

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

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Comment 1: Many of the comments received from individuals and environmental organizations requested to Department to auction 100% of the CO₂ allowances.

(Davis, Martin, Muller, Whitehead, FPL, MAELC, Nature Conservancy)

Response: *Pursuant to Delaware Law (76 Del. Laws, c. 262, § 6045) beginning with 2009 CO₂ allowances, the Department shall auction 60% of allowances available to Delaware and allocate 40% to generators in proportion to their average annual emissions from 2000-2002. The percentage of allowances auctioned by the Department shall increase by 8% per year, such that 100% of Delaware's allowances for 2014 shall be auctioned. Any deviations from this directive would be in violation of Delaware State Law.*

Comment 2: Many of the comments received from individuals and environmental organizations objected to the limited industrial exemption (Section 1.2.2) for units with electrical output to the electrical grid restricted by permit conditions. Several Commenters requested that industrial sources such as the Valero Refinery should not be provided with an exemption from purchasing CO₂ allowances.

(Davis, Martin, Muller, Whitehead, FPL, MAELC, Nature Conservancy)

Response: *When the Regional Greenhouse Gas Initiative was initially proposed by New York Governor Pataki in 2003, he proposed a multi-state program to reduce harmful climate changing emissions from power plants. State representatives from the 10 states developed a program, which relied on a flexible, market-based approach to curb power plant emissions, while also promoting greater energy efficiency and energy independence. The RGGI model rule intended to focus on the power sector and not include the industrial sector that generates power along with process heat. The industrial exemption was provided as an optional provision for those states that had 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 and as long as those units were willing to accept a permit condition limiting export to the power grid to less than 10% of the unit's annual generation.*

The Department agrees with the commenters that industrial sources are a large portion of Delaware's greenhouse gas emissions. The Department has determined it is in the best interest of the state to limit the focus of the CO₂ Budget Trading Program to the power sector in order to limit and ensure the success of this historic multi-state cap-and-trade program. It is the intent of the Department to move forward with regulating greenhouse gas emissions from other sectors (e.g. industrial, commercial, residential and transportation) in the near future.

Specific Comments received from Conectiv –

Comment 3: Combined Allocation/Auction - Proposed Regulation No. 1147 proposes a 60% allowance auction and a 40% direct allowance allocation to CO₂ budget sources for the calendar year 2009. The auction quantity would increase by 8% annually resulting in 100% auction of allowances beginning in 2014. Delaware is unique in offering this approach among other states. The Commenter commends DNREC for implementing a phased-in approach in the proposed CO₂ Budget Trading Program Regulation. Adoption of such a transitional program should minimize the likelihood of emissions leakage and market manipulation.

Response: *The Department agrees with the Commenter that the Department should continue to work with other states in the region to promote auction methodologies that will result in a robust market and minimize potential impacts on the economy.*

Comment 4: Emission Leakage - The Commenter supports a national program that will replace RGGI and ensure that an overall reduction of greenhouse gas emissions in the United States is truly achieved. This would also ensure that all power generators operate on a common, level playing field. The Commenter commends DNREC's proposal, absent a federal cap and trade program, to transition to a 100% auction program to help minimize the potential affects of leakage in Delaware at the outset of the allocation/auction program. The Commenter also commends DNREC for working with PJM to monitor potential emissions leakage from non-program affected generation facilities in the wholesale electricity markets that are serving electricity load in Delaware. Monitoring information through the Generator Attribute Tracking System (GATS) of PJM will not address emission leakage. Rather, it will simply document its existence.

Response: *The Department should continue to work with other states in the region to monitor this issue and work towards establishing regionally consistent protocols if identifiable leakage occurs and negatively impacts the program.*

Comment 5: Monitoring - The Commenter supports DNREC's proposed Section 8.1.3.3.1 that allows CO₂ budget units subject to an Acid Rain emissions limitation (Regulation No. 1136) or the NO_x Budget Trading Program (Regulation No.1139) that qualify for the optional SO₂, and CO₂ (for acid rain) or NO_x (for NO_x Budget) emissions calculations for low mass emissions (LME) units under 40 CFR 75.19, to utilize the CO₂ emissions calculations for LME units under 40 CFR 75.19 for the purposes of compliance with proposed Regulation No. 1147. The Commenter also supports DNREC's proposed Section 8.6.2.2 that allows sources to submit petitions to DNREC requesting approval of alternative monitoring procedures for purposes of demonstrating compliance with proposed Regulation No. 1147.

