



**Environmental
Protection Agency**

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

February 3, 2011

Attention EPA Docket Center, EPA West (Air Docket)
Attention Docket ID No. EPA-HQ-OAR-2009-0491
U.S. Environmental Protection Agency
Mail Code: 2822T
1200 Pennsylvania Avenue, NW.
Washington, DC 20460

Re: Comments on U.S.EPA's January 7, 2011, "Notice of Data Availability for Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone: Request for Comment on Alternative Allocations, Calculation of Assurance Provision Allowance Surrender Requirements, New-Unit Allocations in Indian Country, and Allocations by States" [76 FR 1109].

To whom it may concern:

The Ohio Environmental Protection Agency thanks U.S.EPA for the opportunity to comment on the above-referenced Notice of Data Availability (NODA) regarding alternative allowance allocation approaches for potential use in the Proposed Transport Rule. These comments are a supplement to comments submitted by Ohio EPA on October 1, 2010 and October 15, 2010 regarding the Proposed Transport Rule. [75 FR 45210]

In the NODA, U.S.EPA has provided two alternative methods of allocation of allowances. Option 1 distributes allocations based on each unit's proportionate share of the state's total historic heat input evaluated during the 2005 to 2009 baseline period. Option 2 distributes allocations in the same manner as Option 1 but then constrains the allocation based on a unit's reasonable foreseeable maximum emissions, limiting a unit's ability to exceed historic emissions (from 2003 to 2009). Under Option 2, when a unit's heat input based allocation would exceed the maximum historic emissions baseline, a well-controlled-rate maximum would be calculated based on 0.06 lbs/MMBtu for SO₂ and NO_x.

First, Ohio EPA does not agree that a well controlled rate of 0.06 lbs/mmBTU for SO₂ or NO_x is appropriate. As noted in the NODA, this rate represents the “lowest” annual emission rates assumed achievable when state-of-the art-technology is installed on coal units. A well controlled rate should be just that, not a lowest achievable rate. Ohio EPA reiterates the comment in our October 15, 2010 comments:

In Chapter 5 of the documentation (Emissions Control Technology) U.S.EPA states “Potential (new) coal-fired, combined cycle, and IGCC units are modeled to be constructed with SCR systems and designed to have emission rates ranging between 0.01 and 0.06 lb NO_x/MMBtu. In Appendix 5.2A, “IPM Model – Revisions to Cost and Performance for APC Technologies, SCR Cost Development Methodology” by Sargent and Lundy it is recommended that the “lower level of NO_x removal is recommended as 0.07 NO_x lb/mmBtu” for bituminous coal. Yet, U.S.EPA appears to make the assumption that older coal-fired units retrofitted with SCRs can also achieve a 0.06 lb NO_x/mmBTU rate. Ohio EPA is not as confident that this one size fits all rate is achievable for retrofits.

Second, we remain concerned that the two new options still do not provide for a distribution mechanism of allowances that will meet the needs of the majority of Ohio’s units. When comparing the original proposal’s allocations to the new allocation methods, Ohio EPA found the following for Ohio’s coal units (includes only those units provided allocations in the first proposal):

- 2012 Distribution of SO₂ (from over 450,000 tons total to distribute)

For units with advanced SO₂ controls either in place currently or planned to be in place by the 2012 control period, Option 1 allocates over 140,000 more tons and Option 2 allocates over 131,000 more tons. While for units without advanced SO₂ controls, Option 1 allocates nearly 140,000 less tons and Option 2 allocates over 124,000 less tons.

- 2014 Distribution of SO₂ (from over 173,000 tons total to distribute)

For units with advanced SO₂ controls either in place currently or planned to be in place by the 2012 control period, both Options 1 and 2 allocate over 25,000 more tons. While for units without advanced SO₂ controls, both Options 1 and 2 allocate over 26,000 less tons.

- 2012 Distribution of annual NO_x (from over 94,000 tons total to distribute)

For units with advanced NO_x controls either in place currently or planned to be in place by the 2012 control period, both Options 1 and 2 allocate over 22,000 more tons. While for units without advanced NO_x controls, both Options 1 and 2 allocate over 21,000 less tons.

- 2012 Distribution of ozone season NO_x (from over 39,000 tons total to distribute)

For units with advanced NO_x controls either in place currently or planned to be in place by the 2012 control period, both Options 1 and 2 allocate over 9,000 more tons. While for units without advanced NO_x controls, both Options 1 and 2 allocate over 9,000 less tons.

As intended, the new allocation proposals, based upon heat input rather than actual emissions, are fuel-neutral and control-neutral in an attempt to address commenters concerns. However, they obviously create an even greater disparity between allocations for units that are controlled compared to those that are not.

