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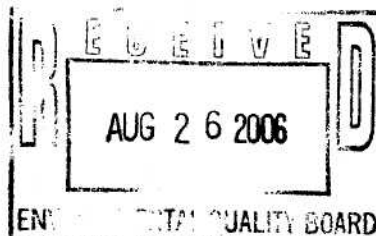


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August 23, 2006

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477



RE: Proposed Rulemaking
25 PA. Code CH. 123
Standards for Contaminants; Mercury
[36 Pa.B. 3185]
Comments by Allegheny Energy

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INDEPENDENT REGULATORY
REPRESENTATIVE

Dear EQB:

Allegheny Energy submits the following comments on the Pennsylvania Department of Environmental Protection Agency's (PADEP) proposed rules on mercury emission standards for electric generating units (EGUs). In brief, 1) the proposed rule does not provide any more protection to the Commonwealth's environment or citizens than that provided by the federal Clean Air Mercury Rule, 2) the administrative record is not adequate to support the rule as proposed, and 3) if passed, the regulation will cause economic distress and possibly hamper electric generation reliability. Allegheny Energy fully supports and incorporates the comments of the Electric Power Generation Association (EPGA) submitted under separate cover.

I. ABOUT ALLEGHENY ENERGY

Allegheny Energy owns, operates, or controls approximately 10,400 megawatts of generation capacity in five states (Maryland, Pennsylvania, Tennessee, Virginia, and West Virginia) and serves an estimated customer base of 1.8 million residential customers. Allegheny Energy's Pennsylvania generation accounts for just under 33% of our total generation portfolio and just over 31% of our coal-based generation. We have three pulverized coal-burning plants in Pennsylvania that consume over 3.5 million tons of in-state coal annually. We employ 2,111 in the state of Pennsylvania, 346 of whom work at one of the three coal-fired plants. This proposed mercury rule directly affects these three Allegheny Energy coal-fired plants:

- 1) Armstrong Power Station with one unit each of 176 MW and 180 MW of output (356 MW total) located in Armstrong County, Adrian, Pennsylvania;
- 2) Hatfield's Ferry Power Station with three units of 570 MW output each (1710 MW total) located in Greene County, Masontown, Pennsylvania; and,
- 3) Mitchell Power Station with one coal unit with a 280 MW output located in Washington County, Courtney, Pennsylvania.

II. INTRODUCTION

A. CAIR and CAMR

Public support for the proposed PADEP mercury rule was garnered under the implication that the emissions from coal burning power plants, like the three listed above, were continuing unabated and causing an unchecked health threat. This rule was proposed as the only effective attempt to regulate mercury in Pennsylvania. In fact, the US EPA had already promulgated the federal Clean Air Mercury Rule (CAMR), a significant regulatory initiative almost totally ignored by Penn Future, the petitioner, and frequently dismissed by PADEP.

Just prior to CAMR the US EPA also passed the Clean Air Interstate Rule (CAIR) with the objective of additional NO_x and SO₂ emissions beyond those already successfully achieved under the Clean Air Act's (CAA) cap and trade system. In the development and modeling of these rules EPA reached two important conclusions. First, the emission controls technology installed to reduce NO_x and SO₂ emissions under CAIR would also have the co-benefit of removing significant amounts of mercury emissions. EPA plans to implement both CAIR and CAMR in two overlapping yet coordinated phases. CAIR Phase I for NO_x will occur in 2009 and for SO₂ will occur in 2010. The second phase of CAIR will then occur for both pollutants in 2015. Recognizing that the installation of CAIR controls will not only place logistic, timing and cost constraints on the coal-burning electric generation industry (and its associated control equipment contractors and suppliers), but will also offer the co-benefit of reduced mercury emissions, the EPA set the CAMR implementation phases to occur in 2010 and 2018. The second phase of CAMR in 2018 will require a second significant reduction in mercury emissions beyond the co-benefits realized by CAIR installed control technologies. The 2018 implementation date will occur far enough in the future to preserve the integrity of generation capacity and stimulate further research into the fledgling technologies of mercury-specific emission controls. Unlike the proposed PADEP regulation, the coordinated implementation of the federal CAIR and CAMR rules will allow Pennsylvania to realize an estimated 86% reduction in mercury without threatening the economic dislocation of any unit within the Commonwealth.