Response: *The Department agrees with the Commenter regarding the use of alternative emission calculations and monitoring procedures for purposes of demonstrating compliance with Regulation 1147.*

Comment 6: Recordkeeping - The Commenter believes the ten year time period as stated in 7 DE Admin. Code 1147.8.8.6.2 is extensive and unprecedented as other Clean Air Act programs have either required a three year or five year time period for record retention. The Commenter recommends that the Department consider a six year [two 3-year control periods] record retention requirement as being sufficient to ensure compliance with the CO₂ Budget Trading Program Regulation.

Response: *The RGGI Model Rule Subcommittee in drafting the Model Rule established the ten year recordkeeping requirement to cover the control period of four years if after a Safety Valve (as defined by the Memorandum of Understanding between the RGGI Participating States) is triggered. In keeping with the Model Rule and regional consensus the Department does not believe the ten year period to be inconsistent with the MOU and the need to maintain certain documents to demonstrate compliance with the provisions of Regulation 1147.*

Comment 7: Reporting - The proposed rule contains provisions for affected sources to submit a monitoring plan [Section 8.5] and to report the following parameters on an annual basis net electrical output and net thermal output [Section 8.8].

The Commenter believes that reporting these parameters is duplicative given that they are currently reported and recorded in the GATS. The Commenter believes that DNREC should work closely with GATS and other existing information systems as appropriate in order to obtain the above data, rather than require power generators to report the information twice.

The Commenter believes that it is unnecessary and duplicative to require power generators to report the above listed parameters on an annual basis (by March 1 for the immediate preceding calendar year) in both electronic and hardcopy form. Again, the CO₂ budget sources are highly regulated sources, almost all of which are also required to participate in the Title IV Part 75 Acid Rain Program. The Acid Rain Program has an annual March 1 reporting deadline. Many state agencies also have programs to report their annual emission inventories by March 1. The Commenter feels that an April 1 reporting deadline [Section 8.8.6.3] makes more sense to allow for adequate quality assurance and certification of the reported data. The April 1 deadline allows ample time for Administrator oversight as the control period is three calendar years.

The requirement to submit the annual reports in both electronic and hardcopy format is duplicative and inefficient. The well established, highly effective Title IV Part 75 Acid Rain Program allows for electronic submittal only, provided that a

paper copy can be furnished upon request to the Agency. The Commenter suggests DNREC revise the language in the proposed model rule Section 8.8.6.3 to the following to address both the accepted format and submittal date of the annual report:

“The data must be sent electronically, provided a paper copy can be furnished upon request, by April 1 for the immediately preceding calendar year to the Department or its agent.”

Response: The Commenter requested the Department consider requiring CO₂ Budget sources to submit annual reports for output data as required by Section 8.8 for facilities who have been awarded early reduction allowance via PJM’s GATS - environmental information system. The Department welcomes technical support from the ISO and Delaware’s Public Service Commission, and will continue to explore options for utilizing existing reporting infrastructure. The Department should continue to work with their contracted agent for developing the reporting mechanisms within the CO₂ Allowance Tracking System that eases the reporting burden by regulated entities.

The Commenter requested the Department consider an alternative deadline for submission of the annual output data as required by Section 8.8 for early reduction allowances from March 1st to April 1st. The Department agrees with the Commenter regarding that on March 1st regulated entities have many regulatory reporting deadlines however, the annual reporting requirement is for units that have received early reduction allowances (Section 5.5.3). The Department does not consider the annual reporting of MWh electric output and MMBtu useful steam output at the unit level for a unit that qualifies to receive early reduction allowances overly burdensome.

The Commenter further requested the Department consider the submittal of the reporting of the output data in electronic format only. The Department is still reviewing data reporting procedures, and will notify sources as soon as they are finalized.

