COMMONWEALTH OF VIRGINIA
§ 111(d) PLAN FOR
THE CLEAN AIR MERCURY RULE

PREAMBLE

BACKGROUND

Designated pollutants are pollutants which are not included on a list published under § 108(a) of the federal Clean Air Act (National Ambient Air Quality Standards) or § 112(d) (hazardous air pollutants), but for which standards of performance for new sources have been established under § 111(b) (new source performance standards).

A designated facility is an existing facility which emits a designated pollutant and which would be subject to a standard of performance for that pollutant if the facility were new. The Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to establish procedures by which states submit plans to control facilities that emit designated pollutants. These procedures were established in 1975 for adoption and submittal of state plans for control of designated pollutants from designated facilities (Subpart B of 40 CFR Part 60).

Subpart B provides that EPA publish guideline documents for development of state emission standards after promulgation of any standard of performance for designated pollutants. The documents must specify emission guidelines, times for compliance and include other pertinent information such as a discussion of the pollutant's effects on public health and welfare, and a description of control techniques including effectiveness and costs. The emission guidelines reflect the degree of emission reduction attainable with the best adequately demonstrated systems of emission reduction, considering costs, applied to existing facilities.

The provisions for adoption and submittal of state plans for designated pollutants are patterned after § 110 of the Clean Air Act: nine months for states to develop and submit plans once final EPA guidelines have been published; four months for EPA approval or disapproval; and if disapproved, EPA will promulgate a new plan within six months.

PLANNING REQUIREMENTS

As required by § 112(n)(1)(A), EPA announced its finding that it was "appropriate and necessary" to regulate coal- and oil-fired electric utilities. This finding triggered a requirement for EPA to propose regulations to control air toxics emissions, including mercury, from these facilities. On January 30, 2004, EPA proposed a rule with two basic approaches for controlling mercury from power plants. One approach would require power plants to meet emissions standards reflecting the application of the "maximum achievable control technology" (MACT) determined according to the procedure set forth in § 112(d). If implemented, this proposal would reduce nationwide mercury by 14 tons or about 30 percent by early 2008. A second approach proposed by EPA would create a market-based "cap and trade" program that, if implemented, would reduce nationwide utility

emissions of mercury in two phases. When fully implemented mercury emissions would be reduced by 33 tons (nearly 70 percent). EPA proposed to pursue the cap and trade approach either under § 111 or § 112.

The January 2004 EPA proposal also proposed to revise the agency's prior finding that is "appropriate and necessary" to regulate utility hazardous air emissions using § 112 MACT standards. This action would give EPA the flexibility to consider a more efficient and more cost-effective way to control mercury emissions. EPA also proposed to revise its original finding that it is "appropriate and necessary" to regulate utility hazardous air emissions using the MACT standards, an action that would give EPA the flexibility to consider a more cost-effective way to control mercury emissions.

In the context of § 111, EPA has interpreted the term "standard of performance" to include a cap-and-trade program, and has determined that a cap-and-trade program based on control technology available in the relevant time frame is the best system for reducing mercury emissions from existing coal-fired utility units.

On March 15, 2005, EPA issued the final Clean Air Mercury Rule (CAMR), which builds on EPA's Clean Air Interstate Rule (CAIR) to significantly reduce mercury emissions from coal-fired power plants. It is anticipated that these rules will reduce utility emissions of mercury from 48 tons a year to 15 tons, a reduction of nearly 70 percent.

CAMR establishes standards of performance limiting mercury emissions from new and existing utilities and creates a market-based cap-and-trade program that will reduce nationwide utility emissions of mercury in two distinct phases. In the first phase, due by 2010, emissions will be reduced by taking advantage of co-benefit reductions, that is, mercury reductions achieved while reducing SO_2 and NO_X under CAIR. In the second phase, due in 2018, utilities will be subject to a second cap, which will reduce emissions to 15 tons upon full implementation.

Emissions guidelines for coal-fired utility units have been promulgated under § 111(d) of the Act and published in the Federal Register of May 18, 2005 (70 FR 28606). The guidelines are promulgated in the Code of Federal Regulations at subpart HHHH of 40 CFR Part 60. A cap-and-trade program for emissions of mercury is an option to be used at the discretion of the states. While states have some flexibility in how they implement the program, at a minimum the regulations must be at least as effective as the guidelines. State plans are due by November 17, 2006.

Under EPA guidelines, the § 111(d) plan must define legal authority and establish emission standards and compliance schedules, as well as contain an emission inventory of polluting facilities and establish methods for conducting source surveillance. Virginia's § 111(d) plan for CAMR is included as Part 1. EPA's specific plan requirements as found in subparts B and HHHH of 40 CFR Part 60 are described in Part 2.

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