B. Trading

The second important conclusion reached by US EPA was the use of a cap and trade system to achieve the reductions sought in a timely and economically viable fashion. Cap and trade systems for NO_x and SO₂ emissions have proven to successfully reduce emissions by producing economic incentives for reductions. The cap and trade issue is of particular importance to Allegheny Energy and we view it as a crucial element in achieving mercury reductions and maintaining compliance without threatening the reliability of Pennsylvania's energy supply.

Under the federal CAIR program discussed above, Allegheny Energy has announced the construction of scrubbers at our Hatfield's Ferry Power Station at the cost of approximately 550 million dollars. We are also adding scrubbers at a two-unit coal generation station that sits on the border of West Virginia and Pennsylvania at an equally significant cost. Finally, 105 million dollars is being spent at another station in West Virginia for the construction of a new stack that will allow 100% of the plant's exhaust to pass through its existing scrubber system. The installation of these

new scrubbers along with the three existing plants that are already scrubbed (Mitchell in Pennsylvania and two in West Virginia) will mean that over 84% of Allegheny Energy's coal-fired generation is scrubbed, removing significant amounts of sulfur dioxide and mercury.

Costs, timing, limited vendor resources, and the unproven full-scale application of mercury-specific control equipment limit Allegheny Energy and other Pennsylvania utilities from doing more between now and 2010. In order to maintain compliance, while at the same time maintaining full generation capacity and reliability, Allegheny Energy needs the ability to use allowances generated by our facilities with controls, at stations that have yet to have additional controls installed. *Under the Department's proposed Pennsylvania mercury rule, which prohibits trading, our Armstrong Power Station may not be able to meet its annual cap given its current use of Pennsylvania coal and operation configuration.* Further compounding the problem is the Department's arbitrary and capricious hierarchy of generation types to which it will award non-tradable supplemental pool allowances. This hierarchy relegates Armstrong's units to be the very last to receive the supplemental pool allowances, further placing the facility's operation at risk.

Our more detailed comments are presented in two parts, the first being general overall comments on the merits of the proposed rule and the second noting specific comments by section and page.

III. GENERAL COMMENTS

The proposed rule is not legally or administratively sustainable. The PADEP clearly stated throughout the regulation making process that its reasons for a state-specific regulation were to 1) protect Pennsylvania coal from economic dislocation, 2) avoid "hot spots" of mercury contamination, and 3) protect the health of the citizens of Pennsylvania. There is, however, no administrative record that clearly identifies the need for more stringent regulations beyond that provided by CAMR or that supports the three PADEP premises on which the rule is based.

A. PROTECTING PENNSYLVANIA COAL

Under CAMR allowances can be allocated based on coal type. Western coals (sub-bituminous), which typically have lower mercury concentrations than eastern coals (bituminous), contain the mercury in forms that are far more difficult to remove. Hence, even though western coals may be lower in mercury concentration, EGUs using western coals can be awarded more allowances under CAMR because that mercury is much harder (and thus more expensive) to remove. Coupled with the cap and trade mechanism within CAMR EGUs are afforded different options (fuel switching, allowance purchasing, etc.) to maintain compliance while still having incentives to reduce mercury emissions overall. The PADEP views this scheme as a disadvantage to eastern bituminous coals and claims that CAMR will drive EGUs away from using Pennsylvania coals, eventually creating an economic disadvantage to some of the Pennsylvania coal mining industry.