Comment 8: CO₂ Offset and Early Reduction Allowances - DNREC has offered unique provisions in Section 10.3.1.2.1.1 that qualify offset projects as eligible to receive CO₂ offset allowances for projects located partly in the State of Delaware and partly in one or more other participating states, provided that the larger part of the CO₂ equivalent emissions reduction or carbon sequestration due to the offset project is projected to occur in the State of Delaware. In light of Delaware’s size, The Commenter supports and appreciates DNREC’s decision to include projects partly located in other states as eligible offset projects.

DNREC’s proposed CO₂ Budget Trading Program Regulation states in Section 10.3.4.1 that “CO₂ offset allowances shall not be awarded to an offset project or CO₂ emissions credit retirement that is required pursuant to any local, state, or federal law, regulation, or administrative or judicial order.” The Commenter believes that this exclusion should not apply in the case of administrative consent orders (ACOs) or

other voluntary agreements that may be entered into by sources. Reductions agreed upon in an ACO are often voluntary; a generator or facility should not be penalized and should be able receive any emission offset allowances generated as a result of an ACO or other voluntary agreement. Therefore, the Commenter suggests the removal of “*administrative*” from DNREC Title 7 Part 1147 Section 10.3.4.1 proposed language.

Response: The Department believes the offsets program should meet the “five-part test” and be, “real, additional, verifiable, enforceable and permanent.” The Commenter has suggested that administrative consent orders or other voluntary agreements be considered to receive offset allowances. Department believes that administrative consent orders and other voluntary agreements a regulated entity has entered into with the Department do not meet the key component for an offsets project - “additionality”. The very nature of an enforcement document such as an administrative consent order stipulates that the offset project occur as the result of an enforcement action and would not have otherwise occurred in the absence of the RGGI offsets component outlined in Section 10 of Regulation 1147.

Specific Comments received from FPL -

Comment 9: The Commenter strongly supports the development of a national, upstream, economy-wide program as the preferred method of addressing the global issue of climate change and reducing CO₂ emissions. The Commenter continues to urge Delaware, and all RGGI states, toward that construct. In the absence of this approach, a well-designed cap-and-trade program implemented on a uniform, region-wide basis can achieve the goals of stabilizing and ultimately, reducing CO₂ emissions while minimizing the disproportionate impacts inherent in a single-state design. The Commenter strongly encourages Delaware, through the Department, to collaborate as closely as possible with the other RGGI state in developing and implementing a market-based program supported by program and auction rules that are regionally consistent so that CO₂ reductions can be achieved while maintaining the reliability of the region's electric system.

Response: *The Department pledges to continue to work with the other participating RGGI states toward implementing the nation's first CO₂ Budget Trading Program that results in addressing the challenge of climate change while increasing energy efficiency investments and stimulating emerging clean energy technology markets.*

Comment 10: The Commenter notes that several of the RGGI states, including Delaware, had indicated that they would be unable to participate in the initial auction (September 25, 2008), as their regulatory and/or legislative processes may not yet be completed. The inability of states to move together in implementing RGGI and conducting regional auctions can contribute to the inefficiency and volatility of the market. **The Commenter urges all RGGI states to commence their participation in the regional process by no later than the December 17th auction, as announced by the RGGI states on March 17, 2008.**

Response: *Delaware is reviewing our statute and regulation to determine if it is feasible to participate in the December auction. We believe it may be possible for Delaware to offer allowances in the December auction pending our promulgation of Regulation 1147 on November 1st. The Department intends to participate if it is determined possible.*

Comment 11: The Commenter reiterates their strong support for the creation of a Voluntary Renewable Energy Set-Aside (VRE) with Regulation 1147 and Delaware's implementation of RGGI. The Commenter notes that their review of Regulation, did not find any provision with the Regulation for a VRE. The Commenter states omitting a VRE Set-aside would further discourage the creation of a voluntary renewables market. The Commenter strongly encourages Delaware to incorporate a VRE Set-aside.

