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INDEPENDENT REGULATORY
REVIEW COMMISSION

TO: Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477
RegComments@state.pa.us

FROM: Merck & Co., Inc.

DATE: July 2, 2007

Re: Comments on Pennsylvania's Proposed Rule to Implement the Clean Air Interstate Rule (CAIR) Trading Programs

Merck & Co., Inc. (Merck) is a global company that researches, develops, manufactures and markets vaccines and pharmaceuticals. Merck owns and operates a pharmaceutical manufacturing facility in West Point, Pennsylvania that includes units subject to the NOx Budget Trading Program, which is proposed to be superseded by the Clean Air Interstate Rule (CAIR) NOx Ozone Season Trading Program. As such, Merck wishes to take this opportunity to provide comment regarding the April 28, 2007 Pennsylvania Department of Environmental Protection's (PADEP's) regulatory proposal to implement the CAIR Trading Programs in the state.

Merck has three main concerns with the rule, as written:

1. The CAIR trading programs are multi-state regulatory programs. The Pennsylvania rule should minimize the number and extent of variations from the federal CAIR program.
2. There are inconsistencies of how the non-EGUs will be included into this program in regards to how permit limits will be established and allowances will be allocated.
3. There are concerns with the language in regards to supplemental monitoring of non-EGUs. Based on PADEP's proposed methodology of allocating equivalent to their 2008 NOx Budget Trading Program allocation, non-EGUs should not be required to monitor for gross electrical output and useful thermal energy. Also, in regards to calibration requirements please include the language "in accordance with manufacturer's recommendations."

Specifically, Merck offers the following comments concerning the proposed Clean Air Interstate Rule:

1. Adoption of Federal CAIR Programs. [§145.201, §145.204]

Pennsylvania DEP has proposed to adopt the federal CAIR NOx Annual Trading Program, CAIR NOx Ozone Season Trading Program and CAIR SO₂ Trading Program by reference, with several exceptions. Merck supports the adoption of the federal model trading programs and urges PADEP to minimize the number and extent of variations from those federal programs in the final Pennsylvania rulemaking. The CAIR trading programs are multi-state regulatory programs applicable to roughly one-half of the states in the U.S. Deviations from the federal model trading programs, if not carefully crafted and based on sound scientific data, could put Pennsylvania businesses at a competitive disadvantage, and drive business away from Pennsylvania.

2. Transition to CAIR NOx Trading Programs. [§145.8]

It is Merck's understanding that the existing NOx Budget Trading Program in Subchapter A of 25 PA Code Chapter 145 will be superseded by the CAIR NOx Ozone Season Trading Program beginning with the 2009 ozone season as follows: the Federal CAIR NOx Ozone Season Trading Program in the Federal Implementation Plan (FIP) of 40 CFR Part 97 will be applicable in Pennsylvania for the 2009 ozone season because PADEP's CAIR State Implementation Plan (SIP) cannot be approved by U.S. EPA in time for PADEP's CAIR rulemaking to be implemented for 2009; then beginning with the 2010 ozone season, PADEP's CAIR NOx Ozone Season Trading Program will be applicable. However, the proposed regulatory language is somewhat confusing regarding NOx allocations during the transition years, and does not provide for implementation of the FIP emission limitations and monitoring requirements in lieu of the NOx Budget Trading Program emission limitations and monitoring requirements in the 2009 ozone season.

- a. Allocation of NOx Allowances during Transition. [§145.8(a)]** The proposal states that the final year for NOx allowance allocations to be made by PADEP "will be 2008" and that "allocations in 2009" will be made by U.S. EPA in accordance with the FIP.

Because the allowance allocation made during any particular year consists of allowances for a future control period, the proposed regulatory language is somewhat confusing (i.e. in 2009, U.S. EPA will allocate allowances for the 2015 ozone season under the FIP).

