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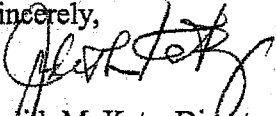
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

Dear Chairperson McGinty,

Thank you for the opportunity to comment on Pennsylvania's proposed Interstate Pollution Transport Reduction program to meet the requirements of the Clean Air Interstate Rule (CAIR). The Environmental Protection Agency (EPA) comments are provided in the attachment to this letter. Please note that while there are certain flexibilities that are allowed under CAIR for a state that wishes to participate in the EPA-administered CAIR trading program, Pennsylvania's proposed rule includes provisions that fall outside these flexibilities. Therefore, the proposed rule must be revised to be consistent with the requirements for States participating in the EPA-administered CAIR trading program. These, among others, are discussed in detail in the attached comments.

We look forward to working with you to resolve these comments. Should you have any questions pertaining to these comments, please do not hesitate to contact me, or have your staff person contact Marilyn Powers of my staff at (215) 814-2308.

Sincerely,


Judith M. Katz, Director
Air Protection Division

cc: Joyce Epps, Director, Bureau of Air Quality



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EPA's Comments on Pennsylvania's Proposed CAIR Rule - Chapter 145.
Interstate Pollution Transport Reduction

Subchapter A NOx Budget Trading Program, General Provisions

§145.101. Transition requirements for nonelectric generating units.

1. EPA will not administer the NOx SIP Call trading program after 2008, so Pennsylvania has to take some regulatory action to continue to meet its NOx SIP Call obligations. Under CAIR, there are two possible options. One choice is to participate in the CAIR NOx ozone season trading program, expanded to cover all existing and new units covered by the NOx SIP Call trading program that otherwise would not be covered by the State's NOx SIP Call trading program (see 40 CFR 51.123(bb)(1) and (3)). The other choice is to meet the requirements of 40 CFR 51.121 through some other means that achieves the emission reductions required by the NOx SIP Call.

The provisions of §145.101 are not consistent with the available options. Section 145.101(a) indicates that the applicability provisions regarding nonelectric generating units (§145.4(a)(2)) under the NOx Budget program would no longer apply beginning May 1, 2009. Electric generating units (which include some cogeneration units) in the NOx SIP Call trading program are not addressed. Section 145.101(b)(1) and (2) provides two options nonelectric generating units could use to meet their NOx SIP Call obligations. Section 145.101(b)(1) indicates that an Ozone Season NOx permit limit will be determined for each nonelectric generating unit covered by §145.4(a)(2) equal to the most recent Ozone Season allowance allocation. As an alternative §145.101(b)(2) provides an option for nonelectric generating units to apply to be subject to certain CAIR NOx Ozone Season requirements under §§145.221-145.223 .

In order for Pennsylvania to continue to meet its NOx SIP Call obligations after 2008, the State will need to chose either to expand the applicability provisions of the CAIR NOx ozone season trading program to include all units covered by the State's NOx Budget Program (electric generating units and non-electric generating units) or to adopt some other control measures that achieve the emission reductions required by the State's NOx Budget trading program. Provisions allowing each individual unit covered by the NOx Budget trading program to apply to become subject to select provisions of the CAIR NOx Ozone Season trading program is not an available option as a means of satisfying the NOx SIP Call obligations after 2008.

Should Pennsylvania choose to include the units covered by the NOx Budget program into the CAIR NOx Ozone Season program as a means of satisfying the NOx SIP Call obligations after 2008, the State would need to expand

§145.203 (Applicability) to include all units covered by §145.4(a)(1) and (2) (electric generating units and nonelectric generating units). These units would therefore be required to comply with all the applicable CAIR NOx Ozone Season requirements. If the State chooses not to expand the CAIR NOx Ozone Season trading program applicability to include all units covered by the State's NOx Budget trading program, the State would need to submit a SIP revision that demonstrates that the State would achieve through other control measures the emission reductions otherwise achieved under the NOx SIP Call for such units. For additional guidance on transitioning from the NOx Budget Trading Program to CAIR please refer to a document entitled "CAIR Frequent Questions – SIP Call Transition" that can be found on the EPA web site: <http://www.epa.gov/airmarkets/progsregs/cair/faq-10.html>.