Response: *Delaware recently created a Sustainable Energy Utility (SEU) to assume primary responsibility for promoting energy efficiency and renewable energy in the state; the SEU will issue a bond to finance more than \$30 million in sustainable energy investments. Pursuant to state law (see 76 Del. Laws, c. 262, § 6045 and Title 7, Chapter 60) 65% of the RGGI auction revenue will be directed to fund the SEU. The Department believes the SEU along with Delaware's Renewable Portfolio Standard will achieve will create real, measurable, and verifiable CO₂ savings in Delaware while meeting our goal to stimulate new renewable energy generation totaling 300 megawatts by 2019. The Department believes the SEU serves the same purpose as the VRE set-aside.*

Comment 12: The Commenter notes that the “Cooperating Regulatory Agency” [defined in Section 1.3 Definitions] contains the requirement to have “entered into a memorandum of understanding with the *appropriate regulatory agencies of all participating states...*” The Model Rule does not indicate that all ten participating states must sign an MOU with a cooperating regulatory agency in order for the cooperating regulatory agency to be able to carry out the obligations relative to offset projects. The Commenter believes this requirement would be duplicative, cumbersome and potentially confusing without providing any additional benefit. The Commenter suggests the language be changed to “...*entered into a memorandum of understanding with the appropriate regulatory agency of a participating state...*”

Response: *The amended MOU signed August 2006 states that the offsets MOU should be with the “implementing environmental agencies of the signatory states.”*

Cooperating regulatory agency. A regulatory agency in a state or United States jurisdiction that is not a participating state that has entered into a memorandum of understanding with the appropriate regulatory agencies of all participating states the Department to carry out certain obligations relative to CO₂ emissions offset projects in that state or United States jurisdiction, including but not limited to the obligation to perform audits of offset project sites, and report violations of XX-10.

The Department reviewed this change and believes it is necessary to insure the offset allowances are recognized by all participating states that each states meets the requirements set forth by the MOU. The Department will remain consistent with the August 2006 MOU as agreed upon and signed by the Department.

Comment 13: The Commenter suggest the Department modify the definition for “Delaware Auction Account” to include the phrase “*or its agent*” after the “Department of Natural Resources and Environmental Control” to allow for delegation to a regional auction organization.

Response: *Department agrees with the Commenter regarding the inclusion of the phrase “or its agent” and has modified the definition to include the phrase.*

“Delaware Auction Account” means an account administered by the Department of Natural Resources and Environmental Control **or its agent** for purposes of auctioning CO₂ allowances.

Comment 14: The Commenter suggest the Department modify the definition for “Monitoring System” by replacing the word “excepted” with “accepted.”

Response: *The Department agrees with the Commenter, and has revised the definition accordingly.*

“Monitoring system” means any monitoring system that meets the requirements of 8.0 of this regulation, including continuous emissions monitoring system, an **accepted** ~~excepted~~ monitoring system, or an alternative monitoring system.

Comment 15: As a general matter, the Commenter opposes set-asides for emitting units.

Response: *See Response to Comment 2.*

Comment 16: Regarding the allocations based on “...Table 5-2 or 5-3 of this regulation as applicable,” the Commenter found no language that specifies under what circumstances each table would be used. The Commenter requests such language be included.

Response: *The Department will use Table 5-2 to allocate allowances if the one industrial facility (Valero Refinery) with electricity generation meeting the applicability for Regulation 1147 does not request an exemption from Regulation 1147 and will use Table 5-3 for allocation of allowances in the event the industrial facility accepts permit restrictions in accordance with Section 1.2.2 .*

Comment 17: The Commenter urges the Department to specify how the amount of retired allowances pursuant to Section 5.3.4.2 (“retire CO₂ allowances in the limited industrial exemption set-aside general account.” There is no indication as to how the amount of allowances to be retired will be calculated. The Commenter urges the Department to specify how the amount of retire allowance will be calculated.

