



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE  
SECRETARY

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

PHONE: (302) 739-9000  
FAX: (302) 739-6242

**Secretary's Order No. 2013-A-0004**

**Re: Approval of Amendment to Regulation, 7 DE Admin. Code 1147, "CO2 Budget Trading Program" in Delaware Regulations Governing Control of Air Pollution**

Date of Issuance: February 19, 2013

Effective Date: March 11, 2013

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control (Department or DNREC), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

The Department published the proposed amendment to Regulation 1147, 7 DE Admin Code 1147, on January 1, 2013 in the *Delaware Register of Regulations*, and held a public hearing on January 23, 2013. The proposed amendment would allow any Delaware petroleum refinery to participate in the carbon dioxide trading program offered by the Regional Greenhouse Gas Initiative similar to the participation otherwise available to other electric generators in Delaware.

The Department's presiding hearing officer, Robert P. Haynes, issued a report that reviews the record and recommends approval of the proposed amendment. I adopt the Report and the record that supports it.

The Report indicates that the proposed amendment was supported by several environmental groups and that Delaware City Refinery Company, LLC (DCR) also

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supports the amendment, albeit with a minor change to clarify the language. The amendment will allow DCR, as Delaware's only petroleum refinery, to sell surplus electricity into the electric grid under certain condition and allow DCR the opportunity to participate in carbon dioxide (CO<sub>2</sub>) trading budget trading program. The CO<sub>2</sub> trading is conducted by the Regional Greenhouse Gas Initiative (RGGI), which consists of Delaware and eight other states. These states joined together in order to establish a market for trading greenhouse gases, which seeks to reduce greenhouse gas emissions, such as from carbon dioxide. Delaware has received auction proceeds from the sale of allowances as a result of its participation in RGGI over the past several years and these funds have been used to reduce Delaware's energy usage through energy efficiency and conservation programs.

DCR will use its existing combustion turbines operating on natural gas to serve the energy needs of DCR, but at times the generation also produces surplus power. The amendment will allow DCR's surplus to be sold to the power grid and to have such sales participate in RGGI's CO<sub>2</sub> budget trading program. As a result, Delawareans will benefit from lower energy prices and may receive increased benefits from RGGI.

The Division of Air Quality (DAQ) provided a response to the comments that seeks some minor language changes to clarify the language based upon DCR's comments. The Report approves this change as appropriate albeit not substantial. I adopt the changes as set forth in Appendix A hereto.

In conclusion, the following findings and conclusions are entered:

1. The Department finds and determines that the record supports the adoption of the proposed amendment in Appendix A of this Order, which reflects the changes made by DAQ in response to public comments and which are not substantial,

2. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation.



Collin P. O' Mara,  
Secretary

## **HEARING OFFICER'S REPORT**

**TO:** The Honorable Collin O'Mara  
Secretary, Department of Natural Resources and Environmental Control

**FROM:** Robert P. Haynes, Esquire  
Senior Hearing Officer, Office of the Secretary  
Department of Natural Resources and Environmental Control

**RE:** Proposed Amendment to Regulation, 7 DE Admin. Code 1147 "CO2 Budget Trading Program" in Regulations Governing the Control of Air Pollution

**DATE:** February 15, 2013

### **I. BACKGROUND AND PROCEDURAL HISTORY**

This report is submitted to the Secretary of the Department of Natural Resources and Environmental Control (Department) with the recommendation to adopt a proposed amendment to 7 DE Admin. Code 1147, entitled "CO2 Budget Trading Program" in the Department's Regulation Governing the Control of Air Pollution, 7 DE Admin. Code 1100 et seq. (Air Regulations).

The proposed amendment to Regulation 1147 was drafted by experts within the Department's Division of Air Quality (DAQ). The purpose of the amendment is to allow any Delaware petroleum refinery, which currently only is the Delaware City Refinery Company, (DCR) located in Delaware City, New Castle County, to expand its participation in Regulation 1147's CO2 Carbon Dioxin Budget Trading Program. DCRC currently is limited to selling surplus self-generated electricity to the interstate power grid to 10% of its total generation. The proposed amendment would allow all of the surplus electricity to be sold and to participate in the Regulation 1147 CO2 budget trading program operated by the Regional Greenhouse Gas Initiative. (RGGI), which is

an organization consisting of Delaware and 9 other states to provide a market for carbon dioxide trading as a means to reduce the emission of this greenhouse gas. Delaware receives funds from auction used for the carbon dioxide trading, and the funds are used for a variety of Delaware green energy projects that will reduce the future demand for energy, including weatherization and renewable energy projects. A public hearing was held January 23, 2013 and the public comment period remained open until February 7, 2013.

