

Transmitted electronically to valerie.gray@state.de.us

September 22, 2008

Ms. Valerie Gray
DNREC
Air Quality Management Section
Division of Air & Waste Management
156 S. State Street
Dover, DE 19901

RE: Proposed Regulation 1147
CO₂ Budget Trading Program

Dear Ms. Gray:

Attached are The Premcor Refining Group Inc.'s (Premcor) comments on proposed regulation 1147. Premcor appreciates the opportunity to offer these comments and expects to continue working with the Department to address climate change issues in a consistent and equitable manner.

Sincerely,



Pat Covert
Director – Health Safety and Environmental

Attachment

**COMMENTS OF THE PREMCOR REFINING GROUP, INC.
ON PROPOSED REGULATION NO. 1147**

Introduction

On September 1, 2008, the Air and Waste Management Division of the Delaware Department of Natural Resources and Environmental Control (the "Department") published in the Delaware Register a draft regulation for the Regional Greenhouse Gas Initiative ("RGGI") Carbon Dioxide ("CO₂") Budget Trading Program, entitled Regulation 1147 CO₂ Budget Trading Program ("Regulation 1147"). The notice of the public hearing for draft Regulation 1147 requested that comments be submitted to the Department on or before September 22, 2008, the date of the public hearing. Consistent with that public notice, The Premcor Refining Group Inc. ("Premcor"), a subsidiary of Valero Energy Corporation, submits the following comments on draft Regulation No. 1147.

Premcor owns and operates the Delaware City Refinery. Certain permitted equipment at the Refinery, specifically four boilers and two combined cycle, gas-fired turbine units, are currently used to generate electricity and steam that is utilized in refinery operations. Each of these units serves one or more electricity generators with a nameplate capacity greater than 25MWe, which results in these units becoming subject to certain portions of Regulation 1147. Premcor has actively participated throughout the Regulation 1147 development process as a member of the RGGI Workgroup, attending many of the Workgroup meetings and providing comments on the draft regulation in conjunction with those meetings and the public workshop held on August 8, 2008. The following comments are provided as a supplement to the comments Premcor has made throughout the RGGI Workgroup process, and all comments submitted as part of the RGGI Workgroup process should be considered to be incorporated with these comments.

General Comments

At the outset, Premcor notes that draft Regulation 1147 wisely retains the limited exemption provided for units that supply less than 10 percent of the unit's electrical output to the grid for sale. As recognized in comments associated with the development of the RGGI Model Rule that was approved and supported by the RGGI states, as well as the Delaware RGGI Workgroup process, the 10 percent exemption is based upon important policy consideration including, among others:

- The primary objective of the RGGI program is to address CO₂ emissions from the power sector, not industrial units designed to generate electricity for on-site use;

- There are certain environmental benefits associated with “inside the fence” or “distributed generation” sources that generate power for their own consumption, and the 10 percent exemption encourages development of those resources;
- Similarly, the 10 percent exemption encourages the development of combined heat and power (“CHP”) units, such as the units at the Delaware City Refinery, consistent with recommendations of the Delaware Energy Task Force; and
- The exemption recognizes that unlike commercial power generators, industrial concerns with on-site generation capability will not receive the benefit of RGGI funds directed towards programs designed to reduce consumer demand for electricity.

In sum, Premcor agrees with the Department that a 10 percent exemption that tracks the exemption provided in the RGGI Model Rule is an important element of Regulation 1147. Other RGGI states with similar on-site electricity generation operations have chosen to include the 10 percent exemption as part of their respective RGGI programs, and there is no reason for Delaware not to be consistent with its approach to Regulation 1147.

Ultimately, Premcor and Valero believe that climate change policy should be developed at the national or international level, in a manner that is fair and consistent across various industries and that is coordinated with other environmental regulations directed at other pollutants. Moreover, these climate change policies should be market-based to promote the most efficient sources for greenhouse gas emission reductions while at the same time taking into account the potential impacts on energy supply and the economy. Accordingly, while Premcor generally supports including the 10 percent exemption as part of Regulation 1147, Premcor believes that any future regulations of greenhouse gas sources should be part of a comprehensive national or international program.

Specific Comments

While Premcor generally supports including the 10 percent exemption as part of Regulation 1147, Premcor does have some specific comments on how the Department has incorporated the exemption into draft Regulation 1147.

1. Due to regulation timing issues, the effective date of the exemption should be deemed to be the effective date of the Regulation if a timely and complete application requesting an appropriate restriction on electricity sales to the grid is submitted.

Section 1.2.2.1 states that for any unit to qualify for the exemption, the operator must obtain a Regulation 1102 or Regulation 1130 permit that includes a practically enforceable condition that restricts the supply of the unit's electrical output to the electric grid to less than or equal to 10 percent of the annual gross generation of the unit. Moreover, Section 1.2.2.2 provides that the exemption is effective "the January 1 that is on or after the date on which the ... provisions in the ... permit ... become final."