Response: *The Department anticipates retiring the full amount of allowances that has been set-aside. The industrial facility’s CO₂ emissions from the units anticipated to qualify for the limited industrial exemption exceed the amount of allowances available.*

Comment 18: The Commenter notes that Section 6.4.7 states “*By January 1, 2009, the Department or its agent will record in the CO₂ budget source’s general account the CO₂ allowances for allocation years of 2009, 2010, 2011, 2012 and 2013 pursuant to the amounts established by 5.3 of this regulation.*” The Commenter urges the Department to record the allowances in the compliance accounts of the budget units to which they were allocated...

Response: *The Department agrees with the Commenter and has revised the Section 6.4.7 accordingly.*

6.4.7 By January 1, 2009, the Department or its agent will record in the CO₂ budget source’s compliance ~~general~~ account the CO₂ allowances for allocation years of 2009, 2010, 2011, 2012 and 2013 pursuant to the amounts established by 5.3 of the regulation.

Comment 19: The Commenter notes that Section 6.5.1.4 reads “*...for excess emissions for a prior control period under 6.4 of this regulation*” is a mistake and should be 6.5.4.

Response. *The Department thanks the Commenter for identifying the error and has revised the section reference to read 6.5.4.*

6.5.1.4 The CO₂ allowances are not necessary for deductions for excess emissions for a prior control period under 6.4 6.5.4 of this regulation.

Comment 20: The Commenter notes Section 10.3.1.2.1.2 reads “*In any state or United States jurisdiction, other than a participating state, in which a cooperating regulatory agency has entered into a memorandum of understanding with the appropriate regulatory agencies of all participating states...*” the Model Rule does not indicated that all ten participating states must sign an MOU with a cooperating state agency in order for the cooperating regulatory agency to be able to carry out the obligations relative to offset projects.

Response: [See Response to Comment 12.](#)

Comment 21: The Commenter notes that Section 11.5.7 reads “*Unsold CO₂ Allowances may be made available for sale in subsequent auctions or after consultation with the Public Service Commission*” and urges the Department to change the may to will: “*Unsold CO₂ Allowances will be made available for sale in subsequent auctions or after consultation with the Public Service Commission.*”

Response: *The Department is not amending Regulation 1147 – Section 11.5.7 at this time. In keeping with the “Design Elements for Regional Allowance Auctions under the Regional Greenhouse Gas Initiative” dated 3/17/08 and pursuant to Regulation 1147 - Section 11.5.7, unsold allowance may be made available for sale in subsequent auctions. In 2012, as part of the first program review envisioned in the December 2005 RGGI Memorandum of Understanding (MOU), a decision will be made by the participating states as to whether to retire any unsold allowances from the first compliance period, or to offer these allowances for sale in subsequent auctions during the second compliance period. The Department has evaluated the MOU regarding unsold allowances and has chosen to determine how they will be sold or retired in light of the consensus reached by the participating RGGI states.*

Comment 22: The Commenter notes that Section 11.7.5 reads “Participation in any auction may be limited to the level of financial security provided” and urges the Department to change the may to will: “Participation in any auction will be limited to the level of financial security provided.”

Response: *In principle the Department agrees with the commenter’s intent to limit participation in the auction to the amount of financial security provided, however, the Department believes remaining consistent with the design of the auction platform is important from a regional context. The Department is not amending Regulation 1147 – Section 11.7.5 at this time.*

Comment 23: The Commenter notes that Section 11.8.1.3 reads “principle” and should read as “principal.”

Response: *The Department thanks the Commenter for identifying the error and has revised the word to “principal.”*

11.8.1.3 The identification of any indictment or felony conviction of any member, director, ~~principle~~, **principal**, partner or officer of the applicant or any affiliate or related entity;

Comment 24: The Commenter notes that Section 11.8.2 regarding the Department review of the applications for qualification lacks any timelines in which this process will be accomplished. The Commenter requests the Department to include language which is consistent with the provisions in the regional auction rules.

Response: *The Department is not amending Regulation 1147 – Section 11.7.5 at this time. The Department should continue to work with other states in the region to promote auction methodologies that will result in a robust market and minimize potential impacts on the economy.*

Comment 25: The Commenter notes Section 11.8.6 appears to contain extra words and suggests removing the words “*this regulation, and regulation*” contained at the end of the sentence.