## **II. SUMMARY OF INFORMATION IN RECORD**

The documents in the record include the following:

DNREC Ex. 1 is the handout provided at the public hearing.

DNREC Ex. 2 is the December 18, 2012, Start Action Notice (SAN) 2012-25 with Valerie Gray of DAQ as its responsible staff member.

DNREC Ex.3 the list of the Delaware air emitting sources that would be subject to the proposed amendment, which is the petroleum refinery located in Delaware City, New Castle County and owned by PBF Energy, Inc.'s Delaware City Refinery Company.

DNREC Ex. 4 is DAQ's Regulatory Flexibility Act analysis.

DNREC Ex.5 is the Department's proposed amendment to Regulation 1147 as published in the January 1, 2013 Delaware Register of Regulations.

DNREC Ex.6 is the public notice published December 20, 2012 in the Delaware State News.

DNREC Ex.7 is the public notice published December 19, 2012 in the News Journal.

DNREC Ex.8 is the notice posted in State of Delaware on-line calendar.

DNREC Ex.9 is the written statement of Valerie Gray as presented at the public hearing.

Sierra Club Ex. 1 is the written statement as presented by Stephanie Herron of the Delaware Chapter of the Sierra Club.

DCRC public comments dated February 5, 2013 that requested clarifying language to the proposed amendment.

Amy Roe spoke and her comments complimented the materials available at the hearing and she also requested a copy of the comments from DCRC, which were provided when received. She commented on the need for Delaware to be concerned with sea level rise associated with greenhouse gas emissions and closing the loophole of industrial exemption from the RGGI. She requested that a full carbon footprint of the refinery be part of a future regulatory review. She stated her support for the proposed amendment.

Stephanie Herron spoke as a representative of the Delaware chapter of the Sierra Club in support of the proposed amendment and its purpose to require the refinery to purchase carbon dioxide allowances to cover the emissions associated with the generation of electricity that DCRC sells to the electric grid. She stated that the refinery's sales to the electric grid were exempt in Regulation 1147 when adopted in October 2008 and that the proposed amendment would bring the refinery within the RGGI CO2 budget trading program. She cited Secretary O'Mara as reporting that 33% of carbon dioxide emissions in Delaware come from electric generation and that the electric generation at DCRC should be included in the RGGI in the effort to reduce greenhouse gas emissions. She cited Delaware's exposure to sea level rise and the improvements that have lowered

Delaware's per capita carbon dioxide emissions, but that this proposed amendment was needed so that DCRC paid its fair share for its contribution to greenhouse gas emissions and its impact on climate change.

Pat Todd of the League of Women Voters spoke and wanted to know the comments from DCRC.

Seth Ross spoke and asked Ms. Gray about the proposed amendment and she explained that it would allow DCRC the opportunity to select an option whereby there would be no 10% restriction on sales to the power grid and under this option DCRC would be subject to the carbon dioxide budget trading similar to other electric generators.

Richard Smith, President of the Delaware NAACP, spoke in support of the proposed amendment. He also asked if the generation of electricity was from burning coal. Ms. Gray indicated that she could not say from what fossil fuel. He stated his support for the Sierra Club position.

Gary Hayman, President of the Newark NAACP spoke on his purpose to find out more about the proposed amendment.

DAQ provided the attached email memo as Appendix A on February 14, 2013 along with its recommendation to revise the proposed amendment in a non-substantial manner by a clarification to the language that DCRC had provided in its public comments submitted February 5, 2013. The clarifying language is included in Appendix A in the required format showing the revisions. The public comment period closed on February 7, 2013 by operation of law.

### **III. BRIEF SUMMARY OF FINDINGS AND DECISION TO ADOPT AMENDMENT**

I recommend a finding that the Department's experts in DAQ developed a record to support the adoption of the proposed amendment, as revised in a non-substantive clarification that was sought in the public comments submitted by DCRC. The amendment, if adopted, would allow an expansion of the carbon dioxide trading in RGGI, which would benefit Delaware from its membership in RGGI. All public comments supported the adoption of the proposed amendment.

### **IV. CONCLUSION**

Based on the record developed, including the careful consideration of all public comments, I find and conclude that the record supports approval of the proposed amendment to Regulation 1147, as set forth in Appendix A hereto, as a final regulation by adopting the attached draft order.

