

otherwise be entitled to a refund or offset⁶—but for the fact that it calculated its royalty obligation using the subscriber group method rather than the system-wide method, and as a result, underpaid the royalties due under the system-wide method—then the operator is not entitled to a refund or offset under Section 111(d)(1)(D). That is indeed the effect of the regulation.

Cable operators presumably use the subscriber group method, because it lowers the amount of royalties owed under the statutory license. Indeed, in most of the refund requests at issue in this proceeding, the amount owed on the Statement of Account would be higher if the cable operator used the system-wide method instead of the subscriber group method to calculate its royalty obligation. In such cases, the operators are not entitled to a refund or offset, because the overpayments purportedly shown on their Statements of Account would not have occurred but for the fact that they calculated their royalty obligation using the subscriber group method rather than the system-wide method, which was the methodology in effect when the Statements were filed.

The NCTA contended that the proposed rule is inconsistent with the legislative history for the amendment to Section 111(d)(1)(D), but the quotes that the NCTA cited from the congressional debate do not support this view. At best, these quotes merely indicate that stakeholders disagreed over whether a cable operator should be required to pay for phantom signals and that the legislation was intended to resolve that longstanding dispute. The NCTA offered no language from the congressional debate indicating that Congress intended to change the method that should be used to calculate royalty obligations on Statements filed before the date of enactment. Nor is there any indication that Congress intended to overrule the Office's longstanding practice of declining to issue refunds or offsets to cable operators who failed to pay for phantom signals.

Finally, the NCTA contended that the proposed rule will cause “confusion and uncertainty” regarding the treatment of phantom signals. NCTA Reply at 2. However, the NCTA acknowledged that the instances where a cable operator used the subscriber group methodology and subsequently requested a refund “are relatively rare,”

⁶ As the NCTA observed, an operator might be entitled to a refund if it incorrectly reported a local signal as distant or mistakenly paid royalties for a signal that was not carried anywhere on the system. See NCTA Reply at 3.

NCTA Comment at 1 n.3, and in fact, it provided only one example of alleged “confusion and delay” in its comments. Specifically, the NCTA predicted that the proposed rule would create uncertainty for Statements of Account filed for the second accounting period of 2010, because “those statements were not due until after the effective date of STELA, but in some cases were filed before that date.” NCTA Reply at 2, n.1. In fact, the Office did not receive any Statements of Account for the 2010/2 accounting period before the effective date of STELA, so the regulation will not cause any delay in connection with those Statements.⁷ Moreover, the proposed rule draws a bright line that eliminates any confusion. Refunds on Statements of Account filed prior to the 2010/1 accounting period are based upon calculations of royalty obligations under the methodology that attributed carriage of a signal throughout the cable system rather than on the revised methodology adopted under STELA that requires calculations to be made based on carriage of signals within discrete communities.

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

Final Regulations

In consideration of the foregoing, the Copyright Office amends part 201 of 37 CFR as follows:

PART 201—GENERAL PROVISIONS

- 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

- 2. Amend § 201.17 by redesignating paragraphs (m)(1) through (4) as paragraphs (m)(2) through (5) and adding a new paragraph (m)(1) to read as follows:

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(m) * * *

(1) Royalty fee obligations under 17 U.S.C. 111 prior to the effective date of the Satellite Television Extension and Localism Act of 2010, Public Law 111-175, are determined based on carriage of each distant signal on a system-wide basis. Refunds for an overpayment of royalty fees for an accounting period prior to January 1, 2010, shall be made only when all outstanding royalty fee obligations have been met, including

⁷ As discussed above, STELA is effective as of February 27, 2010. The 2010/2 accounting period ended on December 31, 2010, and Statements of Account for that period were due on March 1, 2011.

those for carriage of each distant signal on a system-wide basis.

* * * * *

Dated: September 21, 2012.

Maria A. Pallante,
Register of Copyrights.

Approved by:

James H. Billington,
The Librarian of Congress.

[FR Doc. 2013-00171 Filed 1-8-13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[FRL-9767-5]

Notice of Approval of Clean Air Act Outer Continental Shelf Minor Source/ Title V Minor Permit Modification Issued to Shell Offshore, Inc. for the Kulluk Conical Drilling Unit

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice announces that EPA Region 10 has issued a final decision granting Shell Offshore Inc.'s (“Shell”) request for minor modifications of Clean Air Act Outer Continental Shelf (“OCS”) Minor Source/Title V Permit No. R10OCS03000 (“permits”). The permits authorize air emissions associated with Shell's operation of the Kulluk Conical Drilling Unit (“Kulluk”) in the Beaufort Sea to conduct exploratory oil and gas drilling.

DATES: January 9, 2013.

ADDRESSES: The documents relevant to the above-referenced permits are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, AWT-107, Seattle, WA 98101. To arrange for viewing of these documents, call Natasha Greaves at (206) 553-7079.

FOR FURTHER INFORMATION CONTACT: Natasha Greaves, Office of Air Waste and Toxics, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, Suite 900, AWT-107, Seattle, WA 98101.