The general consensus on control equipment efficiencies suggests an ESP/scrubber combination could achieve mercury reductions in the 53% to 87% range. Therefore, a power station with an existing ESP burning a typical Pennsylvania coal with an average mercury concentration of 0.3 ppm (24 lbs/Tbtu at 12,500 Btu/lb) could not achieve the Phase I limits of the PADEP proposed rule by installing a scrubber alone. Even at the optimum reduction level of 87% the addition of the scrubber would only reduce mercury by 20.9 lbs/Tbtu leaving the station 0.7 lbs/Tbtu above the Phase I limit. Even though the station would have presumptive controls in place and be exempt from this emission rate limit, the facility would not be able to meet its annual mercury cap based on the CAMR allocations. In order to achieve compliance with the annual cap the station would need to switch coal supplies in addition to adding on controls. Coal supplies outside of Pennsylvania can readily provide coals with up to 2/3 less mercury concentration, or on the order of 0.1 ppm (8 lbs/Tbtu). Using coals outside of Pennsylvania in addition to the scrubber would ensure achieving compliance with Phase I and, if the efficiency is truly on the high end, also with Phase II. Regardless of the exact numbers, however, it is obvious power stations exist today that will be considering low mercury, non-Pennsylvania coal options as a compliance strategy for the PADEP proposed mercury rule. How this aids the Pennsylvania coal industry and protects its jobs and economy eludes us. It also seems to elude the Pennsylvania Coal Association, and industry-related unions and coal producers.

Allegheny Energy's Armstrong power station is just one example. Preliminary analysis reveals even with scrubbers installed, the current Pennsylvania-coal mix being burned at the station might exceed the mandated emission caps in the 2010 Phase I of the Department's proposed rule. Pennsylvania plants facing this scenario have no option but to review coal-switching options, specifically involving lower-mercury coal.

B. HOT SPOTS

Another of PADEP's drivers for establishing a state-only rule was the concern of "hot spots" being created by the CAMR cap and trade provisions whereby only large plants (presumably outside of Pennsylvania) would be over-controlled to cover the continued emissions of smaller plants (presumably in Pennsylvania). The Department claims that the operation of these non-controlled smaller plants would continue to emit mercury (perhaps even at increased levels if enough tradable allowances were created), which would deposit locally and thus create a "hot spot of mercury contamination." Allegheny Energy does not dispute the evidence that coal-burning electric generating units contribute to *regional* mercury levels. The Electric Power Research Institute (EPRI) has made this point repeatedly when discussing mercury deposition influences, however, its data and the information provided to the Mercury Workgroup did not support the concept of site-specific "hot spots" because of the co-benefit reductions in mercury emissions that would be realized from the installation of CAIR emission controls.

An article written by then-Environmental Law Institute attorney Byron Swift¹ examines the very question of "whether major U.S. emissions trading programs for air pollutants have contributed to elevated emissions concentrations in specific geographic areas, or pollution 'hot spots'." Swift's conclusions:

¹ BNA's Environmental Reporter, Volume 35, No. 19, May 7, 2004.

“[T]he actual performance of these programs shows that none has resulted in a regional shift of emissions, and all trading programs examined have led to proportionately greater emissions reductions from the larger sources. Overall, the data from the programs reviewed indicate that trading has not created geographic hot spots and, in promoting reductions at the largest plants, has smoothed out pollutant emissions instead of concentrating them [emphasis added].”

Many states, along with US EPA, agree that with CAIR control technology installations on larger plants there is no basis for concern about residual hot spots. An ongoing study conducted by the Environmental Resources Research Institute at The Pennsylvania State University showed in its 2005 status report no statistically significant increase in mercury deposition concentrations.² Finally, a study conducted by Brookhaven National Laboratory found no evidence for mercury hot spots.³ The concept of “hot spots” and the negative connotation derived by such a phrase, particularly when describing pollutant emissions, has become ingrained in the public mind as truth not from demonstrated scientific fact or analysis but rather through repetition of the phrase by the Department and the petitioner.

The Department is apparently under the misconception that controls on larger plants will allow smaller, older, un-controlled plants to run more causing an increase in emissions and creating a “hot spot.” Ignoring for the moment the above evidence to the contrary, economic market dispatching will, in of itself, prevent this type of scenario. Dispatching of units is determined by operating costs, not capital investment costs. Operating costs, generally depicted in terms of dollars per mega-watt hour, have three major components: fuel costs, maintenance costs, and emission allowance costs. The sum of these components generally determines the order in which generation is called to operate.