Response: The Department thanks the Commenter for noting the error and has corrected it accordingly.

11.8.6 Bid Submittal Instructions. All bids shall be in a form prescribed by the Department, which shall be made available electronically on the CO₂ Allowance Auction Website, as appropriate. All bids submitted will be considered binding offers for the purchase of allowances under the rules of the auction, ~~this regulation~~, and this regulation.

Comment 26: The Commenter notes that Section 11.10 regarding the Auction Reporting and Transfer of CO₂ Allowances and Section 11.13 Publication of Auction Results lacks any timelines and urges the Department to establish timelines consistent with that set forth by the regional auction rules.

Response: *The Department is not amending Regulation 1147 – Section 11.7.5 at this time. The Department should continue to work with other states in the region to promote auction methodologies that will result in a robust market and minimize potential impacts on the economy.*

Specific Comments received from Nature Conservancy –

Comment 27: The Commenter supports the auction of Delaware’s CO₂ allowances and would like 100% of the allowances to be auctioned but recognizes that the proposed regulation starts with a 60% auction in 2009 and achieves 100% auction by 2014.

Response: *See response to Comment 1.*

Comment 28: The Commenter supports the use of auction revenues for Public Benefit Purpose as defined by Regulation 1147 and as detailed in the Delaware Code – Title 7, Chapter 60.

Response: *Pursuant to Delaware Law (76 Del. Laws, c. 262, § 6046) and Title 7, Chapter 60 the Department shall direct auction proceeds for Public Benefit Purpose: 65% of the CO₂ allowance proceeds shall be directed to the Sustainable Energy Utility (SEU), to further the goals and activities of the SEU including, but not limited to, the promotion of energy conservation, energy efficiency, renewable energy, and energy financing pursuant to Section 8059(j)(3); 15% of the CO₂ allowance proceeds shall be directed to low income consumers, of which 10% shall be directed to the federally funded and state administered Weatherization Assistance Program (WAP), and up to 5% shall be directed to the federally funded and state administered fuel assistance (LIHEAP) programs; and 10% of CO₂ allowance proceeds shall be directed to Greenhouse Gas Reduction Projects, selected by the Secretary following a periodic competitive proposal process.*

Comment 29: The Commenter supports the creation of a credible, market-driven offsets program and the high standards specified in Section 10.1 – “the five-part test” – “real, additional, verifiable, enforceable, and permanent.”

Response: *The Department will continue to work with the other participating RGGI states to finalize the provisions to ensure that CO₂ offset allowances are not awarded to projects that would have occurred without the offset provisions of Regulation 1147.*

Comment 30: The Commenter supports the inclusion of additional offset types in the program in keeping with the provision in the RGGI Memorandum of Understanding (MOU) dated 12/20/05.

Response: *The final rule does not include any categories beyond the five that were included in the original proposal. After extensive study during the Regional Greenhouse Gas Initiative’s planning process, the five project categories were selected with consideration of expected offset supply within the borders of participating states, the relative ease of developing standards, and the likelihood of mandatory greenhouse gas regulations for that sector. The Department will, however, continue to work toward the*

development of additional offset categories with the other participating states. Proposed categories will be evaluated based on the requirements included in Regulation 1147 – Section 10.5. Specifically, the Department must be confident that any CO₂ offset allowances awarded from new offset categories meet the requirements of Regulation 1147 – Section 10.1.1 that offsets “represent CO₂ equivalent emission reductions or carbon sequestration that are real, additional, verifiable, enforceable, and permanent within the framework of a standards-based approach.”

Comment 31: The Commenter recommends that Delaware participate in the December 2008 auction planned by RGGI Inc. and all regional auctions planned subsequent to that. The Commenter supports Delaware’s participation with the quarterly auctions planned by RGGI Inc.

Response: *See response to Comment 10.*

Comment 32: The Commenter recommends a reserve price of \$1.86 per CO₂ allowance in 2008 and 2009, and adjusted by the Consumer Price Index thereafter as agreed to by RGGI states and specified in the 3/17/08 document titled, “Design Elements for Regional Allowance Auctions under the Regional Greenhouse Gas Initiative.”