  
Robert P. Haynes, Esquire  
Senior Hearing Officer



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List of Commenters submitting comments via the Public Hearing for Regulation 1147:

Amy Roe  
(public testimony at public hearing)  
Private Citizen

Stephanie Herron  
(letter read and submitted at public hearing)  
Delaware Chapter of the Sierra Club

John Irwin  
(letter submitted on 1/30/2013)  
Chair, Executive Committee  
Delaware Chapter of the Sierra Club

Thomas S. Godlewski, Jr.  
(letter submitted 2/5/2013)  
Delaware City Refining Company  
4550 Wrangle Hill Road  
Delaware City, DE 19706

Seth Roth  
(via email dated 2/5/2013)  
Delaware Nature Society

**Comment 1: Expand program beyond the Power Sector - Many of the comments received from individuals and environmental organizations voiced support for the amendment but also strongly felt the amendment did not go far enough. The commenters urged the Department to require all emissions from the refinery to become subject to the CO<sub>2</sub> Budget Trading Program. (Roe, Delaware Chapter of the Sierra Club – Herron and Irwin; DNS – voiced support of the regulatory proposal)**

**Response:** In keeping with the RGGI Model Rule - DE 7 Admin Code 1147 is applicable to CO<sub>2</sub> emissions from the power sector and provides an exemption to the industrial sector units that generated power along with process heat. The industrial exemption is provided as an optional provision for those states that included industrial fossil fuel-fired EGU's in developing the emissions baseline analysis that met the 25 MWe threshold but did not produce power for export to the grid. In 2008, the Delaware City Refinery accepted a permit condition limiting the export of electricity generated to no more than 10 percent per year.

These amendments to Regulation 1147 further expand the efforts of the Department by further reducing greenhouse gas emissions from all facilities that produce electricity for sale to the grid. The proposed amendments require petroleum refineries that accept enforceable permit conditions to purchase CO<sub>2</sub> allowances to cover all of their CO<sub>2</sub> emissions each year that are directly associated with the electricity they generate and export to the electrical grid.

**Comment 2: The Commenter suggests the Department clarify the language in the proposed amendment Section 1.2.3.1 to clarify the number of allowances required for the refinery to hold at the end of the control period. (PBF Refinery)**

**The Commenter believes that the current language proposed should be clarified to state the refinery must not hold CO<sub>2</sub> allowances less than the CO<sub>2</sub> emission associated with the supply of the annual electric output to the electric grid from CO<sub>2</sub> Budget Units. The Commenter offers two suggested alternatives to the Department's proposal to clarify the applicability of Section 1.2.3.1:**

*Applicability.* Notwithstanding 1.2.1 of this regulation, a CO<sub>2</sub> budget source under 1.2.1 of this regulation that is a petroleum refinery may elect to participate in the CO<sub>2</sub> budget trading program by securing a permit issued pursuant to 7 DE Admin Code 1102 or 1130 that contains practically enforceable conditions that require compliance with all of the provisions of this regulation, except "*CO<sub>2</sub> budget emissions limitation*" shall mean for a CO<sub>2</sub> budget source, the tonnage equivalent, in CO<sub>2</sub> emissions associated with the annual gross electrical generation output to the electric grid in a control period from all CO<sub>2</sub> Budget Units at the CO<sub>2</sub> Budget Source, ~~of the CO<sub>2</sub> allowances available for compliance deduction for the source for a control period,~~ and the amount of CO<sub>2</sub> allowances required to be available for compliance deduction for the source for a control period pursuant to 1.5.3.1 of this regulation shall be the total CO<sub>2</sub> emissions associated with the electrical generation output to the electrical grid for the control period from all CO<sub>2</sub> budget units at the CO<sub>2</sub> budget source.

**Response:** It was the intent of the Department to require the refinery to hold at the end of the control period an equivalent number of allowances equal to the tonnage equivalent in CO<sub>2</sub> emissions associated ONLY with generation exported to the electric grid from all CO<sub>2</sub> Budget Units located at the refinery.

1. The inclusion of the term gross electrical generation was meant to clarify the intent that all generation exported to the grid is applicable to determining the CO<sub>2</sub> emissions limitation and not calculating generation exported minus imports.
2. The Department agrees to the deletion of the term "annual" gross electrical generation output. It was not the intent of the Department to require annual compliance true-up.
3. Revision to the definition of "CO<sub>2</sub> budget emission limitation." CO<sub>2</sub> budget emission limitation is defined in 7 DE Admin. Code 1147 as:

*"CO<sub>2</sub> budget emissions limitation"* means for a CO<sub>2</sub> budget source, the tonnage equivalent, in CO<sub>2</sub> emissions in a control period, of the CO<sub>2</sub> allowances available for compliance deduction for the source for a control period.

