

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of the Environment**
(DLS Control No. 14-327)

Overview and Legal and Fiscal Impact

These regulations establish new nitrogen oxides (NO_x) emission requirements for specified coal-fired power plants in the State.

The regulations present no legal issue of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of the Environment:

Air Quality: Control of NO_x Emissions from Coal-Fired Electric Generating Units:
COMAR 26.11.38.01-.06

Legal Analysis

Background

The Federal Clean Air Act (CAA) requires the U.S. Environmental Protection Agency (EPA) to establish National Ambient Air Quality Standards (NAAQS) for six criteria pollutants, including ozone, which are harmful to public health and the environment. States are responsible for developing State Implementation Plans (SIPs) to meet the standards. Maryland continues to exceed ozone standards and most of the State's population is located in an area designated as a "marginal" or "moderate" nonattainment area for the 2008 eight-hour ozone standard.

Ozone is produced when volatile organic compounds (VOCs) and NO_x react in the presence of heat and sunlight. Some research indicates that NO_x reductions are more effective at reducing ozone levels than VOC reductions.

Sources of air pollution in nonattainment areas classified as moderate and above are also subject to a Reasonably Available Control Technology (RACT) requirement. RACT is the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

The CAA requires the Maryland Department of the Environment to review and revise the NO_x RACT requirements in Maryland's SIP as necessary to achieve compliance with new, more stringent, NAAQS. As a result, in June 2015, the State is required to submit to EPA an

attainment plan for ozone that includes emission reduction strategies designed to achieve compliance with a 75 parts per billion (ppb) ozone standard by 2018.

According to the department, reductions in NO_x emissions from coal-fired electric generating units on high electricity demand days during the ozone season are necessary to achieve compliance with the 75 ppb ozone standard. These reductions are also viewed as a necessary prerequisite for compliance with a more stringent ozone standard that EPA is expected to propose in December 2014. This action represents a compromise reached between the department and several other interested stakeholders after lengthy negotiations over other potential alternative emission reduction scenarios.

Summary of Regulations

The regulations establish new NO_x emission requirements for coal-fired power plants in the State. A description of each regulation follows.

Definitions

Regulation .01 sets forth the definitions applicable to the new chapter, including a definition of “affected electric generating unit,” which lists one or more specific coal-fired generating units located at seven locations across the State.

Applicability

Regulation .02 specifies that the new chapter applies to an “affected electric generating unit,” as defined in Regulation .01.

NO_x Emission Control Requirements Beginning in 2015

Regulation .03 establishes daily NO_x reduction requirements during ozone season (beginning on May 1, 2015), ozone season NO_x reduction requirements (measured by a 30-day system-wide rolling average), and NO_x emission requirements for affected electric generating units equipped with a fluidized bed combustor (there is one unit in the State with this technology).

Additional NO_x Emission Control Requirements Beginning June 1, 2020

Regulation .04 establishes additional NO_x emission control requirements for specific affected electric generating units that must be met by June 1, 2020. The regulation requires seven specified units to take one of three actions by this date: (1) install a specified emission reduction technology and meet a specified emission rate; (2) permanently retire the unit; or (3) switch the unit’s fuel from coal to natural gas.

Compliance Demonstration Requirements

Regulation .05 establishes procedures and requirements for affected electric generating units to demonstrate compliance with the NO_x emission control requirements in Regulations .03 and .04.

Reporting Requirements

Regulation .06 establishes a monthly reporting schedule for each affected electric generating unit subject to the requirements of the new chapter. It also specifies the information that must be contained in the reports.

Legal Issue

The regulations present no legal issue of concern.

Statutory Authority and Legislative Intent

The department cites §§ 1-101, 1-404, 2-101 – 2-103, 2-301 – 2-303, 2-1003, 10-102, 10-103, and 10-1002 of the Environment Article as authority for the regulations. The department has broad regulatory authority in § 2-301(a) and is authorized to adopt regulations “for the control of air pollution in this State, including testing, monitoring, record keeping, and reporting requirements.” Further, in § 2-302, the department is required to adopt regulations that “set emission standards and ambient air quality standards” for each of the air quality control areas in the State. This authority is correct and complete, and the regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

The department cites § 10-1002 of the Environment Article as authority for the regulations. However, this section does not exist and was submitted in error. As a result, the department will remove this section from the authority line. Additionally, the department has agreed to make minor technical changes to more accurately reference its new definition of an affected electric generating unit.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have minimal impact on State and local governments. The Department of Legislative Services generally concurs.

The department advises that it can monitor compliance of the new regulations with existing resources and that, therefore, the regulations have minimal impact on the department. The department also advises that the regulations have minimal impact on other State agencies and local governments. The Department of Legislative Services concurs with this assessment for several reasons. First, the regulations do not impose additional obligations on other State agencies or local governments. Additionally, although the regulated electric generating units may seek to pass along the additional compliance costs through higher rates (particularly after 2020 when the regulations’ more stringent requirements take effect), the extent of any such increase is indeterminate due to numerous factors, including the decisions of electricity market participants. Finally, it is important to note that the regulations are necessary to comply with

federal law; in the absence of regulations that comply with federal clean air standards, EPA is required to establish a compliant implementation plan for the State; sanctions also apply.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services generally concurs. The regulation will result in the eventual installation of pollution control technology, retrofitting of facilities to comply with the fuel-switching alternative offered in the regulations, or decommissioning of electric generating units. While the facilities directly subject to the regulations are not owned by small businesses, any of the compliance-related activities may result in an increase in the demand for small businesses engaged in servicing or constructing power plants. However, as noted above, any impact of the regulations is the result of the need to comply with the Federal Clean Air Act.

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