PADEP could eliminate the confusion by clarifying that the final year for NOx allowance allocations to be made by PADEP "will be for the 2008 ozone season" and that "allocations for the 2009 ozone season" will be made by U.S. EPA in accordance with the FIP.

b. Transition of Emission Limitations and Monitoring Requirements [§145.8(b)]

The proposed §145.8(b) indicates that the emission limitations and monitoring requirements established in Subchapter A of Chapter 145 will be replaced by the CAIR NOx Trading Programs in Subchapter D of Chapter 145 beginning with the May 1, 2010 control period. As such, the emission limitations and monitoring requirements in Subchapter A (NOx Budget Trading Program) would still be applicable during the 2009 ozone season. This conflicts with Merck's understanding that the CAIR NOx Ozone Season FIP would apply for the 2009 ozone season and the fact that U.S. EPA will not administer the NOx Budget Trading Program after the 2008 ozone season.

PADEP could eliminate the conflict by adding regulatory language to state that the emission limitations and monitoring requirements in Subchapter A will be replaced by the Federal CAIR NOx Ozone Season Trading Program in 40 CFR Part 97 for the 2009 ozone season.

3. Transition of Nonelectric Generating Units. [§145.101]

PADEP has proposed that nonelectric generating units (non-EGUs) subject to the NOx Budget Trading Program in Subchapter A of 25 PA Code Chapter 145 would transition out of that program in one of two ways. 1) Under §145.101(b)(1), non-EGUs would receive a NOx permit limit equivalent to their 2008 NOx Budget Trading Program allocation; if actual emissions exceeded the permit limit, they would be required to retire CAIR NOx Ozone Season allowances to account for the excess emissions. 2) Under §145.101(b)(2), it is Merck's understanding that non-EGUs would be allocated CAIR NOx ozone season

allowances in an amount equivalent to their 2008 NOx Budget Trading Program allocation, and that, as with the first transition approach, non-EGUs would retire CAIR NOx Ozone Season allowances for compliance.

Merck would be interested in utilizing the transition approach specified in §145.102(b)(2) in which CAIR NOx Ozone Season allowances would be allocated to sources, however, Merck finds the proposed regulatory language somewhat unclear and contradictory. The proposed §145.101(b)(2) is written as follows:

“(2) *NOx allowance allocation.* If the Department approves a plan approval application by May 1, 2008, for a nonelectric generating unit to be subject to CAIR NOx Ozone Season requirements under §§ 145.221--145.223 (relating to timing requirements for CAIR NOx Ozone Season allowance allocations; CAIR NOx Ozone Season allowance allocations; and supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.370--96.375), the Ozone Season NOx permit limit described in paragraph (1) will not apply to the nonelectric generating unit. The unit will receive CAIR NOx Ozone Season allowances for the duration of the CAIR NOx Ozone Season Trading Program or for the life of the unit, whichever is shorter, under the allocation cycle described in § 145.221. The amount of CAIR NOx Ozone Season allowances allocated to a nonelectric generating unit under this paragraph will equal the unit's 2008 NOx allowance allocation under Subchapter A (relating to NOx Budget Trading Program). The Department will amend the unit's permit to subject the unit to §§ 145.221--145.223 for the duration of the CAIR NOx Ozone Season Trading Program.”

Proposed §145.101(c) specifies that nonelectric generating units would comply with the limit established in §145.101(a) or (b) by retiring CAIR NOx Ozone Season Allowances.

As proposed then, under §145.101(b)(2), non-EGUs units would submit an application to be subject to PA DEPs CAIR NOx Ozone Season requirements in §§145.221--145.223, receive a permit revision indicating that they are subject to those requirements, receive an

annual CAIR NOx Ozone Season allowance allocation in an amount equivalent to their 2008 NOx Budget Trading Program allocation, and comply by retiring CAIR NOx Ozone Season allowances. Merck finds this confusing and/or contradictory as follows:

- a. **Applicability of §145.222.** Nonelectric generating units following this option would receive a permit indicating that they are subject to §145.222, which specifies the methodology that PADEP would use to allocate CAIR NOx Ozone Season allowances to CAIR NOx Ozone Season units in lieu of the requirements in 40 CFR Part 96.342. This is confusing because §145.101(b)(2) also specifically states that non-EGUs will be allocated CAIR NOx ozone season allowances in an amount equivalent to their 2008 NOx Budget Trading Program allocation. If Merck is correct that PADEP's intent was to allocate an amount equivalent to the 2008 NOx Budget Trading Program allocation, non-EGUs should not be subject to §145.222.
- b. **Ozone Season Permit Limit.** The preamble to the proposed rulemaking and proposed §145.101(c) both indicate that non-EGUs would become subject to an ozone season NOx permit limit. However, §145.101(b)(2) does not provide for the units to receive any such permit limit.