Our proposal was to revise this definition as it applies to any petroleum so that it includes only the emissions associated with generation to the grid. The changes we proposed are shown below:

*"CO<sub>2</sub> budget emissions limitation"* shall mean for a CO<sub>2</sub> budget source, the tonnage equivalent, in CO<sub>2</sub> emissions associated with the annual gross electrical generation output to the electric grid in a control period from all CO<sub>2</sub> Budget Units at the CO<sub>2</sub> Budget Source, of the CO<sub>2</sub> allowances available for compliance deduction for the source for a control period,

The suggestion is to define the term as follows:

*"CO<sub>2</sub> budget emissions limitation"* shall mean for a CO<sub>2</sub> budget source, the tonnage equivalent, in CO<sub>2</sub> emissions associated with the electrical generation output to the electric grid in a control period from all CO<sub>2</sub> Budget Units at the CO<sub>2</sub> Budget Source.

This suggestion results in CO<sub>2</sub> budget emission limitation being defined as simply "the tons of CO<sub>2</sub> emitted." This is not acceptable because it would make many of the compliance provisions of the regulation of no effect. For example, "excess emissions" is defined as, "*any tonnage of CO<sub>2</sub> emitted by a CO<sub>2</sub> budget source during a control period that exceeds the CO<sub>2</sub> budget emissions limitation for the source.*" With the suggested change the CO<sub>2</sub> budget emission limitation would be the tonnage of CO<sub>2</sub> emitted, and since it would not be possible to have emissions that exceed what was actually emitted, it would not be possible to have excess emissions.

The Department does not recommend making this change.

4. The addition of language at the end, “... and the amount of CO<sub>2</sub> allowances required to be available for compliance deduction for the source for a control period pursuant to 1.5.3.1 of this regulation shall be the total CO<sub>2</sub> emissions associated with the electrical generation output to the electric grid for the control period from all CO<sub>2</sub> budget units at the CO<sub>2</sub> budget source.”

In the Department proposal, the term “CO<sub>2</sub> budget emissions limitation” was defined to include only the tons of CO<sub>2</sub> associated with electrical generation to the grid, with the thought that this definition would be sufficient to implement the concept that only emissions associated with electric output to the grid would be regulated. The proposed additional suggested language appears, in concept, consistent with this intent, and provides additional clarity to proposed 1.2.3.1.

The suggestion referenced 1.5.3.1. 1.5.3.1 pertains to the holding of CO<sub>2</sub> allowances available for compliance deduction. 1.5.3.1 states:

*“The owners and operators of each CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source shall hold CO<sub>2</sub> allowances available for compliance deductions under 6.5 of this regulation, as of the CO<sub>2</sub> allowance transfer deadline, in the source’s compliance account in an amount not less than the total CO<sub>2</sub> emissions for the control period from all CO<sub>2</sub> budget units at the source, as determined in accordance with 6.0 and 8.0 of this regulation.”*

A similar situation to the one the refinery is suggesting be clarified also exists in 6.5.2.1:

6.5.2 Deductions for compliance. Following the recordation, in accordance with 7.2 of this regulation, of CO<sub>2</sub> allowance transfers submitted for recordation in the CO<sub>2</sub> budget source’s compliance account by the CO<sub>2</sub> allowance transfer deadline for a control period, the Department or its agent will deduct CO<sub>2</sub> allowances available under 6.1 of this regulation to cover the source’s CO<sub>2</sub> emissions (as determined in accordance with 8.0 of this regulation for the control period, as follows:

- 6.5.2.1 until the amount of CO<sub>2</sub> allowances deducted equals the number of tons of total CO<sub>2</sub> emissions, less any CO<sub>2</sub> emissions attributable to the burning of eligible biomass, determined in accordance with 8.0 of this regulation, from all CO<sub>2</sub> budget units at the CO<sub>2</sub> budget source for the control period; or
- 6.5.2.2 If there are insufficient CO<sub>2</sub> allowances to complete the deductions 6.2.1 of this regulation, until no more CO<sub>2</sub> allowances available under 6.5.1 of this regulation remain in the compliance account.

The Department should consider adding the following clarifying language to the end of proposed 1.2.3.1:

“... and the amount of CO<sub>2</sub> allowances required to be held pursuant to 1.5.3.1, and deducted pursuant to 6.5.2.1 of this regulation shall include only the number of tons of total CO<sub>2</sub> emissions associated with gross generation output to the electric grid.”

