHE; LG&E and KU; Mississippi DEQ; Mississippi PSC; National Association of Home Builders; NRECA; Newmont; NorthWestern Energy; Oglethorpe; Prairie State; Southern Company; Montana; Nebraska; New Jersey DEP; North Dakota; Texas; West Virginia; Wisconsin; Wyoming; UARG; and Westar Energy.

APA section 705 provides, “When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review.” 5 U.S.C. § 705. Under CAA section 307(d)(7)(B), the EPA may stay the effectiveness of a rule while it is being reconsidered “for a period not to exceed three months.”

The EPA received 22 petitions for an administrative stay under APA section 705 and CAA section 307(d)(7)(B).

² As noted, the EPA is deferring action on Kentucky’s and Oglethorpe’s petitions to the extent they raise the topic of biomass.

The EPA received petitions from West Virginia and a group of 15 other states; Ameren; Basin; Business Associations; Denbury; Kansas DHE; Mississippi DEQ; Mississippi PSC; Montana; NAFO; National Mining Association; Nebraska; New Jersey DEP; North Dakota; NorthWestern Energy; Peabody Energy Corporation; Prairie State; Texas; UARG; and Westar Energy.

The EPA responded to several of these petitions by letters stating that we were not taking action on them in light of the stay imposed on the rule by the U.S. Supreme Court on February 7, 2016. Subsequently, the EPA sent letters to all the petitioners denying each of these petitions for the reasons explained in the memorandum referred to above, "Basis for Denial of Petitions to Reconsider and Petitions to Stay the CAA Section 111(d) Emission Guidelines for Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating Units."

Dated: January 11, 2017.

Gina McCarthy,
Administrator.

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