For example¹:

- Unit 12 at Avon Lake is uncontrolled unit and owners have indicated no planned SO₂ control. Under the original proposal this unit would have been allocated 33,578 tons of SO₂ emissions in 2012. Under Option 1 of this proposal this unit will be allocated 9,582 tons and under Option 2, 10,670 tons. The highest year of SO₂ emissions is 38,697 (2006).
- Unit 1 at Cardinal is controlled by an FGD (2008). Under the original proposal this unit would have been allocated 2,975 tons of SO₂ emissions in 2012. Under Option 1 of this proposal this unit will be allocated 10,074 tons and under Option 2, 11,218 tons. The highest year of SO₂ emissions is 52,481 (2003 before control) while post-control SO₂ emissions fell to 2,688 tons in 2009 (which was the highest year of heat input between 2005 and 2009).
- Unit 5 at Eastlake is uncontrolled and owners have indicated no planned SO₂ control. Under the original proposal this unit would have been allocated 31,669 tons of SO₂ emissions in 2012. Under Option 1 of this proposal this unit will be allocated 12,658 tons and under Option 2, 14,096 tons. The highest year of SO₂ emissions is 49,293 (2005).
- Unit 1 at Gavin is controlled by an FGD. Under the original proposal this unit would have been allocated 12,877 tons of SO₂ emissions in 2012. Under Option 1 of this proposal this unit will be allocated 30,273 tons and under Option 2, 16,439 tons. The highest year of SO₂ emissions is 16,439 (2004).
- Unit 6 at Miami Fort is uncontrolled and owners have indicated no planned SO₂ control. Under the original proposal this unit would have been allocated 18,718 tons of SO₂ emissions in 2012. Under Option 1 of this proposal this unit will be allocated 3,473 tons and under Option 2, 3,868 tons. The highest year of SO₂ emissions is 22,918 (2003).

¹ While Ohio EPA focus' its examples on SO₂ allocations and predominantly the 2012 control period our comments apply to both SO₂ and NO_x allocations for all control periods as similar concerns are evident in all allocations.

For many uncontrolled units, like the examples above for Avon Lake, Eastlake and Miami Fort, there is a significant shortfall in the amount of SO₂ allocations that will be needed. As expressed in Ohio's October 1, 2010 comments, Ohio feels it will be quite challenging if not impossible for a number of Ohio sources to install advanced control technologies by 2014, let alone 2012. Ohio doubts these sources could even meet these restrictive allocations by burning a low-sulfur coal. Because it is virtually impossible to install advanced SO₂ controls by 2012, these owners only available means of making up for the shortfall will be to purchase excess allocations from controlled units with excess allocations. This allocation method is forcing an SO₂ allowance trading market in 2012 as the only method of compliance for many sources as installation of controls will not be an option.

Concerns with respect to this forced trading compliance method are further exacerbated due to the even tighter budgets on SO₂ emissions in 2014. As expressed in our October 1, 2010 comments, Ohio EPA is very concerned that the insufficient allocations of SO₂, the restrictive variability limits, and limited trading scheme for Group 1 SO₂ States, in conjunction with the issues and questions raised in our previous comments regarding the new unit set aside, will inhibit trading. Due to the nature of the proposed program design, U.S.EPA cannot assume that wide-spread trading will occur to "make up" for the shortfall in allocations for certain units. With such insufficient allocations, if any allocations are left at the end of the year sources will likely bank for future years rather than trade due to the significant repercussions that occur when assurance provisions are triggered.

For many controlled units, like the examples above for Gavin and Cardinal, there are excess allocations, except units with older control devices when Option 2 is applied. While Option 2 has attempted to limit the amount of excess allocations, the method used does have issues. The NODA acknowledges that "for the majority of units, the historic heat input-based allocation will not be sufficient to cover historic emission levels" and that "heat input-based allocations only exceed historic emissions for units at the lower end of the range of historic emission rates for the pollutant involved" and therefore, for these units, Option 2 would "establish, based on historic data, a reasonably foreseeable maximum emissions level" based on a "well-controlled emission rate that all units can meet." However, in comparing emission rates for Gavin and Cardinal, Cardinal's much newer FGD is capable of achieving lower emission rates.