5. The second approach recommended by the Commenter to clarify 1.2.3.1 adds language to speak to the deduction of allowances at the end of control period pursuant to 1.5.3.1 shall be equivalent to the total emissions from the CO<sub>2</sub> budget units at the refinery associated with electrical generation output to the electrical grid. See the Department response to items 3 and 4 above.

Or a second approach to clarifying 1.2.3.1

*Applicability. Notwithstanding 1.2.1 of this regulation, a CO<sub>2</sub> budget source under 1.2.1 of this regulation that is a petroleum refinery may elect to participate in the CO<sub>2</sub> budget trading program by securing a permit issued pursuant to 7 DE Admin Code 1102 or 1130 that contains practically enforceable conditions that require compliance with all of the provisions of this regulation, except “CO<sub>2</sub> budget emissions limitation” shall mean for a CO<sub>2</sub> budget source, the tonnage equivalent, in CO<sub>2</sub> emissions associated with the annual gross electrical generation output to the electric grid in a control period from all CO<sub>2</sub> Budget Units at the CO<sub>2</sub> Budget Source, of the CO<sub>2</sub> allowances available for compliance deduction for the source for a control period that the quantity of CO<sub>2</sub> allowances required to be available for compliance deduction pursuant to 1.5.3.1 of this regulation for such source for a control period shall be the tonnage equivalent, for the total CO<sub>2</sub> emissions from all CO<sub>2</sub> budget units at the refinery-based CO<sub>2</sub> budget source associated with the electrical generation output to the electrical grid for such control period from all such CO<sub>2</sub> budget units.*

The Department has chosen to consider the language presented by the first suggestion. The Department believes that the amended definition “CO<sub>2</sub> budget emissions limitation” is necessary define the CO<sub>2</sub> emissions that will be associated with the CO<sub>2</sub> allowances at the time of compliance certification.

As a result the Department recommends the following amendments to the proposed language be considered by the Secretary:

1.2.3 Requirements for any CO<sub>2</sub> Budget Source that is a petroleum refinery.

- 1.2.3.1 *Applicability.* Notwithstanding 1.2.1 of this regulation, a CO<sub>2</sub> budget source under 1.2.1 of this regulation that is a petroleum refinery may elect to participate in the CO<sub>2</sub> budget trading program by securing a permit issued pursuant to 7 DE Admin Code 1102 or 1130 that contains practically enforceable conditions that require compliance with all of the provisions of

this regulation, except “*CO<sub>2</sub> budget emissions limitation*” shall mean for a CO<sub>2</sub> budget source, the tonnage equivalent, in CO<sub>2</sub> emissions associated with the annual gross electrical generation output to the electric grid in a control period from all CO<sub>2</sub> Budget Units at the CO<sub>2</sub> Budget Source, of the CO<sub>2</sub> allowances available for compliance deduction for the source for a control period and the amount of CO<sub>2</sub> allowances required to be held pursuant to 1.5.3.1, and deducted pursuant to 6.5.2.1 of this regulation shall include only the number of tons of total CO<sub>2</sub> emissions associated with gross generation output to the electric grid.

**Title 7 Natural Resources and Environmental Control  
1100 Air Quality Management Section**

**1147 CO<sub>2</sub> Budget Trading Program**

**03/11/2013**

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1.2.3 Requirements for any CO<sub>2</sub> Budget Source that is a petroleum refinery.

1.2.3.1 *Applicability.* Notwithstanding 1.2.1 of this regulation, a CO<sub>2</sub> budget source under 1.2.1 of this regulation that is a petroleum refinery may elect to participate in the CO<sub>2</sub> budget trading program by securing a permit issued pursuant to 7 **DE Admin Code** 1102 or 1130 that contains practically enforceable conditions that require compliance with all of the provisions of this regulation, except "*CO<sub>2</sub> budget emissions limitation*" shall mean for a CO<sub>2</sub> budget source, the tonnage equivalent, in CO<sub>2</sub> emissions associated with the gross electrical generation output to the electric grid in a control period from all CO<sub>2</sub> Budget Units at the CO<sub>2</sub> Budget Source, of the CO<sub>2</sub> allowances available for compliance deduction for the source for a control period; and the amount of CO<sub>2</sub> allowances required to be held pursuant to 1.5.3.1, and deducted pursuant to 6.5.2.1 of this regulation shall include only the number of tons of total CO<sub>2</sub> emissions associated with gross generation output to the electric grid.

1.2.3.2 *Effective date.* The requirements of 1.2.3.1 of this regulation shall become effective as of January 1 of the year that the permit required under 1.2.3.1 of this regulation becomes final.