Older and smaller plants tend to have higher fuel costs as a result of less efficient design (higher heat rate) than newer plants. Likewise, these plants tend to have fewer emission-control devices and as a result have higher emission rates. This translates to higher emission dispatch costs, as the operator must surrender emission allowances equal to its emissions. Both of these factors add cost to the older, smaller uncontrolled plants that move them further out on the dispatch queue, leading to fewer economic dispatch hours, rather than more. Dispatching less translates directly into fewer overall emissions and thus precludes the “hot spot” scenario constructed by PADEP and the petitioner. At best PADEP has collected conflicting evidence, much of it unreleased, to create “intuitive” support for a rule of significant economic and reliability consequences.

C. HEALTH PROTECTION

Allegheny Energy fully appreciates the characteristics and toxicity of mercury in various exposure settings and concentrations. However, the toxicity of mercury in and of itself does not logically lead to PADEP’s proposed rule. In fact, a review of the record and Mercury Workgroup presentations fails to reveal any technical rationale for a rule that goes beyond CAMR’s requirements. The Department has focused on the generic health concerns associated with

² *Mercury Deposition in Pennsylvania: 2005 Status Report*, James A. Lynch, December, 2005.

³ *The Local Impacts of Mercury Emissions from Coal Fired Power Plants on Human Health Risk, Progress Report for the Period of March 2002 – March 2003*, T. M. Sullivan, Brookhaven National Laboratory, May, 2003.

mercury, concluding a state-specific standard is required, when numerous physicians and PhD toxicologists have presented information to the contrary. The Department itself has publicly stated that it does not have any studies linking mercury emissions from power plants to health impacts on communities.⁴

At the October 28, 2005 Mercury Workgroup session, Dr. Donald J. McGraw (MD) told PADEP “[s]tudies of people eating lots of fish in other cultures do not show adverse health consequences. There is a huge benefit to eating fish and it would be an unfortunate tradeoff to reduce the consumption of fish for health effects (from mercury) we have not seen.”⁵

The U.S. Centers for Disease Control (CDC) conducted a nationwide study of women of childbearing age, infants, and young children and were unable to find a single case where mercury levels approached the level that might cause adverse health effects.⁶ At the Senate Environmental Resources and Energy Committee hearing on May 2, 2006, Dr. Jack Snyder said the Committee has “not been provided credible evidence supporting speculation that any women, children, or fetuses have been harmed, or have been placed at increased risk of harm, as a result of eating fish from bodies of water in Pennsylvania or other parts of the United States.”⁷ Finally, there is the testimony of Dr. Gail Charnley given during the June 6, 2006 hearing of the Senate Environmental Resources and Energy Committee that states “[a]ny claims that Pennsylvania’s state-specific proposed rule will protect high consumers of Pennsylvania fish any better than will the federal rule are not scientifically supportable.”⁸

In an October 2005 press release, the Harvard School of Public Health (HSPH) promoted a study that was subsequently published in the *American Journal of Preventive Medicine*.⁹ In that release HSPH claims:

“A comparison of the risk and benefits of fish consumption suggests that government advisories warning women of childbearing age about mercury exposure should be issued with caution. [I]f advisories cause fish consumption in the general public to drop out of fear about the effects of mercury, substantial nutritional benefits could be lost.”

HSPH investigators claim that research to date has found no significant ill effects from mercury at the lifetime levels to which most humans are exposed.¹⁰

In view of this information, it is difficult if not impossible to identify what benefit PADEP hopes to achieve beyond that already created by CAMR.

⁴ June 6, 2006 Hearing Transcript, pages 41-43, Senate Environmental Resources and Energy Committee.

⁵ Expert in occupational and environmental medicine serving on the faculty of the University of Pittsburgh and Johns Hopkins University.

⁶ “*Third National Report on Human Exposure to Environmental Chemicals*,” U.S. Centers for Disease Control, 2005.