As written, §145.101(b)(2) states that the units would not be subject to the permit limit specified in §145.101(b)(1), and the provisions that would be incorporated into the unit's permit, §§145.221—145.223, do not include any permit limits. Based on Merck's understanding of the intent of the proposal, the nonelectric units should be subject to the permit limit specified in §145.101(b)(1), which is a limit equivalent to the unit's 2008 NOx Budget Trading Program allocation. (i.e. because the units would receive a NOx ozone season NOx allocation equivalent to their 2008 NOx Budget Trading Program allocation, they should receive a permit limit equivalent to that allocation).

- c. **Applicability of §145.223.** Proposed §145.101(b)(2) would require nonelectric generating units to be subject to §145.223, which requires supplemental monitoring of gross electrical output and useful thermal energy for units subject to U.S. EPA's CAIR monitoring requirements in 40 CFR §§96.370 – 96.375. The preamble to the proposed rulemaking indicates that the supplemental monitoring requirements were

proposed for the purpose of ensuring that allocations are made on an equitable basis. Because PADEP's proposed NOx allocation methodology is based on the gross electrical output and useful thermal energy generated by a unit, Merck understands why PADEP would require the proposed supplemental monitoring for units subject to that allocation methodology. However, it is Merck's understanding the non-EGUs would not receive allocations based on PADEP's proposed methodology, but would receive an allocation equivalent to their 2008 NOx Budget Trading Program allocation. Because the allocation is not based on gross electrical output or useful thermal energy, non-EGUs should not be required to monitor for those parameters. (Note that Comments 4 and 6 below also address the proposed supplemental monitoring requirements).

4. Monitoring Requirements Applicable to Non-EGUs. [§145.101(e)].

PADEP has proposed in §145.101(e) that non-EGUs must comply with the 40 CFR Part 75 monitoring requirements specified under 40 CFR Part 96 Subpart HHHH (with an alternative of complying with PADEP's continuous emissions monitoring system program manual, if approved by the Department in writing). Merck finds the Part 75/Subpart HHHH requirement a bit unclear as it relates to the proposed supplemental monitoring requirements in §145.223, and requests that the Department clarify the requirement. Specifically, Merck is not certain if the Department intended to specify that Subpart HHHH is directly applicable to non-EGUs. If so, the supplemental monitoring requirements of proposed §145.223 would apply to non-EGUs because that section applies to units that are subject to 40 CFR §§96.370 – 96.375, which is Subpart HHHH. As discussed in Comment 3.c above, Merck does not believe the supplemental monitoring requirements should apply to non-EGUs.

5. Allocation to Qualifying Resources: [§145.222(f)]

PADEP has proposed to allocate NOx allowances to qualifying resources that have generated renewable energy certificates under Pennsylvania's Alternative Energy Portfolio Standards Act. Merck supports PADEP's allocation of NOx allowances to such qualifying resources, as it will provide an additional incentive for the creation of renewable energy resources in the Commonwealth.

6. Supplemental Monitoring. [§145.223]

PADEP has proposed supplemental monitoring of gross electrical output and useful thermal energy generation by affected units. The supplemental monitoring would require affected units to "install, calibrate, maintain and operate" wattmeters, steam flow meters, steam temperature monitors and steam pressure monitors. These devices are quite different than traditional continuous emissions monitors and as such, have calibration techniques and requirements that are different from traditional continuous emissions monitors. In recognition of this, Merck requests that the Department specify that the calibration requirements which apply to such meters and monitors be calibration "in accordance with manufacturer's recommendations."



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