

Executive Summary

Amendments to 25 Pa. Code Chapters 121, 129 and 145

The Department of Environmental Protection recommends proposed amendments to 25 Pa. Code Chapters 121, 129 and 145 (relating to general provisions; standards for sources; and interstate pollution transport reduction) to revise § 121.1 (relating to definitions), § 129.204 (relating to emission accountability), and Chapter 145, Subchapters A, B and C (relating to NO_x budget trading program; emissions of NO_x from stationary internal combustion engines; and emissions of NO_x from cement manufacturing); and to add Chapter 145, Subchapter D (relating to CAIR NO_x and SO₂ trading programs).

Summary of Proposal

The proposed amendments will establish the requirements for implementing and enforcing the Clean Air Interstate Rule (CAIR) promulgated by the United States Environmental Protection Agency (EPA) on May 12, 2005, as amended. The CAIR requires 28 states (including Pennsylvania) and the District of Columbia to adopt and submit revisions to their state implementation plans (SIPs). The SIP revisions are required under Clean Air Act (CAA) section 110(a)(2)(D) to reduce SO₂ and NO_x emissions that significantly contribute to nonattainment of the fine particulate matter (PM_{2.5}) and 8-hour ozone National Ambient Air Quality Standards (NAAQS) in downwind states. Each state may independently determine which emissions sources to subject to controls and which control measures to adopt. The CAIR also contains model rules, many of which the proposed amendments incorporate by reference.

The proposed amendments establish general provisions to achieve reductions from electric generating units (EGUs) currently covered by the NO_x Budget Trading Program in Chapter 145, Subchapter A. The proposed NO_x reduction requirements are similar to the existing requirements of the NO_x Budget Trading Program and contain provisions relating to designated representatives of covered units, permitting, allowances, monitoring, and opting-in. These proposed amendments establish three CAIR trading programs, which cover annual NO_x emissions, ozone season NO_x emissions, and annual SO₂ emissions, respectively. Each of the three proposed CAIR trading programs contains similar provisions.

The proposed amendments make minor changes to the requirements that apply to the owners and operators of small sources of NO_x in the five-county Philadelphia area that are subject to NO_x emissions limits under 25 Pa. Code §§ 129.201 through 129.203 (relating to boilers; stationary combustion turbines; and stationary internal combustion engines). A proposed amendment to 25 Pa. Code § 129.204 (relating to emission accountability) would require the owners and operators of these sources to surrender CAIR NO_x Ozone Season allowances rather than NO_x Budget Trading Program allowances if their NO_x emissions exceeded their NO_x emission limits, beginning in 2009. A similar change is proposed in § 145.113 (relating to standard requirements) for NO_x emissions from large stationary internal combustion engines that are not subject to the NO_x Budget Trading Program, and in § 145.143 (relating to standard requirements) for NO_x emissions from Portland cement kilns. An additional change clarifies the alternative calculation and recordkeeping procedures for the calculation of actual emissions from

small sources of NOx in the five-county Philadelphia area. This is provided as a result of experience in implementation of this provision.

Two new sections are proposed in the NOx Budget Trading Program. The first would add § 145.8 (relating to transition to CAIR NOx trading programs) to address the transitioning of NOx allowance allocations, NOx emission limitations and NOx monitoring requirements and to address certain compliance issues.

The second would add § 145.101 (relating to transition requirements for nonelectric generating units) to Subchapter A to establish requirements for non-EGUs that are subject to the NOx Budget Trading Program. These non-EGUs are not required to be included in the CAIR NOx trading programs, but their NOx emissions must continue to be restricted. The proposed amendment offers two options with regard to limiting their emissions: the owner or operator may take a cap on the unit's NOx emissions at the unit's 2005 NOx Budget Trading Program allocation rate and surrender CAIR NOx allowances if the limits are not met in an ozone season; or the owner or operator may include the unit in the CAIR NOx Ozone Season Trading Program by opting-in at the outset of the program.

In April of 2005, in response to litigation, EPA issued national findings that states failed to submit SIP revisions to address interstate transport NOx and SO₂ with respect to the 8-hour ozone and PM_{2.5} NAAQS by the July 2000 deadline. The findings triggered a two-year clock for EPA to issue Federal Implementation Plans (FIPs) under section 110(c)(1) of the CAA to address the SIP requirements concerning prevention of interstate transport of air pollutants under section 110(a)(2)(D) of the CAA. On March 15, 2006, EPA signed a final rule satisfying the FIP requirement and requiring the owners and operators of covered units (generally all stationary, fossil-fuel-fired boilers, combustion turbines, or other stationary, fossil-fuel-fired combustion devices serving generators of 25 megawatts or greater) in Pennsylvania to comply with the CAIR NOx and SO₂ trading programs in the absence of an approved state program satisfying the CAIR SIP call.

Purpose of the Regulation

The purpose of this proposed rulemaking is to establish a program to limit the emission of NOx and SO₂ from electric generating facilities of 25 megawatts or greater. This proposed rulemaking also extends NOx emission permit limits for certain boilers, stationary combustion turbines and stationary internal combustion engines; and provides for the allocation of NOx allowances to certain renewable energy and energy efficiency units, and to cogeneration units that did not receive SO₂ allowances under the Federal Acid Rain Program. The proposed CAIR NOx trading programs will supercede the existing NOx Budget Trading Program. The proposed amendments are reasonably necessary to achieve and maintain the NAAQS, including the 8-hour ozone and fine particulate standards, to satisfy related federal Clean Air Act requirements and to avoid the imposition of sanctions under the federal Clean Air Act.

Affected Parties

The proposed amendments will affect owners and operators of major air contamination sources.

Advisory Groups

The Air Quality Technical Advisory Committee reviewed this proposal on December 14, 2006, and voted at its January 4, 2007, meeting to advance the proposal to the Environmental Quality Board (EQB) for consideration at the EQB's February 20, 2007, meeting. In addition, the proposed amendments were reviewed with the Citizens' Advisory Council on January 17, 2007, and the Small Business Compliance Advisory Committee on January 24, 2007.

Public Comments and EQB

The Department recommends a 60-day public comment period for the proposed rulemaking. The Air Pollution Control Act requires public hearings to be held in the areas of the state affected by air resource regulations. The Department is proposing to hold three (3) public hearings in the Commonwealth for the purpose of accepting comments on the proposed amendments. In lieu of or in addition to presenting oral testimony at the hearings, interested parties may submit written comments to the Department.