

**Maryland General Assembly
Department of Legislative Services**

**Emergency/Proposed Regulations
Department of the Environment
(DLS Control No. 15-051)**

Overview and Legal and Fiscal Impact

These emergency/proposed 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, but additional comments have been included in the *Special Notes* section below.

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-.05

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.

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.

Portions of Maryland containing most of the State's population have been designated as "marginal" or "moderate" nonattainment areas for the 2008 eight-hour ozone standard (75 parts per billion (ppb)). 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 the 75 ppb ozone standard by 2017.

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 and maintain 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 2015.

These regulations contain the same provisions as the department's November 2014 submission, with the exception of certain additional control requirements to be achieved by 2020. A further discussion of the prior submission is included in the *Special Notes* section below.

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

Regulation .03 establishes daily NO_x reduction requirements during the 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 (measured by a 24-hour block average; there is one unit in the State with this technology).

Compliance Demonstration Requirements

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

Reporting Requirements

Regulation .05 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 §§ 1-404, 2-103, and 2-301 through 2-303 of the Environment Article as authority for the regulations. Under §1-404, the Secretary of the Environment has broad authority to adopt regulations to carry out the provisions of law that are within the Secretary's jurisdiction. Section 2-103 establishes the department's (1) jurisdiction over emissions into the air and ambient air quality in the State; and (2) responsibility for monitoring ambient air quality and coordinating State programs on ambient air quality control. Section 2-301 authorizes the department to adopt regulations for the control of air pollution in the State, including testing, monitoring, recordkeeping, and reporting requirements. Section 2-302 requires the department to adopt regulations that set emissions standards and ambient air quality standards for each of the air quality control areas in the State, consistent with federal requirements.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Reason for Emergency Status

The department requests emergency status to begin on May 1, 2015, and to expire on October 26, 2015. This period is within normal timeframes approved by the committee. The department indicates the emergency status is necessary to obtain reductions in NO_x emissions during the 2015 ozone season in order to comply with the federal ozone air quality standard.

Special Notes

Regulations to establish new NO_x emission requirements for coal-fired power plants were previously submitted to the Joint Committee on Administrative, Executive, and Legislative Review in November 2014. That proposed action would have established new NO_x reduction requirements beginning on May 1, 2015, and additional NO_x reduction requirements to be met by June 1, 2020. Those proposed regulations were adopted by the department on January 16, 2015, but according to the department those proposed regulations were held for further review. The department advises that, because NO_x reductions must still be obtained during the upcoming summer ozone season in order to meet federal requirements, these emergency regulations contain the same provisions as the previous submission, with the exception of the additional control requirements to be achieved by 2020. The department further advises that it will continue to work with all stakeholders and consider options for providing long-term emissions reductions and greater public health protections by 2020.

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 no impact on State or local governments. The Department of Legislative Services concurs.

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 concurs.

Additional Comments

The department indicates that the costs of \$430,000 - \$4.3 million included in the department's Estimate of Economic Impact represent estimated existing operating costs of NOx control technology at electricity generating units subject to the regulations. The range in costs is a result of varying estimates for different units, which vary in the amount of time that they are used, their capacity, and their control technology and amount of reagent (ammonia and/or urea) used. These regulations may increase those existing operating costs to a certain extent, but not dramatically.

Contact Information

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