TECHNICAL SUPPORT DOCUMENT

FOR

AMENDMENTS TO COMAR 26.09

MD CO_2 Budget Trading Program

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PREPARED BY:

MARYLAND DEPARTMENT OF THE ENVIRONMENT
1800 Washington Boulevard
Baltimore Maryland 21230

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I. INTRODUCTION

A. Primary Purpose of the Amendments

The purpose of this action is to amend regulations under COMAR 26.09, Maryland CO_2 Budget Trading Program, with regard to the following:

1. Revise certain definitions;
2. Provide an alternative to the current options of either offering unused Set-aside CO_2 allowances at auction, or holding them indefinitely;
3. Provide additional uses for the CO_2 Allowance Contingency Account;
4. Provide the option to permanently retire CO_2 allowances from the CO_2 Allowance Contingency Account; and
5. Require electronic submission of the compliance certification report.

B. Background

The Healthy Air Act

The Healthy Air Act was signed into law on April 6, 2006 and required Maryland to join the Regional Greenhouse Gas Initiative (RGGI) by July 2007. Maryland joined RGGI by signing RGGI's multi-state Memorandum of Understanding (MOU) on April 20, 2007. The Department subsequently adopted Code of Maryland Regulations (COMAR) 26.09.01 to .03, implementing the “Maryland CO_2 Budget Trading Program”, which became effective on July 17, 2008. COMAR 26.09.04 (“Auctions”) became effective as a permanent regulation on August 25, 2008.

The Regional Greenhouse Gas Initiative

The Regional Greenhouse Gas Initiative is comprised of ten states in the Northeast and Mid-Atlantic regions who provide market-based carbon dioxide (CO_2) cap and trade programs designed to reduce emissions of CO_2, a greenhouse gas, from fossil fuel-fired electricity generators with a nameplate capacity of 25 megawatts or greater. RGGI currently is comprised of Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Maryland; New Jersey has indicated it will discontinue participation after the end of the first compliance period, 2009-2011. Participating RGGI states each require electricity generators to have acquired, through regional auction or secondary market transactions, one CO_2 allowance for every ton of CO_2 emitted over a three-year compliance period. Auction proceeds fund a number of state programs, including energy efficiency programs that result in lower CO_2 emissions through reduced electricity demand. The RGGI states conducted the first quarterly regional auction in September 2008, and the program officially began in January 2009.

The electricity generation sector is a major contributor to climate change because a large amount of CO_2 is released during the combustion of fossil fuels. With this in mind, RGGI set a cap of

188,076,976 tons of CO_2 emissions for the region, based on emissions from eligible electricity generators averaged from 2000 to 2002. Maryland will receive 37,503,983 CO_2 allowances for each year from 2009 through 2014. Between 2015 and 2018, Maryland will annually receive 2 ½ percent fewer CO_2 allowances as the RGGI cap reduces by 10 percent during that time.

Carbon dioxide emissions in the RGGI region have decreased substantially. One factor contributing to the decrease in regional emissions has been a shift in use of natural gas over oil for fuel at electricity generators due to a significant decrease in the price of natural gas. Another factor is an economic recession that began in late 2008 and continues today. As electric generating companies acquired CO_2 allowances equal to their emissions, some CO_2 allowances offered at the regional auctions were not sold. Currently Maryland regulations require these CO_2 allowances to be offered for sale at a subsequent auction. The Department would like to have additional options to deal with unsold CO_2 allowances including the option to retire them permanently as an environmental benefit.

As a state that generates electricity predominantly from coal-fired power plants, Maryland developed a cautious regulatory approach to RGGI. Maryland developed four set-aside accounts containing CO_2 allowances reserved for special purposes. These set asides are the Limited Industrial Exemption Set-aside, the Long Term Contract Set-aside, the Voluntary Renewable Set-aside, and the Clean Generation Set-aside. Each of these accounts was established to provide flexibility for the Department to handle difficult situations should they arise. Maryland's regulations specifically identify the process under which CO_2 allowances are allocated to Set-aside Accounts, and utilized as well as what is done with unused CO_2 allowances. Some CO_2 allowances from the Limited Industrial Exemption Set-aside and the Voluntary Renewable Set-aside can be retired but the others are offered for sale in the auction. Most of the CO_2 allowances allocated to these set-aside accounts have not been utilized. Since the CO_2 allowances were not utilized in the first control period, and the accounts will be repopulated with CO_2 allowances from the second control period, and there is little demand to purchase the unused CO_2 allowances, the Department would like to amend the regulations to allow the option of permanently retiring these CO_2 allowances.