When comparing the Gavin unit and the Cardinal unit above, Gavin has an older FGD pre-dating the years of data used in this analysis and allocation method while Cardinal has a newer FGD. This seems to have worked as an advantage for Cardinal. Option 1 and the first steps of Option 2 results in allocations for Cardinal well above actual controlled emissions, but because the control device was installed within the years used for this analysis and the year of highest actual emissions (uncontrolled) is well above the heat-rate based calculation, there is no restriction under the second part of calculations under Option 2². However, for Gavin, because the control device was

² Note that Cardinal's allocations under Option 2 are actually higher than Option 1. This is due to re-distributing allocations among all units in the State after units restricted under Option 2 have their emissions reduced similar to Gavin's.

installed prior to the years of analysis, the year of highest actual emissions is a controlled year triggering the limitation on allocations under the second part of calculations under Option 2. While Option 2 attempts to constrain allocations based on a unit's reasonable foreseeable maximum emissions it does it in a manner that places a disadvantage to units with control devices installed prior to 2003. Also note that Gavin's average of the three highest annual heat inputs (96,340,367) is over three times larger than Cardinal's (32,060,238). This is obviously reflected in the allocations under Option 1, but Option 2 does not effectively discount both units in an equal manner.

As demonstrated through U.S.EPA's latest allocation approaches, Ohio remains concerned that a fair and workable method can be found when it is apparent the issue lies within the State's SO₂ budget itself, especially given the very short time frame for implementation. The SO₂ budgets for 2012 and 2014 are just not sufficient.

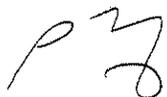
Ohio EPA wishes to reiterate its October 1, 2010 comments again. Ohio EPA is very concerned that there are insufficient allocations of SO₂, especially given the selection of 2012 and 2014 compliance deadlines. Ohio continues to believe it will be challenging if not impossible to install controls by 2014. Installing controls by 2012 is not plausible. Many sources, as a result of consent decrees between U.S. EPA and the utilities, are required to reduce emissions in the future. Yet U.S. EPA has not made any attempt to align compliance dates that necessitate installation of controls with the consent decrees that they designed. For example, the Muskingum River units are required by their consent decree to retire, repower or retrofit before the 2016 control period while Gorsuch units are required by their consent decree to retire, repower or retrofit before the 2013 control period. Why would U.S. EPA not better align consent decree compliance dates with the compliance dates of the Transport Rule. Furthermore, U.S. EPA did not set unobtainable installation dates for control requirements as a part of the consent decrees, but this is exactly what has been done with the Transport Rule. And as noted before, Ohio has serious concerns that these tight State budgets will inhibit trading of allocations under this program. Given the serious consequences that will face sources not meeting their allocated budgets, it is imperative that U.S.EPA provide a workable approach within the Transport Rule and provide sufficient time for compliance. While the two new allocation methods were an attempt to address concerns raised by Ohio and other commenters, the methods seem to result in an opposite extreme of new issues and concerns as identified in these comments.

Lastly, in addition to the comments and concerns regarding the new allocation methods, Ohio EPA is providing comment on U.S.EPA's proposed provisions for States to submit SIPs. Ohio EPA appreciates U.S.EPA's attempt to address our, and others, comments regarding U.S.EPA's initial proposal of a "FIP first" approach that usurps the fundamental right of the States to develop their own SIP. However, Ohio EPA believes the deadlines established in this proposal are unreasonable. U.S.EPA's proposal assumes the first year for which State allocations might be used in lieu of U.S.EPA allocations would be the 2014 control period, and only then if States submit a SIP by November 1, 2011. This would provide States approximately four months to prepare and submit SIPs if U.S.EPA finalizes this rule in June 2011 and provides guidance to States on SIP expectations. Yet U.S.EPA states in the proposal that these deadlines

are needed so U.S.EPA has sufficient time to review the SIPs before recording of the allocations³ would be required and U.S.EPA determined at least 6 months is necessary for their review. It appears that again States and the regulated community are being subject to unreasonable deadlines as a means of rectifying the federal government's failure to produce a timely regulation. Four months is not sufficient time for Ohio to prepare a SIP considering rulemaking will be necessary. Under this proposal, if the SIP is not submitted by this date, a State will be required to wait until the next control period, 2015. U.S.EPA must find a flexible method for providing reasonably sufficient time for States to prepare a SIP and equally reasonable time for U.S.EPA review and approval allowing for State allocations before the 2014 control period. Ohio EPA suggests U.S.EPA evaluate other methods for providing this time, such as flexibility in changes to the time needed for recording of allocations when SIPs are under review by U.S.EPA.

Again, Ohio EPA thanks you for this opportunity to comment.

Sincerely,



Scott J. Nally
Director
Ohio EPA

/att

Cc: Bob Hodanbosi, Chief Division of Air Pollution Control, Ohio EPA

³ Allocations are recorded in May and January of the year that is two years prior to the control period.