1.2.2.3 *Compliance.*

For the purpose of applying permitting requirements under 3.0 of this regulation, and applying monitoring requirements under 8.0 of this regulation, the unit shall be treated as commencing operation on the date the permit required under 1.2.3.1 of this regulation becomes final.

1.2.4 *Deduction of tons from State of Delaware CO<sub>2</sub> Budget Trading Program limited industrial exemption set-aside account.* In the event that the Department grants an exemption under 1.2.2 or approval to comply under 1.2.3 of this regulation to a CO<sub>2</sub> source, with one or more units that on January 1, 2005, serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe, the Department shall retire the number of CO<sub>2</sub> allowances from the set-aside established for such purpose under 5.3 of this regulation.

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5.3.4.2 As of the January 1 that is after the date that an exemption under 1.2.2 or approval to comply under 1.2.3 has been granted, for each allocation year the Department will retire CO<sub>2</sub> allowances in the limited industrial exemption set-aside general account.

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Title 7 Natural Resources and Environmental Control  
1100 Air Quality Management Section

1147 CO<sub>2</sub> Budget Trading Program

~~11/11/08~~ 03/11/2013

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1.2.3 Requirements for any CO<sub>2</sub> Budget Source that is a petroleum refinery.

1.2.3.1 Applicability. Notwithstanding 1.2.1 of this regulation, a CO<sub>2</sub> budget source under 1.2.1 of this regulation that is a petroleum refinery may elect to participate in the CO<sub>2</sub> budget trading program by securing a permit issued pursuant to 7 DE Admin Code 1102 or 1130 that contains practically enforceable conditions that require compliance with all of the provisions of this regulation, except "CO<sub>2</sub> budget emissions limitation" shall mean for a CO<sub>2</sub> budget source, the tonnage equivalent, in CO<sub>2</sub> emissions associated with the **[annual]** gross electrical generation output to the electric grid in a control period from all CO<sub>2</sub> Budget Units at the CO<sub>2</sub> Budget Source, of the CO<sub>2</sub> allowances available for compliance deduction for the source for a control period; **and the amount of CO<sub>2</sub> allowances required to be held pursuant to 1.5.3.1, and deducted pursuant to 6.5.2.1 of this regulation shall include only the number of tons of total CO<sub>2</sub> emissions associated with gross generation output to the electric grid.**

1.2.3.2 Effective date. The requirements of 1.2.3.1 of this regulation shall become effective as of January 1 of the year that the permit required under 1.2.3.1 of this regulation becomes final.

1.2.2.3 Compliance.

For the purpose of applying permitting requirements under 3.0 of this regulation, and applying monitoring requirements under 8.0 of this regulation, the unit shall be treated as commencing operation on the date the permit required under 1.2.3.1 of this regulation becomes final.

1.2.2.4 Deduction of tons from State of Delaware CO<sub>2</sub> Budget Trading Program limited industrial exemption set-aside account. In the event that the Department grants an exemption under 1.2.2 or approval to comply under 1.2.3 of this regulation to a CO<sub>2</sub> source, with one or more units that on January 1, 2005, serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe, the Department shall retire the number of CO<sub>2</sub> allowances from the set-aside established for such purpose under 5.3 of this regulation.

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5.3.4.2 As of the January 1 that is after the date that an exemption under 1.2.2 or approval to comply under 1.2.3 has been granted, for each allocation year the Department will retire CO<sub>2</sub> allowances in the limited industrial exemption set-aside general account.

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Appendix A  
Final Regulation

Title 7 Natural Resources and Environmental Control  
1100 Air Quality Management Section

1147 CO<sub>2</sub> Budget Trading Program

03/11/2013

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1.2.3 Requirements for any CO<sub>2</sub> Budget Source that is a petroleum refinery.

1.2.3.1 *Applicability.* Notwithstanding 1.2.1 of this regulation, a CO<sub>2</sub> budget source under 1.2.1 of this regulation that is a petroleum refinery may elect to participate in the CO<sub>2</sub> budget trading program by securing a permit issued pursuant to 7 **DE Admin Code** 1102 or 1130 that contains practically enforceable conditions that require compliance with all of the provisions of this regulation, except "*CO<sub>2</sub> budget emissions limitation*" shall mean for a CO<sub>2</sub> budget source, the tonnage equivalent, in CO<sub>2</sub> emissions associated with the gross electrical generation output to the electric grid in a control period from all CO<sub>2</sub> Budget Units at the CO<sub>2</sub> Budget Source, of the CO<sub>2</sub> allowances available for compliance deduction for the source for a control period; and the amount of CO<sub>2</sub> allowances required to be held pursuant to 1.5.3.1, and deducted pursuant to 6.5.2.1 of this regulation shall include only the number of tons of total CO<sub>2</sub> emissions associated with gross generation output to the electric grid.