In addition to CO_2 allowances in the set-aside accounts, Maryland, like the other states, has a significant number of CO_2 allowances that were offered for sale at an auction but were not sold. The regulations require these unsold CO_2 allowances to be offered at a subsequent auction. Since the electric generating sources have already acquired CO_2 allowances to match their emissions for this control period, it is probable these unsold CO_2 allowances would remain unsold if offered for sale in the first control period or subsequent control periods. The Department would like to amend the regulations to allow the option of permanently retiring these unsold CO_2 allowances.

The purpose of the amendments is to allow Maryland to permanently retire unused CO_2 allowances, which would benefit the environment. Currently Maryland has the discretion to offer unused CO_2 allowances in an auction or hold these CO_2 allowances indefinitely but there are no provisions for retirement. The retirement option is an additional option and not a mandate. The case by case decision to either auction or retire unused CO_2 allowances would be made in consultation with the Maryland Public Service Commission and the Maryland Energy Administration.

II. OVERVIEW OF THE AMENDMENTS

This proposed action includes the following requirements:

1. Definitions

In Chapter 01, the Department modified the definition of the "CO_2 allowance contingency account" to receive un-used CO_2 allowances from the Set-asides; and the "CO_2 allowance retirement account" to permanently receive CO_2 allowances from the CO_2 Allowance Contingency Account.

2. Provide an alternative to the current options of either offering unused Set-aside CO_2 allowances at auction, or holding them indefinitely.

The Department is amending Chapter 02 to add options to the current requirement to auction unused Set-aside CO_2 allowances in future auctions. The current regulation requires the Department to transfer unused Set-aside CO_2 allowances to the Consumer Energy Efficiency Account, to offer in future auctions, though the auction in which the CO_2 allowances would be offered is not identified in the regulation. The Department, in consultation with the Auction Advisory Committee, has decided in this proposed regulation to either offer such CO_2 allowances in auctions, or transfer them to the CO_2 Allowance Contingency Account.

3. Provide additional uses of the CO_2 Allowance Contingency Account

This amendment will allow the Department the option to transfer unused CO_2 allowances from the Set-aside accounts to the CO_2 Allowance Contingency Account. The CO_2 allowances in this account will not be auctioned unless they are subsequently transferred to the Consumer Energy Efficiency Account. The current Set-aside Account regulations require the Department to transfer unused CO_2 allowances from Set-aside accounts to the Consumer Energy Efficiency Account by a certain date in order to be auctioned in a future auction. The option to transfer unused Set-aside account allowances to the CO_2 Allowance Contingency Account allows the Department to separate them from unused CO_2 allowances that are earmarked for auction.

4. Provide the option to permanently retire CO_2 allowances from the CO_2 Allowance Contingency Account.

This amendment allows CO_2 allowances from the CO_2 Allowance Contingency Account to be permanently retired upon transfer to the CO_2 Allowance Retirement Account. Currently, only specific CO_2 allowances from the Limited Industrial Exemption Set-aside Account and the Voluntary Renewable Energy Set-aside Account, based upon criteria identified in the respective regulations, can be transferred for permanent retirement in to the CO_2 Allowance Retirement Account.

5. Require electronic submission of compliance certification report

This amendment will require the CO_2 authorized account representatives to electronically submit the compliance certification report to the CO_2 Allowance Tracking System ("COATS"), as well as provide a hard copy to the Department. The participating states developed COATS to hold all emissions and CO_2 allowance data. The compliance module developed for COATS was designed for an electronic submission of the compliance certification report. In addition, the Department requires a hard copy submittal. Currently, the regulation does not specify the method for submittal.

