

**From:** Gray Valerie A. (DNREC)  
**Sent:** Thursday, October 02, 2008 1:34 PM  
**To:** 'Alan Muller'  
**Subject:** RE: comments on RGGI regulation

Alan – In response to your questions on the public process for regulatory development, please note the following:

(1) How was the makeup of the "invitation list" for the workgroup determined? The invitation list for requesting participation in the regulatory development process for Regulation 1147 – CO2 Budget Trading Program was derived from the SCR 28 Workgroup (see <http://www.awm.delaware.gov/Info/Regs/Pages/SCR.aspx>) with the absence of the legislative representatives (Sen. McDowell, Sen. Copeland, Sen. Bunting, Rep. Hocker and Rep Thornberg), Dr. Byrne and Secretary Hughes.

(2) What documentation exists of participation on behalf of the public interest? The meeting sign in sheets are publically available and are posted on the DNREC AQM regulatory development website for each workgroup meeting - <http://www.awm.delaware.gov/Info/Regs/Pages/RGGI.aspx>.

(3) What is the Department's understanding of it's obligations in regard to public participation in the development of regulations? The Department follows the requirements outlined in the Delaware Code. Where are these obligations defined in law, regulation, policy, or otherwise? Title 7 Del.C. Section 6006 and Title 29 Del.C. Section 10115.

If you have any additional comments or questions regarding Regulation 1147 – CO2 Budget Trading Program, please do not hesitate to contact me at 302.739.9402.

Thanks,  
*Valerie Gray*  
Planning Supervisor  
DNREC – AQM  
302.739.9402 office  
302.739.3106 fax

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**From:** Alan Muller [mailto:amuller@dca.net]  
**Sent:** Thursday, October 02, 2008 10:58 AM  
**To:** Gray Valerie A. (DNREC)  
**Cc:** Amirikian Ronald A. (DNREC); Vest Lisa A. (DNREC); Morozowich Deanna; Mirzakhilili Ali (DNREC)  
**Subject:** RE: comments on RGGI regulation

At 08:53 AM 10/2/2008 -0400, Gray Valerie A. (DNREC) wrote:

Alan – with the exception of one email I received this morning all comments received by DNREC's Air Quality Management Section in regard to Regulation 1147 – CO2 Budget Trading

Program have been posted on DNREC's AQM regulatory development website dedicated to the regulation. As to your question one why neither of the three environmental organizations who participated in the regulatory development process for this regulation have not commented to date, I do not know.

Dear Valerie and Lisa:

I'm not sure exactly how I phrased the email, but it was not my intention to ask the Department \*why\* the invited "environmental organizations" did not comment. I would not expect you to venture an answer to that question.

On the other hand, the question is important. Generally, the AQM Reg. Development Group has acted with some level of good faith in seeking public input into regulations. In this important matter it is plain from the hearing record and otherwise that meaningful public input did not occur. Whether this was intentional on the part of the Department is not clear to me from the record.

However, the invitation list as posted--6 discharges including TWO people from NRG vs 3 presumptive "enviros"--raises questions as to whether the Department acted in good faith. We question whether the reg development process in this case is so poisoned by the lack of public participation that it should be invalidated.

I reviewed the "draft" minutes of the 5 meetings of the Workgroup, and found no clear indication of participation by environmental interests.

Therefore, I pose to you these questions, noting that time is of the essence:

- (1) How was the makeup of the "invitation list" for the workgroup determined?
- (2) What documentation exists of participation on behalf of the public interest?
- (3) What is the Department's understanding of it's obligations in regard to public participation in the development of regulations? Where are these obligations defined in law, regulation, policy, or otherwise?

Yours very truly,

Alan Muller