Response: *The RGGI states are working with the Market Monitor and the Auction Manager to establish the Reserve Price that is consistent with all participating state regulations and will announce the Reserve Price in the Auction Notice.*

Comment 33: The Commenter recommends, especially if it is determined that RGGI is significantly over-allocated, that any allowance falling below the reserve price are retired, and that Delaware include this option in the proposed regulation or at a minimum, any allowances that fall below the reserve price should be placed in a contingency reserve account as is stipulated.

Response: *In keeping with the “Design Elements for Regional Allowance Auctions under the Regional Greenhouse Gas Initiative” dated 3/17/08 and pursuant to Regulation 1147 - Section 11.5.7, unsold allowance may be made available for sale in subsequent auctions. In 2012, as part of the first program review envisioned in the December 2005 RGGI Memorandum of Understanding (MOU), a decision will be made by the participating states as to whether to retire any unsold allowances from the first compliance period, or to offer these allowances for sale in subsequent auctions during the second compliance period.*

Specific Comments received from Northeast GHG Coalition –

Comment 34: Auction Format and Structure. The Commenter supports Delaware’s implementation of joint and uniform multi-state auctions.

Response: *The Department agrees with the Commenter that the Department should continue to work with other participating RGGI states in the region to promote auction methodologies that will result in a robust market and minimize potential impacts on the economy.*

Comment 35: The Commenter supports the single round, sealed bid, uniform price auction method and believes [recommends] that the RGGI [participating] states identify how a decisions will be made to alternative auction methods as the RGGI allowance market emerges and changes over time and identify how much input stakeholders will have in that process.

Response: *The Department does not view these comments as germane to Delaware’s Regulation 1147, but rather more relevant to the regional process. However, the Department should continue to work with other participating RGGI states in the region to promote auction methodologies that will result in a robust market and minimize potential impacts on the economy.*

Comment 36: The Commenter recommends that it would be beneficial for the RGGI [participating] States to identify how the current market reserve price will be utilized and how it will be determined and provide to market participants on the RGGI auction website well in advance of the December 2008 auction. As an alternative to basing the reserve price for subsequent auctions on 80 percent of the market price, the Commenter recommends that the RGGI states consider using a similar methodology as the Stage 1 trigger event, which uses a 14 month market settling period.

Response: *The Department regards the Auction Notice as the appropriate vehicle for providing the information regarding the current market reserve price. The regulatory language for the Auction Notice as provided by Section 11.9.2 is sufficient to address the Commenter’s request.*

The Department commits to work with the other participating RGGI states to develop regionally consistent auction protocols. If the RGGI regional organization or the Market Monitor recommends that RGGI states implement a reserve price or price cap, then the Department should consider such recommendations to maintain consistency with the regional auction platform.

Comment 37: Pricing Information - The Commenter notes that in the “RGGI Design Elements for Regional Allowance Auctions under the Regional Greenhouse Gas Initiative” dated 3/17/08 that the Department it will perform calculations of the

minimum reserve price, current market price and the reserve price in consultation with the regulatory agencies in other participating states. The Department should clarify when this information will be provided and where it will be posted.

Response: *See response to Comment 36.*

Comment 38: The Commenter notes that in the “RGGI Design Elements for Regional Allowance Auctions under the Regional Greenhouse Gas Initiative” dated 3/17/08 that the Department it will perform calculations of trigger prices, and determine whether or not a stage-one (\$7/ton 2005\$) or stage two-trigger (\$10/ton 2005\$) event has occurred in consultation with the regulatory agencies in other participating states. DAWM should update these values to 2009 dollars as soon as possible and indicate when this information will be provided and where it will be posted.

Response: *See response to Comment 36.*

Comment 39: The Commenter recommends that all unsold allowances be offered for sale in future and subsequent auctions regardless of the reserve price method used.

Response: *See response to Comment 33.*

Comment 40: The Commenter believes [recommends] that oversight and enforcement powers are imperative to the success of the auctions and the functioning of the secondary market and that RGGI Inc. should release information regarding the governmental agency(ies) that will have jurisdiction to enforce regional auction rules or procedures and take action where appropriate.