1.2.3.2 *Effective date.* The requirements of 1.2.3.1 of this regulation shall become effective as of January 1 of the year that the permit required under 1.2.3.1 of this regulation becomes final.

1.2.2.3 *Compliance.*

For the purpose of applying permitting requirements under 3.0 of this regulation, and applying monitoring requirements under 8.0 of this regulation, the unit shall be treated as commencing operation on the date the permit required under 1.2.3.1 of this regulation becomes final.

1.2.4 *Deduction of tons from State of Delaware CO<sub>2</sub> Budget Trading Program limited industrial exemption set-aside account.* In the event that the Department grants an exemption under 1.2.2 or approval to comply under 1.2.3 of this regulation to a CO<sub>2</sub> source, with one or more units that on January 1, 2005, serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe, the Department shall retire the number of CO<sub>2</sub> allowances from the set-aside established for such purpose under 5.3 of this regulation.

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5.3.4.2 As of the January 1 that is after the date that an exemption under 1.2.2 or approval to comply under 1.2.3 has been granted, for each allocation year the Department will retire CO<sub>2</sub> allowances in the limited industrial exemption set-aside general account.



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**PROPOSED REGULATIONS**

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**301 Victims' Compensation Assistance Program Rules and Regulations**

*(Break in Continuity of Sections)*

**25.0 Burial Awards**

The aggregate award for funeral and burial shall not exceed ~~\$8,500.00~~ \$5,000.00.

**Please Note:** As the rest of the sections were not amended they are not being published. The complete proposal for Victim's Compensation Assistance Program is available at:

301 Victims' Compensation Assistance Program Rules and Regulations

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF AIR QUALITY**

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)  
7 DE Admin. Code 1147

REGISTER NOTICE SAN # 2012-25

**1. TITLE OF THE REGULATIONS:**

Amendment to 7 DE Admin. Code 1147 - *CO<sub>2</sub> Budget Trading Program*

**2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

The proposed amendments require that petroleum refinery units purchase Carbon Dioxide (CO<sub>2</sub>) allowances to cover its reported emissions each year that are directly associated with the electricity generated and exported to the electrical grid. Petroleum refinery units participating in the CO<sub>2</sub> Budget Trading Program will be required to report emissions, as required by other Electric Generating Units, and accept enforceable permit conditions.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Del.C., Ch. 60, Environmental Control

**5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:**

None

**6. NOTICE OF PUBLIC COMMENT:**

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, January 23, 2013 beginning at 6:00 PM at the Delaware City Library located at 250 Fifth Street, Delaware City, DE. Interested parties may submit comments in writing to: Valerie Gray, DNREC Division of Air Quality, 655 South Bay Road, Suite 5N, Dover, DE 19901.

**7. PREPARED BY:**

Valerie Gray, 302.739.9402, December 7, 2012

**1147 CO<sub>2</sub> Budget Trading Program**44/11/08 ~~xx~~/11/2013**1.0 CO<sub>2</sub> Budget Trading Program General Provisions***(Break in Continuity Within Section)***1.2.3 Requirements for any CO<sub>2</sub> Budget Source that is a petroleum refinery.**

**1.2.3.1** Applicability. Notwithstanding 1.2.1 of this regulation, a CO<sub>2</sub> budget source under 1.2.1 of this regulation that is a petroleum refinery may elect to participate in the CO<sub>2</sub> budget trading program by securing a permit issued pursuant to 7 DE Admin. Code 1102 or 1130 that contains practically enforceable conditions that require compliance with all of the provisions of this regulation, except "CO<sub>2</sub> budget emissions limitation" shall mean for a CO<sub>2</sub> budget source, the tonnage equivalent, in CO<sub>2</sub> emissions associated with the annual gross electrical generation output to the electric grid in a control period from all CO<sub>2</sub> Budget Units at the CO<sub>2</sub> Budget Source, of the CO<sub>2</sub> allowances available for compliance deduction for the source for a control period.

**1.2.3.2** Effective date. The requirements of 1.2.3.1 of this regulation shall become effective as of January 1 of the year that the permit required under 1.2.3.1 of this regulation becomes final.

**1.2.3.3** Compliance. For the purpose of applying permitting requirements under 3.0 of this regulation, and applying monitoring requirements under 8.0 of this regulation, the unit shall be treated as commencing operation on the date the permit required under 1.2.3.1 of this regulation becomes final.