SUPPLEMENTARY INFORMATION: EPA Region 10 issued a final decision on the minor modifications of the permits on September 28, 2012. The modified permits also became effective on that date, and the 30-day period provided by 40 CFR 71.11(l) to file with the Environmental Appeals Board (“EAB”)

a petition to review the minor modifications of the permits ended on October 29, 2012. Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of these final permit decisions, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of January 9, 2013.

On April 12, 2012, EPA issued a final decision on the permits which authorize air emissions from Shell's operation of the Kulluk in the Beaufort Sea to conduct exploratory drilling. Shell submitted an application to EPA Region 10 requesting minor modifications of the permits on July 5, 2012. EPA Region 10 reviewed and issued the requested minor modifications of the permits on September 28, 2012.

All conditions of the Kulluk permit, issued by EPA on September 28, 2012, are final and effective.

Dated: November 6, 2012.

Kate Kelly,

Director, Office of Air, Waste & Toxics, Region 10.

[FR Doc. 2012-31649 Filed 1-8-13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2012-0782; FRL-9766-7]

Determination of Attainment for the San Francisco Bay Area Nonattainment Area for the 2006 Fine Particle Standard; California; Determination Regarding Applicability of Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to determine that the San Francisco Bay Area nonattainment area in California has attained the 2006 24-hour fine particle (PM_{2.5}) National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality-assured, and certified ambient air monitoring data showing that this area has monitored attainment of the 2006 24-hour PM_{2.5} NAAQS based on the 2009–2011 monitoring period. Based on the above determination, the requirements for this area to submit an attainment demonstration, together with reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP and attainment deadlines are suspended for so long as

the area continues to attain the 2006 24-hour PM_{2.5} NAAQS.

DATES: This rule is effective on February 8, 2013.

ADDRESSES: EPA has established docket number EPA-R09-OAR-2012-0782 for this action. Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, (415) 972-3963, or by email at ungvarsky.john@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, wherever “we”, “us” or “our” are used, we mean EPA.

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I. Summary of Proposed Action

On October 29, 2012 (77 FR 65521), EPA proposed to determine that the San Francisco Bay Area nonattainment area¹ has attained the 2006 24-hour NAAQS² for fine particles (generally referring to particles less than or equal to 2.5 micrometers in diameter, PM_{2.5}).

In our proposed rule, we explained how EPA makes an attainment determination for the 2006 24-hour PM_{2.5} NAAQS by reference to complete, quality-assured data gathered at State and Local Air Monitoring Stations (SLAMS) and entered into EPA's Air Quality System (AQS) database and by reference to 40 CFR 50.13 (“National primary and secondary ambient air quality standards for PM_{2.5}”) and appendix N to [40 CFR] part 50

¹ The San Francisco Bay Area PM_{2.5} nonattainment area includes southern Sonoma, Napa, Marin, Contra Costa, San Francisco, Alameda, San Mateo, Santa Clara and the western part of Solano counties.

² The 2006 24-hour PM_{2.5} NAAQS is 35 micrograms per cubic meter (µg/m³), based on a 3-year average of the 98th percentile of 24-hour concentrations.

(“Interpretation of the National Ambient Air Quality Standards for PM_{2.5}”). EPA proposed the determination of attainment for the San Francisco Bay Area based upon a review of the monitoring network operated by the Bay Area Air Quality Management District (BAAQMD) and the data collected at the 10 monitoring sites operating during the most recent complete three-year period (i.e., 2009 to 2011). Based on this review, EPA found that complete, quality-assured and certified data for the San Francisco Bay Area showed that the 24-hour design value for the 2009–2011 period was equal to or less than 35 µg/m³ at all of the monitor sites. See the data summary table on page 65523 of the October 29, 2012 proposed rule. We also noted that preliminary data available in AQS for 2012 indicates that the San Francisco Bay Area continues to attain the NAAQS.

In our proposed rule, based on the proposed determination of attainment, we also proposed to apply EPA's Clean Data Policy to the 2006 PM_{2.5} NAAQS and thereby suspend the requirements for this area to submit an attainment demonstration, associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for so long as the area continues to attain the 2006 24-hour PM_{2.5} NAAQS. See pages 65524–65525 of our October 29, 2012 proposed rule. In proposing to apply the Clean Data Policy to the 2006 PM_{2.5} NAAQS, we explained how we are applying the same statutory interpretation with respect to the implications of clean data determinations that the Agency has long applied in regulations for the 1997 8-hour ozone and PM_{2.5} NAAQS and in individual rulemakings for the 1-hour ozone, PM₁₀ and lead NAAQS.

Please see the October 29, 2012 proposed rule for more detailed information concerning the PM_{2.5} NAAQS, designations of PM_{2.5} nonattainment areas, the regulatory basis for determining attainment of the NAAQS, BAAQMD's PM_{2.5} monitoring network, EPA's review and evaluation of the data, and the rationale and implications for application of the Clean Data Policy to the 2006 PM_{2.5} NAAQS.

II. Public Comments and EPA Responses

EPA's proposed rule provided a 30-day public comment period. During this period, we received no comments.

III. EPA's Final Action

For the reasons provided in the proposed rule and summarized herein, EPA is taking final action to determine that the San Francisco Bay Area