⁷ Physician and former staff toxicologist at Thomas Jefferson Medical College (Philadelphia, PA).

⁸ Dr. Charnley’s full testimony, <http://white.pasenategop.com/environmental/060606/charnley-060606.pdf>

⁹ Refer to press release at <http://www.hsph.harvard.edu/press/releases/press10192005.html>

¹⁰ Refer to http://www.hsph.harvard.edu/review_fall_04/risk_fish.html

IV. A CASE FOR TRADING

Considering all the relatively new and aggressive pollutant reduction mandates required by CAIR and CAMR the industry is responding to its compliance obligations, in whole, by installing control equipment. There are limits to these compliance efforts, however, that must be recognized by the regulators. These include not only the practical factors of technical and financial feasibility but also the more subtle limits like the disparity caused by deregulation of the industry in certain states. Nevertheless, controls that are being installed will go onto the stations that offer the greatest reductions at the least cost. In order to make compliance achievable the Department must allow for trading. Unrestricted interstate trading as proposed in CAMR is the most practical scenario and has been proven by the Clean Air Act to be an effective pollutant reducing mechanism. Short of that, interstate fleet trading at least offers a company the opportunity to comply as a system rather than as individual and independent entities and can better protect reliability.

As stated earlier, Allegheny Energy has three coal-fired plants directly affected by this proposed regulation. Mitchell Power Station is currently scrubbed and thus meets the presumptive control technology requirements listed in the proposed rule for Phase I. In preparation for the federal CAIR program, we are installing scrubbers at our Hatfield's Ferry Power Station to be operational by 2009. With the installation of these new scrubbers, both Hatfield's Ferry and Mitchell power stations should be able to meet the Phase I annual caps and emission requirements under the presumptive control technology provisions. In addition to the Pennsylvania scrubber we are also constructing new scrubbers at a station in West Virginia and a new stack at yet another station already equipped with a scrubber. This belies the petitioner's twisted construction of CAMR that it will somehow promote massive import of mercury emission allowances into Pennsylvania. Between CAIR and CAMR, that is not feasible and, in fact, is not predicted by PADEP's or US EPA's modeling.

In addition, all of this new construction, to comply with CAIR, is costing Allegheny Energy on the order of one billion dollars in capital expenditures. With many other electric generating companies doing the same as Allegheny Energy, availability of contractors and, more crucially, of construction materials is becoming very limited. The possibility of installing even more control equipment, if financially possible, may not be realized logistically. Most major control equipment installations have design and construction lead times of 24 to 40 months. After accounting for all of these factors it becomes apparent that companies will struggle to meet the 2010 Phase I deadline of the proposed rule without trading options.

Such is the case with Allegheny Energy's Armstrong Power Station. Initial Ontario Hydro Method (OHM) stack tests by independent third party contractors suggested that mercury emissions at this plant were manageable under CAMR and Pennsylvania's proposed Phase I limitations. Using these test results the company then turned its focus on meeting CAIR SO₂ reductions, assuming the co-benefit mercury reductions would be more than sufficient. Allegheny Energy elected to scrub the larger Hatfield's Ferry plant, then to consider controls at other stations, as warranted, to meet the requirements of Phase II of CAIR or CAMR. More recent tests using OHM, sorbent tubes, and CEMs simultaneously now suggest mercury emission rates are actually higher.

Even in view of this new data, the scrubbers at our Mitchell Power Station and Hatfield's Ferry Power Station appear to provide enough reduction efficiency to achieve compliance with the proposed Pennsylvania rule Phase I mercury annual cap and emission rate. At these recently demonstrated higher emission rates, however, Armstrong's compliance is problematic short of trading, new technology developments, or an "alternative limit or reduction schedule" under § 123.206.