2. The provision in §145.101(c) is unclear, and the citations do not seem to be correct. If Pennsylvania chooses not to expand its CAIR NOx Ozone Season trading program as discussed above, the non-EGUs will presumably be subject to a permit limit and will not be able to use allowances; however, if the State chooses to include all non-EGUs in the CAIR NOx Ozone Season trading program, the provision in §145.101(c) is redundant.
3. The provision in §145.101(d) is problematic. If Pennsylvania chooses not to expand its CAIR NOx Ozone Season trading program as discussed above, the non-EGUs may opt in to the CAIR NOx ozone season trading program as set forth in §145.101(d); however, if the State chooses to include all non-EGUs in the CAIR NOx Ozone Season program, such units cannot opt into that program.
4. Whether Pennsylvania chooses to meet the NOx SIP Call obligations after 2008 by expanding the CAIR NOx Ozone Season trading program applicability to include all units covered by the NOx Budget trading program or to submit a revision that demonstrates that the State will otherwise achieve the required emission reductions through a SIP revision, the units in either program must be required to comply with the monitoring provisions of part 75 (see §51.121(h)(i)(4)). Alternative monitoring as provided in §145.101(e) is not approvable.

Subchapter D. CAIR NOx and SO₂ Trading Programs General Provisions

§145.202 Definitions

Pennsylvania incorporates by reference the CAIR NOx Annual Trading Program, CAIR NOx Ozone Season Trading Program, and the CAIR SO₂ Trading Program (see §§145.201 and 145.204). Pennsylvania should not include definitions of the words and terms already defined in the above mentioned rules and should exclude them from this section. If Pennsylvania does not exclude these definitions, the definitions need to be the same as those

in the CAIR trading programs. Pennsylvania may include in this section the definitions specifically required for the purpose of the allowance allocation sections (§§145.212 and 145.222) of this proposed rule (e.g. Renewable Energy, Demand side management, etc.). Additionally, EPA suggests that the terms "New CAIR NOx Units", "Existing Units", "Aggregator", and "Qualifying Resources and Units" used in 145.211, 145.212, 145.221, or 145.222 be defined and included in this section.

§145.203 Applicability.

Renewable energy and energy efficiency units should not be included in the applicability section. They may be allocated allowances in the appropriate sections but are not trading sources subject to CAIR requirements.

145.205 – Emission Reduction Credit Provisions

The language in this provision should be modified in accordance with the language provided to PADEP in the 6/28/2007 e-mail from Marilyn Powers to Jim Stoner.

§145.211 Timing requirements for CAIR NOx allowance allocations.

1. 145.211(b)(1) and (2) – The timing requirements in this section do not meet the timing criteria in 40 CFR 51.123, and is not approvable. Pennsylvania must adhere to the allocation timing requirements found in 40 CFR 51.123(o)(2)(ii). The rationale for these requirements is discussed in the CAIR preamble at 70 FR 25162, 25278-79 (May 12, 2005). Pennsylvania should review this and the guidance provided by the 11/21/2006 email from Judy Katz prior to finalizing the appropriate timing requirements for allocating the NOx allowances.
2. 145.211(d) (i), (ii), and (iii) – The timing to publish the notice of the proposed CAIR NOx allowance allocations must be changed to align with the timing requirement changes required to be made to subsections 145.211 (a) and (b). EPA notes that the date for publication in §145.211(d) of allocations under §145.212(e) precedes the deadline for making allocations set forth in §145.212(e).

§145.212 CAIR NOx allowance allocations.

1. Subsection (b) – The provision in (b)(2)(vii) correctly seems to apply to all allocations, but it is included only under the provisions concerning baseline heat input.
2. Subsections (c) and (d) – Subsection (c) states that allowances will be allocated based on baseline heat input to CAIR NOx units and qualifying

resources under subsection (f)(1), but allocations made under subsection (f)(1) are based on "equivalent thermal energy", which does not seem to be the same thing as baseline heat input. It is also unclear whether Pennsylvania intends to allocate to qualifying resources under (f)(1) before allocating under (c) and (d).

3. Subsection (e) – It appears that the Department will be allocating to CAIR NOx allowances new CAIR NOx units under § 145.211(c) equal to the previous year's emissions at each unit, unless the unit has been issued allowances for the prior year in a regular allocation under § 145.211(b). Because subsection (e) provides that CAIR NOx allowances under this subsection will be of a vintage year that is 5 years later than the year in which the emissions were generated, the new unit may have no allocations for four years. EPA notes this to ensure that this is what Pennsylvania intends. Additionally, the subsection states that the allocation of these allowances to the new unit will not reduce the number of allowances the unit is entitled to receive under § 145.211(b). This seems to mean that a unit can get for a control period both a regular allocation (of allowances with that year's vintage) and a new unit allocation (of allowances with the vintage of the year 5 years later). EPA notes this to ensure that this is what Pennsylvania intends and to suggest that the allocation provisions be clarified.
4. Subsection (f) – This subsection needs clarification. Subsection (f) states that the Department will allocate CAIR NOx allowances to a Tier I or II qualifying resource not allocated allowances under subsection (c), which allocates based on baseline heat input. However, subsection (f)(1) states the allocations of such a qualifying resource will be in accordance with subsection (c) but will be based on equivalent thermal energy. Subsection (f)(1) does not explain how the equivalent thermal energy is to be converted into allowances.
5. Subsection (f)(1)(i) – The owner or operator of the qualifying resource must be required to have an authorized account representative.
6. Subsection (f)(2)(iii) – It is unclear what this provision means. For example, how is the dollar value of "excess" allowances "not included" and from what allocations is it "not included"?
7. Subsection (f)(2)(v) – The words "or are opted in to" should be removed.
8. Subsection (g) - The practical effect of this section is that there is no time limit on how long after determination and recordation of an allocation the Department may determine that the allocation was incorrect. This potential reduction in a future allocation means that the owner or operator of a unit cannot buy or sell allowances, or undertake other allowance market activities, in reliance on its allocations. These allocations may be effectively "taken back" in the future. This provision to "correct" allocations is inconsistent