**1.2.2.4** Deduction of tons from State of Delaware CO<sub>2</sub> Budget Trading Program limited industrial exemption set-aside account. In the event that the Department grants an exemption under 1.2.2 or approval to comply under 1.2.3 of this regulation to a CO<sub>2</sub> source, with one or more units that on January 1, 2005, serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe, the Department shall retire the number of CO<sub>2</sub> allowances from the set-aside established for such purpose under 5.3 of this regulation.

*(Break in Continuity of Sections)*

11/11/08

**5.0 CO<sub>2</sub> Allowance Allocations***(Break in Continuity Within Section)***5.3 CO<sub>2</sub> allowance allocations.***(Break in Continuity Within Section)*

**5.3.4** Limited industrial exemption set-aside allocation. The limited industrial exemption set-aside allocation will consist of 1,207,544 tons from the State of Delaware CO<sub>2</sub> Budget Trading Program base budget set forth in 5.1 of this regulation. For each control period, the Department will determine CO<sub>2</sub> allowance allocations in accordance with the following procedures.

**5.3.4.1** The Department will open and manage a general account for the limited exemption set-aside for each control period.

**5.3.4.2** As of the January 1 that is after the date that an exemption under 1.2.2 or approval to comply under 1.2.3 has been granted, for each allocation year the Department will retire CO<sub>2</sub> allowances in the limited industrial exemption set-aside general account.

**\*Please Note: As the rest of the sections are not being amended, they are not being published here. A complete copy of the proposed regulation is available at:**

**1147 CO<sub>2</sub> Budget Trading Program**

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# Public Meeting Calendar

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**January 23, 2013**

6:00 PM

## Amendment to Reg 1147– CARBON DIOXIDE BUDGET TRADING PROGRAM as it relates to petroleum refineries

**Department**  
Natural Resources and Environmental Control

**Host Agency**  
Air Quality

**Meeting Location**  
Delaware City Public Library  
250 5th St.  
Delaware City, DE, 19706  
New Castle County

**Contact**  
Valerie Gray  
302-739-9402  
655 S. Bay Road  
Suite 5N  
Dover, DE 19901

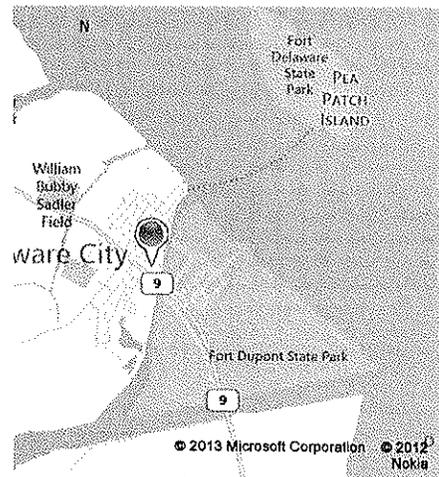
**Purpose**  
The proposed amendments require that petroleum refinery units purchase CO2 allowances to cover its reported emissions each year that are directly associated with the electricity generated and exported to the electrical grid. Petroleum refinery units participating in the CO2 Budget Trading Program will be required to report emissions, as required by other Electric Generating Units, and accept enforceable permit conditions.

**Agenda**  
AGENDA Hearing Officer Call Hearing to Order Introduction of Exhibits by Department Staff Department Exhibits entered into hearing record Department presentation/explanation of proposed promulgation Hearing Officer will open hearing to anyone from the public wishing to make a statement/comment for the record After all public comment received Hearing Officer will conclude hearing

**Minutes**  
Minutes have not yet been published for this meeting

**Additional Information**  
The proposed regulation and amendments may be inspected at the Department's offices located at 655 South Bay Road, Suite 5N, Dover and 715 Grantham Lane, New Castle, or on the Division of Air Quality's website at:  
<http://www.awm.delaware.gov/Info/Regs/Pages/RGGL.aspx>

For additional information or any appointments to inspect the proposed regulation or amendments, please contact Valerie Gray in Dover at (302) 739-9402, or at [valerie.gray@state.de.us](mailto:valerie.gray@state.de.us). Interested parties may submit comments in writing on this proposed amendment prior to the public hearing and/or comments may be presented either orally or in writing at the public hearing or wish to submit your comments to be considered at the public hearing, please contact Valerie Gray at (302) 739-9402.



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**January 15, 2013**

6:00 PM

## Hearing on application submitted by DE City Refining Company to restart the Unit 34 Olefins

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