

Secretary's Order No.: **2008-A-0055**

RE: Proposed Regulation No. 1147: CO₂ Budget Trading Program
*Regional Greenhouse Gas Initiative (RGGI) to Address
Carbon Dioxide (CO₂) from Electric Generating Units (EGUs)*

Date of Issuance: October 15, 2008

Effective Date of the Amendment: November 11, 2008

I. Background:

A public hearing was held on Monday, September 22, 2008, in the Richardson and Robbins Auditorium of DNREC, 89 Kings Highway, Dover, Delaware, to receive public comment on Delaware's proposed new air regulation, Regulation No. 1147: CO₂ Budget Trading Program - Regional Greenhouse Gas Initiative (RGGI), to address Carbon Dioxide (CO₂) emissions from Electric Generating Units (EGUs) – hereinafter referred to as the “RGGI”. This new regulation will create Delaware's portion of a multi-state CO₂ cap-and-trade program. The cap-and-trade program was developed by the RGGI, which is a cooperative effort among ten Northeastern and Mid-Atlantic States, to wit: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. The purpose of RGGI is to reduce the emissions of CO₂ from EGUs. CO₂ is a principal human-caused greenhouse gas which contributes to global warming.

Beginning in 2009 through 2015, the emissions of CO₂ from any EGU with a maximum rated heat input capacity of equal to or greater than 25 megawatts that is located in a RGGI state would be capped at current levels (emissions from Delaware affected facilities account for approximately 7.5 million tons). After 2015, the cap would be reduced incrementally to achieve a 10 percent reduction by 2019. Under the cap-and-trade program, one allowance is equivalent to one ton of CO₂ emissions allowed by the cap. Each subject EGU will be required to have enough allowances to cover its reported emissions during the three year compliance periods. The EGUs may buy or sell allowances, but individual EGU emissions shall not exceed the amount of allowances it possesses. The total amount of the allowances will be equal to the emissions cap for the RGGI states.

The Department has the authority to promulgate this regulation under 7 Del.C., Chapter 60. From the very beginning of this promulgation process (beginning in April of 2007 with the signing of Start Action Notice 2007-04), the Department has been extremely diligent with regard to posting all available information (including, but certainly not limited to, the draft regulatory language) concerning RGGI on DNREC's website for public review, and underwent an intense stakeholder process, including holding no less than five stakeholder workgroup meetings since February 2008, so that the public would be able to provide meaningful input concerning this regulatory matter.

During this time, the Department shared pre-proposal drafts of the proposed regulations with the regulated community, and received thoughtful comment in return. The proposed regulations are also based on a model rule developed by all RGGI states, which itself was subject to development in an open and transparent process with multiple stakeholder meetings, including many stakeholders from the regulated community in Delaware.

As noted above, public comment was received by the Department, both prior to and subsequent to the public hearing on September 22, 2008. Additional comments were received from the regulated community, as well as from individual citizens, during the post-hearing phase of this matter, all of which became part of the record in this case as well. Following the close of the record for public comment, the Air Quality Management Section of the Department prepared a detailed and extensive Response Document, dated October 8, 2008, which thoroughly addressed all comments received during the pre-hearing, hearing, and post-hearing phases of this process.

Thereafter, the Hearing Officer completed her report, dated October 14, 2008, and incorporated the aforementioned Department's Response Document of October 8, 2008 into the same. Accordingly, that Hearing Officer's report, including all attachments, is expressly incorporated hereinto this Order at this time. Proper notice of this hearing was provided, as required by law.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to the responses given to each public comment, as reflected in the Hearing Officer's Report of October 14, 2008, which, again, is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. The Department has reviewed this proposed regulation in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
6. Formal promulgation of proposed Regulation No. 1147 will create Delaware's portion of a multi-state carbon dioxide cap-and-trade program, as developed by the RGGI, which is a

cooperative effort among ten Northeastern and Mid-Atlantic States to reduce the emissions of CO₂ from EGUs;

7. Upon implementation of this initiative, beginning in 2009 through 2015, the total emissions of CO₂ from all EGUs with a maximum rated heat input capacity of equal to or greater than 25 megawatts that is located in a RGGI state would be stabilized at levels roughly equivalent to average annual emissions during 2000-2002;
8. After 2015, the carbon dioxide emissions would be reduced incrementally to achieve a 10 percent reduction by 2019;
9. Under the RGGI cap-and-trade program, one allowance will be issued for each ton of CO₂ emissions allowed by the cap. Each subject EGU will be required to have enough allowances to cover its reported emissions for the 3-year control period. The EGUs may buy or sell allowances, but individual EGU emissions shall not exceed the amount of allowances it possesses. The total amount of the allowances will be equal to the emissions cap for the RGGI states;
10. Through RGGI, Delaware will accomplish a reduction of CO₂ emissions, support a green economy, promote energy independence, and provide a model for a national program to reduce CO₂ emissions;

11. RGGI's phased approach, with initially modest emission reductions, will provide clear market signals and regulatory certainty without resulting in dramatic electricity price impacts;
12. The RGGI program, once implemented, will produce numerous environmental and economic benefits for Delaware, including, but not limited to, emission reductions, cost efficiency with the use of auction allowances, overall auction design, and serving as a model for other major carbon markets under consideration in other regions, both nationally and internationally;
13. The formal Response Document, as drafted by the Air Quality Management Section of the Department's Division of Air and Waste, dated October 8, 2008 and attached to the Hearing Officer's report as Attachment "C", provides a thorough, accurate and balanced summary of the public comment received by the Department throughout all phases of the record during this regulatory promulgation. Moreover, the conclusions with respect to each issue and comment are well-reasoned and based upon the record. As such, they are sufficient to serve as specific findings for that purpose;
14. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
15. The Department's proposed regulation, as published in the September 1, 2008 *Delaware Register of Regulations* and as set

forth within Attachment “A” in the Hearing Officer’s report, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*;

16. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer’s Report dated October 14, 2008, and expressly incorporated herein, it is hereby ordered that the new regulation, Regulation No. 1147: CO₂ Budget Trading Program - *Regional Greenhouse Gas Initiative (RGGI) to Address Carbon Dioxide (CO₂) from Electric Generating Units (EGUs)*, be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of new Regulation No. 1147 will establish the Regional Greenhouse Gas Initiative, i.e., RGGI, which is the first mandatory cap-and-trade program in the United States for carbon

dioxide (CO₂), the principal human-caused greenhouse gas. It will be the culmination of a ten-state cooperative effort to reduce greenhouse gas emissions from electric power generation. Through RGGI, Delaware will accomplish a reduction of CO₂ emissions, support a green economy, promote energy independence, and provide a model for a national program to reduce CO₂ emissions.

RGGI's phased approach, with initially modest emission reductions, will provide clear market signals and regulatory certainty without resulting in dramatic electricity price impacts. The RGGI program, once implemented, will produce numerous environmental and economic benefits for Delaware, including, but not limited to, emission reductions, cost efficiency with the use of auction allowances, and overall auction design. It will also serve as a model for other major carbon markets under consideration in other regions, both nationally and internationally.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

/s/John A. Hughes
John A. Hughes
Secretary

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