with the allocation timing requirements for existing and new units under 40 CFR 51.123(o)(2)(ii).

§145.221 Timing requirements for CAIR NOx Ozone Season allowance allocations.

1. 145.221(b)(1) and (2) – The timing requirements in this section do not meet the timing criteria in 40 CFR 51.123, and is not approvable. Pennsylvania must adhere to the allocation timing requirements found in 40 CFR 51.123(aa)(2)(iii). The rationale for these requirements is discussed in the CAIR preamble at 70 FR 25162, 25278-79 (May 12, 2005). Pennsylvania should review this and the guidance provided by the 11/21/2006 email from Judy Katz prior to finalizing the appropriate timing requirements for allocating the NOx allowances.
2. 145.221(d) (i), (ii), and (iii) – The timing to publish the notice of the proposed CAIR NOx allowance allocations must be changed to align with the timing requirement changes required to be made to subsections 145.221 (a) and (b). EPA notes that the date for publication in §145.211(d) of allocations under §145.212(e) precedes the deadline for making allocations set forth in §145.212(e).

§145.222 CAIR NOx Ozone Season allowance allocations.

1. Subsection (b) – The provision in (b)(2)(vii) correctly seems to apply to all allocations, but it is included only under the provisions concerning baseline heat input.
2. Subsections (c) and (d) – Subsection (c) states that allowances will be allocated based on baseline heat input to CAIR NOx Ozone Season units and qualifying resources under subsection (f)(1), but allocations made under subsection (f)(1) are based on “equivalent thermal energy”, which does not seem to be the same thing as baseline heat input. It is also unclear whether Pennsylvania intends to allocate to qualifying resources under (f)(1) before allocating under (c) and (d). EPA notes that the reference in subsection (c) to 40 CFR 96.140 should be changed to 40 CFR 96.340.
3. Subsection (e) – It appears that the Department will be allocating to CAIR NOx Ozone Season allowances new CAIR NOx Ozone Season units under § 145.221(c) equal to the previous year's emissions at each unit, unless the unit has been issued allowances for the prior year in a regular allocation under § 145.221(b). Because subsection (e) provides that CAIR NOx allowances under this subsection will be of a vintage year that is 5 years later than the year in which the emissions were generated, the new unit may have no

allocations for four years. EPA notes this to ensure that this is what Pennsylvania intends. Additionally, the subsection states that the allocation of these allowances to the new unit will not reduce the number of allowances the unit is entitled to receive under § 145.221(b). This seems to mean that a unit can get for a control period both a regular allocation (of allowances with that year's vintage) and a new unit allocation (of allowances with the vintage of the year 5 years later). EPA notes this to ensure that this is what Pennsylvania intends and to suggest that the allocation provisions be clarified.

4. Subsection (f) – This subsection needs clarification. Subsection (f) states that the Department will allocate CAIR NOx allowances to a Tier I or II qualifying resource not allocated allowances under subsection (c), which allocates based on baseline heat input. However, subsection (f)(1) states the allocations of such a qualifying resource will be in accordance with subsection (c) but will be based on equivalent thermal energy. Subsection (f)(1) does not explain how the equivalent thermal energy is to be converted into allowances.
5. Subsection (f)(1)(i) – The owner or operator of the qualifying resource must be required to have an authorized account representative.
6. Subsection (g) – The practical effect of this section is that there is no time limit on how long after determination and recordation of an allocation the Department may determine that the allocation was incorrect. This potential reduction in a future allocation means that the owner or operator of a unit cannot buy or sell allowances, or undertake other allowance market activities, in reliance on its allocations. These allocations may be effectively “taken back” in the future. This provision to “correct” allocations is inconsistent with the allocation timing requirements for existing and new units under 40 CFR 51.123(aa)(2)(iii).