Response: *The Department believes its enforcement authority as specified by Title 7 Chapter 60 establishes the Department’s ability to enforce Regulation 1147. However, the Department should continue to work with other participating RGGI states in the region as well as the Commodities Futures Trading Commission (CFTC) to promote auction methodologies that will result in a robust market and minimize potential impacts on the economy.*

Comment 41: The Commenter recommends that the regulation include provisions similar to the New Jersey statute regarding the transition of the CO₂ Budget Trading Program with the enactment of a national regulatory program so as not to have redundant and possibly conflicting programs.

Response: *Pursuant to Delaware Law (76 Del. Laws, c. 262, §9207), the Department should review any adopted federal climate legislation and subsequent implementing regulations. If the subsequent federal program is substantially equivalent or more stringent than the final proposed regulations, the Department should move to*

adopt the federal program when it becomes effective. The Department shall not abandoned the CO₂ Budget Trading Program until the national program is fully implemented and Delaware's regulations have been amended to transition to the national program.

Specific Comments received from Premcor Refining Group Inc. (Valero Delaware City Refinery) –

Comment 42: The Commenter generally supports including the 10 percent exemption as part of Regulation 1147, and believes that any future regulations of greenhouse gas sources should be part of a comprehensive national or international program.

Response: *The Department pledges to continue to work with the other participating RGGI states toward implementing the nation's first CO₂ Budget Trading Program that results in addressing the challenge of climate change while increasing energy efficiency investments and stimulating emerging clean energy technology markets.*

Comment 43: 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. The Commenter 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.”

Response: *The Department does not believe that it would be appropriate to modify Regulation 1147 – Section 1.2.2.2 as requested. The Department does not believe the effective date of the regulation and the date the program begins prohibits a CO₂ budget source from requesting a permit condition to limit its electric generation to the grid by 10%. The Department believes adequate notice has been provided all CO₂ budget sources in Delaware regarding the intent to promulgate Regulation 1147.*

Comment 44: 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.

Response: *The definition for “unit” includes the term – “combined cycle system” which encompasses a system comprised of one or more combustion turbines, heat recovery steam generators and steam turbines. The Department believes the definition provides for a system of one or more combustion turbines to which the exemption applies.*

“Unit” means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

“Combined cycle system” means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

“Combustion turbine” means an enclosed fossil or other fuel-fired device that is comprised of a compressor (if applicable), a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

“CO₂ budget source” means a source that includes one or more CO₂ budget units.

“CO₂ budget unit” means a unit that is subject to the CO₂ Budget Trading Program requirements under 1.2 of this regulation.

Comment 45: The Commenter 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.

Response: *See Response to Comment 44.*

Comment 46: 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. 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.

Response: *The Department agrees with the Commenter, and has revised Table 5-2 accordingly.*

Comment 47: The Commenter states 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.

Response: *The Department is not amending Regulation 1147 – Section 1.2.2 at this time. The loss of the exemption as a result of failure to comply is in keeping with the Model Rule. The Department believes the exemption from participation in the CO₂ Budget Trading Program’s annual reporting deadline is not overly burdensome to the exempt CO₂ Budget Source and is important that the unit demonstrate the 10% limitation is met on an annual basis. The Department shall review all enforcement for non-compliance with its rules in accordance with its enforcement guidelines.*

Comment 48: The Commenter states 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.

Response: *The Department agrees with the Commenter*, and has revised Section 1.2.2.1 accordingly.

1.2.2.1 *Applicability.* Notwithstanding 1.2.1 of this regulation, a unit under 1.2.1 of this regulation that is covered by a permit issued pursuant to 7 DE Admin Code 1102 or 1130 containing a practically enforceable condition restricting the supply of the unit’s annual electrical output to the electric grid to less than or equal to 10 percent of the annual gross generation of the unit, and which complies with the provisions in 1.2.2.3 of this regulation, 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 and, if applicable because of the allocation of CO₂ allowances during the pre-exemption time period, 5.0, 6.0 and 7.0 of this regulation.