III. COMPARISON OF THE REGULATIONS TO FEDERAL STANDARDS

No federal regulation currently exists for the control of CO_2 emissions from the burning of fossil fuels for electricity generation. The Maryland regulations, as a part of the larger RGGI regional process, are among the first regulations of its kind in the country.

IV. EXPECTED EMISSIONS REDUCTIONS

The proposed amendments will result in minimal to no CO_2 emissions reductions.

V. ECONOMIC IMPACT ON AFFECTED SOURCES, MDE, OTHER STATE AGENCIES, LOCAL GOVERNMENT, OTHER INDUSTRIES OR TRADE GROUPS

These amendments have no economic impact on the Affected Sources, MDE, other State Agencies, Local Government, other Industries or Trade Groups. Although there has been a minor economic impact to Maryland electric generating units from the implementation of the Maryland CO2 Budget Trading Program, in the absence of any other actions, these amendments are not expected to result in any additional impact to electricity generators. The RGGI has had little impact on retail electricity prices, therefore the proposed action has minimal or no economic impact on small businesses

VI. AFFECTED SOURCES

These regulations affect fossil fuel-fired generating units at the following plants:

Owner	Plant	Location	Fuel
AES Enterprise	Warrior Run	Allegany County	Coal
Potomac Energy	R P Smith	Washington County	Coal
Con Edison Development & Old Dominion Electric Cooperative	Rock Springs	Cecil County	Natural Gas
Constellation Power	Brandon Shores	Anne Arundel County	Coal
	C P Crane	Baltimore County	Coal
	Gould Street	Baltimore City	Natural Gas
	Perryman	Harford County	Oil/Natural Gas
	Riverside	Baltimore County	Oil/Natural Gas
	Herbert A Wagner	Anne Arundel County	Coal/Oil/Natural Gas
	Westport	Baltimore City	Natural Gas
GenOn	Chalk Point	Prince George's County	Coal/Natural Gas
	Dickerson	Montgomery County	Coal/ Natural Gas
	Morgantown	Charles County	Coal
RG Steel	Sparrows Point	Baltimore County	Natural Gas/Blast Furnace Gas
New Page	Luke Mill	Allegany County	Coal
NRG Energy	Vienna	Dorchester County	Oil
Panda Energy	Brandywine	Prince George's County	Natural Gas

VII. ENVIRONMENTAL & HEALTH IMPACTS OF AMENDMENTS

There is no expected environmental or health impacts associated with these amendments.

VIII. ECONOMIC IMPACT

The economic impact of the proposed amendments is limited to those related to the permanent retirement of unused CO_2 allowances. These amendments are proposed for Regulation .02 under

COMAR 26.09.01 General Administrative Provisions; Regulations .05 through .09 under COMAR 26.09.02 Applicability, Determining Compliance, and Allowance Distribution; and, Regulations .03 and .05 under COMAR 26.09.04 Auctions. The proposed amendments revise certain definitions; remove the requirement to auction unused Set-aside CO_2 allowances; allow transfers of unused CO_2 Allowances from Set-aside accounts to the CO_2 Allowance Contingency Account; and allow the option to permanently retire unused Set-aside account CO_2 allowances.

Overall, the ability to retire CO_2 allowances will have little economic impact as these CO_2 allowances are surplus. These CO_2 allowances were unused during the first compliance period. An equivalent amount of new CO_2 allowances will be generated for the second compliance period so it is unlikely they will be needed in the second compliance period. Allowances currently sell at the reserve or minimum price. At this time, without other factors also changing, CO_2 allowances will continue to sell at the reserve price. Other factors include such things as a significant rise in natural gas prices or a significant rise in electricity demand due to economic recovery.

Impact on Generators.

Although there has been a minor economic impact to Maryland electric generating units from the implementation of the Maryland CO_2 Budget Trading Program, these amendments are not expected to result in any additional impact to electricity generators.

IX. SUBMISSION TO EPA AS REVISION TO MARYLAND'S SIP (OR 111(d) PLAN, OR TITLE V PROGRAM)

These amendments will not be submitted to the U.S. Environmental Protection Agency (EPA) for approval as part of Maryland's State Implementation Plan.