Many Pennsylvania stations burn high mercury-content Pennsylvania coal. To move toward compliance at these stations, coal switching and the purchasing of low-mercury coal, possibly from suppliers outside of Pennsylvania, is inevitable. In most cases, the reductions realized from a different coal supply along with the reductions attributable to existing control equipment will not be sufficient, however, to achieve compliance with the proposed rule's Phase I emission cap or rate. Given the equipment installation constraints described above and the prohibition on trading, this proposed rule creates significant concerns for electric reliability in Pennsylvania. If supplies and contractors are available to construct additional controls, financing will almost certainly come with a premium or be inflated to cover expediting fees imposed by contractors and suppliers. Allowing interstate CAMR style trading or interstate fleet trading, however, would allow these stations to comply with the Pennsylvania regulations with allowances made available from the company's CAIR-controlled plants. Aside from providing compliance, an interstate trading system would also provide incentive to reduce mercury emissions at all coal-fired stations sooner rather than later.

If trading is not added to the rule and controls cannot be built because of time, labor, or financial constraints then the proposed rules allow for the Department to enter into a plan approval, permit, or consent order that dictates an alternative mercury emissions limit or schedule. While this scenario may allow for the continued operation of small and medium sized plants at some reduced level of output, it provides no added benefit to the environment, no incentive to achieve reductions at the earliest possible time, and no comfort on continued energy supply reliability. The benefits of cap and trade on the other hand have been proven to provide market incentive and affectively achieve reductions in other pollutants.

Do not depend on cheap, fast technologies replacing the proven track record of trading. Despite the claims of some very zealous vendors, there are few mercury specific control technologies that have been used in full-scale applications.

As described above, in section B of these general comments, the Department is under the misconception that controls on larger plants will generate large banks of tradable allowances to run smaller, older, un-controlled plants and potentially increase emissions. The forces of economic market dispatching, hinging on operating costs, do not support this concept.

V. SPECIFIC COMMENTS

A. § 123.202, Definitions, Page 3 of 22

Add a definition for dry flue gas desulfurization

Add a definition for dry flue gas desulfurization control equipment. Although not as efficient as WFGD, it is a viable control technology that will reduce mercury as a co-benefit. Suggested language:

DFGD -- Dry flue gas desulfurization unit – A sulfur dioxide control system located downstream of the steam generating unit that removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gases with a solid alkaline substance including lime or limestone.

B. § 123.202, Definitions, Page 5 of 22

Add the word “molecular” to the definition for SCR

To more accurately reflect the chemical conversion that occurs in a SCR the word “molecular” should be added between the words “form” and “nitrogen” in the last sentence of the definition.

C. § 123.205, Emission standards for coal-fired EGUs, Page 6 and 7 of 22

Change the mercury emission rate standard unit of measurement to lbs/Tbtu

The mercury emission rate standard unit of measurement should be changed to pounds per trillion Btu (lbs/Tbtu) to be consistent with the units listed in §123.214 of the proposed rule, other state rules, and CAMR.

D. § 123.205, Emission standards for coal-fired EGUs, Page 8 of 22

Change lettering of this Section to reflect four subsections – (a), (b), (c), and (d)

This Section has four distinct subsections, the last two of which are both identified with the letter ‘c.’ The lettering needs corrected by changing the last ‘c’ to a ‘d.’

E. § 123.207, Annual emission limitations for coal-fired EGUs, Pages 10 & 11 of 22

This section does not clearly identify correlation between implementation phase years and budgets for CFBs – it requires correction of typographical errors or further clarification.

Throughout this section, there are references to CFBs getting allowances for years 2010 through 2014, but this section only lists a Phase II allowance budget for CFBs (Phase II is slated for years 2015 and beyond). The confusion is only further compounded by the statements in subsection (h) declaring that Phase I allowance set asides will be published for both existing affected CFB and PCF units – yet it appears from subsection (d) that existing CFBs are not being awarded Phase I allowances (or at least not from the Phase I pool). Either there are typographical errors in this section, confusing Phase I and Phase II implementation, or the section needs further explanation to clarify what is intended.