The expected promulgation date of Regulation 1147 is December 1, 2008, with an expected effective date of December 11, 2008. In light of this timetable, it is unlikely that the Department would be in a position to issue final operating permits with the necessary restriction before January 1, 2009. Under the terms of 1.2.2.2, this means that the earliest Premcor or any other unit that qualifies for the exemption would be able to take advantage of the exemption is January 1, 2010. There is no sound policy reason for units that qualify for the exemption at the time Regulation 1147 becomes final and effective to be subject to the provisions of Regulation 1147 for almost one year simply due to the timing of the regulation's issuance. Accordingly, the appropriate provisions of 1.2.2 should be revised so that the exemption is deemed effective on the effective date of Regulation 1147, so long as complete application requesting the necessary restriction is received by the Department within a reasonable period of time after the effective date of the Regulation. To that end, Premcor suggests adding the following language to Section 1.2.2.2:

If a complete application requesting permit revisions consistent with the restriction required by 1.2.2.1 of this regulation is received within sixty days of the effective date of this regulation, and a permit is issued containing such a restriction, then the effective date of the exemption under 1.2.2.1 of this regulation shall be deemed to be the effective date of this regulation.

2. The Department should clarify that the restriction on electricity output to the grid can be enforced on a "source" as well as a "unit" basis.

As currently drafted, the exemption offered in Section 1.2.2 of Regulation 1147 applies to individual "units," which are defined in Section 1.3 as "a fossil-fuel fired stationary boiler, combustion turbine, or combined cycle system." Consistent with that framework, the 10 percent permit restriction required by 1.2.2.1, as well as the provisions of 1.2.2.3.5 that govern when an exemption is lost, appear to apply on a unit basis. Accordingly, on its face Section 1.2.2 contemplates that all standards, compliance methods, monitoring and recordkeeping requirements associated with the exemption apply on a unit by unit basis.

Because the Premcor power generating units are tightly integrated with a common steam header, however, power generation from individual RGGI units cannot be directly measured.

Likewise, the revenue meters that track net output to the grid are not segregated by RGGI unit. These shared systems make unit by unit monitoring of the amount of power generated or exported to the grid technically infeasible. Accordingly, Premcor requests that the language in Section 1.2.2.1 of the Regulation be clarified to state explicitly that a practically enforceable condition includes monitoring the generation and sale of electricity via the grid based on an aggregated unit basis or on an aggregate “source” basis.

Along these lines, Table 5-2, which sets forth CO₂ budget unit allocations for existing sources applicable to the years 2009 through 2014, associates a specific electricity generator with each RGGI unit at the Premcor refinery. While this table will not be relevant if Premcor qualifies for the 10% exemption, for the reasons outlined above, the table should clarify that the presence of a RGGI unit and an electricity generator at the refinery in the same row of Table 5-2 does not mean that the RGGI unit solely serves the electricity generator indicated in the table.

3. The language governing when a unit loses its exemption should be revised so that, consistent with Department compliance enforcement policy, procedural violations do not automatically result in the loss of a permitted exemption.

Sections 1.2.2.3.5 and 1.2.2.3.5.2 state that a unit receiving a 10 percent exemption shall lose that exemption on “the first date on which the unit fails to comply, or on which the owners and operators fail to meet their burden of proving that the unit is complying, with the restriction...described in 1.2.2.1 of this regulation...” On its face, the broad language referencing the failure to meet the burden could encompass procedural issues such as the late submission of the report on annual gross generation required by Section 1.2.2.3.2. Thus, a unit could lose its right to rely on a permitted exemption (*i.e.*, a permit provision would be revoked) in the instance where an annual gross generation report is submitted shortly after February 1 of a given year.

This severe consequence of violating what is a procedural reporting requirement is inconsistent with published Department enforcement guidelines. Specifically Chapter Six, Section I of the Department’s Compliance and Enforcement Guide, which concerns Air Quality Management Priority Case Classification, does not contemplate loss of permitted exemptions in such instances. Instead, subsection C states that:

[t]ypically, procedural violations which are limited in nature to monitoring, record keeping, and reporting which do not substantially interfere with Engineering and Compliance Staff determining the compliance status of the source...are considered minor and result in a Letter of Deficiency or Notice of Violation.

The loss of a permit as a result of a procedural violation is also inconsistent with other provisions of Regulation 1147 that govern electric generating units subject to the regulation. Indeed, the provisions of Section 8.0 of the Regulation contemplate and allow for “out of control” monitoring periods, and the loss of CO₂ allowances occurs only when a budget source has excess emissions in a control period. In sum, there is no valid reason for enforcement of the requirements associated with the 10 percent exemption to be treated differently than other procedural requirements of Regulation 1147 or other air quality regulations designed to protect the health and welfare of Delaware citizens. This inconsistency with Delaware enforcement practice can be resolved most easily by substituting the word “may” for the word “shall” in Section 1.2.2.3.5 of the regulation. At a minimum, the Department should clarify at some point in the regulation that nothing in Regulation 1147 is intended to restrict the Department’s enforcement discretion granted by the Delaware Environmental Control Statute.

4. The language in 1.2.2.1 concerning applicable provisions of Regulation 1147 for those facilities making use of the 10% exemption should be modified to be consistent with the Model Rule.

In 1.2.2.1, the language indicates that units meeting the 10% export limitation “...shall be exempt from the requirements of Regulation 1147, except for the provisions of *this regulation*, 1.3, 1.4, 1.6 of this regulation...” It appears that the initial phrase “this regulation” is a typographical error. The corresponding language in the Model Rule provision reads “except for the provisions of this *section*...” Section 1.2..2.1 of Draft Regulation 1147 should be modified to conform to the Model Rule.

Premcor appreciates the opportunity to offer these comments and expects to continue working with the Department to address climate change issues in a consistent and equitable manner.