F. § 123.209, Petition process, Pages 13 & 14 of 22

Awarding of supplemental pool allowances should be based on compliance efforts, technical feasibility, and fiscal ability hierarchy rather than a hierarchy based on generation unit type

The Department criticized the US EPA for basing mercury allowances on the type of coal as being unfair to eastern bituminous and specifically Pennsylvania mined coals. The allocation hierarchy listed in this proposed section is far more arbitrary and capricious and only serves to illustrate PADEP's bias to promote its agenda for preferred coal generation units within the Commonwealth (i.e. waste coal and IGCC). In reality the vast majority of existing coal-fired units in Pennsylvania subject to this rule are pulverized coal burners with varying levels of emission controls. The requirements of the federal CAIR program, which is also implemented in two phases, will drastically increase the number of units with emissions control equipment. While this equipment is designed for NO_x and SO₂ control there will be co-benefit emission reductions realized for mercury. In some cases, these co-benefit reductions will be significant enough to reach compliance with the Department's proposed Phase I implementation date of 2010 but there will also be cases where additional, mercury-specific controls will be needed, especially where certain seams of Pennsylvania coal are being burned. The reductions these mercury-specific controls can achieve have not yet been proven on full-scale applications. The problem created, however, is the timing, logistics, and cost of all these controls, not to mention the fact that some control systems may just not work as anticipated. The implementation phases of these two programs is very close and since controls for CAIR will also control mercury to some significant extent, Pennsylvania EGUs are putting resources and capital into those controls. Installation of equipment of this magnitude – at multiple sites – rapidly consumes design and construction contractors, labor forces, and equipment supply vendors to the point of saturation where, even if money were unlimited, additional controls simply cannot be built. For companies in this situation, the proposed regulations should, at the very least, award supplemental pool allowances to the units, regardless of type, that are making reasonable attempts but simply cannot comply. A better solution would be to incorporate interstate trading into the proposed rule, rendering the petition process unnecessary.

G. § 123.214(a)(1), Coal sampling and analysis for input mercury levels, Page 20 of 22

Sampling of coal supply should be on as-received coal, once per shipment per source.

Daily sampling of as-burned coal, as required in the proposed regulation, will add to the operation cost of the EGUs. As-received coal samples are already taken on a per shipment basis (truck, railcar, barge) to verify contracted quality. In some cases, the supplier will provide the

sampling and analysis. Since this process is already in place and as-received coal reflects the variation in mercury concentration that as-burned coal analysis would there is no justification for increasing sampling costs. Allegheny Energy proposes that the daily sampling requirement of as-burned coal be changed to allow for sampling and testing of as-received coal on a per shipment per source basis. This change would also affect language in § 123.205.

H. § 123.214(2), Coal sampling and analysis for input mercury levels, Page 20 of 22

Acceptable mercury coal analysis methods should be expanded to include ASTM D3684-01 and ASTM D6722-01

There are three PADEP/US EPA approved ASTM methods for mercury analysis that are widely used by industry and commercial laboratories: ASTM D6414-01, ASTM D3684-01, and ASTM D6722-01. Since this section only recognizes ASTM D6414-01, EGUs would need to petition the Department to use the other two methods mentioned. It is wasteful of both the Department and applicant's resources to petition to use two methods already approved by both PADEP and US EPA. Therefore, ASTM D3684-01 and ASTM D6722-01 should be added to the section as acceptable analysis methods.

VI. SUMMARY

When proposing regulations of this scope and consequence regulators have a duty to provide evidence that the benefits to public health, the environment, and society in general outweigh modeled or constructed negative consequences. PADEP has not created such an administrative record. For the EQB to pass this rule it is imperative the Department present and rely upon evidence that some commensurate public health or environmental benefit will be gained beyond what could be achieved by CAMR. Anything short of that may result in the premature retirement of generating plants in Pennsylvania, overall reduced electric generation in the state, constraints on reliability, movement to low mercury concentration coal from outside the state, and a potential increase in electricity prices with no benefit beyond the existing federal rule.

Allegheny Energy appreciates the opportunity to express our opinions and comments on these regulations. If we can be of further assistance please contact Mr. Randy Cain of my staff at 724-838-6004.

Sincerely,

David C. Cannon Jr.
David C. Cannon Jr. *by RDC*
Vice President
Environment, Health & Safety