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HOUSE BILL NO. 1055

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on February 8, 2006)

(Patrons Prior to Substitute—Delegates Reid and Saxman [HB 1471])

A BILL to amend the Code of Virginia by adding in Chapter 13 of Title 10.1 an article numbered 3, consisting of sections numbered 10.1-1327 and 10.1-1328, relating to the control of air emissions.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 13 of Title 10.1 an article numbered 3, consisting of sections numbered 10.1-1327 and 10.1-1328 as follows:

Article 3.

Air Emissions Control.

§ 10.1-1327. Definitions.

As used in this article, unless the context requires a different meaning:

"Electric generating unit" means a unit that combusts fossil fuel and has the capacity to generate 25 or more megawatts of electricity that is used for sale.

"Mercury" means mercury and mercury compounds in either a gaseous or particulate form.

"Ozone season" means the period May 1 through September 30 of a year.

§ 10.1-1328. Emissions rates and limitations.

A. To ensure that the regulated units within the Commonwealth meet the emissions budgets established by the federal Environmental Protection Agency (EPA) in its Clean Air Interstate Rule, the Board shall promulgate regulations that provide:

1. Beginning on January 1, 2009, all electric generating units within the Commonwealth shall collectively be allocated allowances of 36,074 tons of nitrogen oxide (NOx) annually, and 15,994 tons of NOx during an ozone season;

2. Beginning on January 1, 2010, all electric generating units within the Commonwealth shall collectively be allocated allowances of 63,478 tons of sulfur dioxide (SO2) annually;

3. Beginning on January 1, 2015, all electric generating units within the Commonwealth shall collectively be allocated allowances of 44,435 tons of SO2 annually, 30,062 tons of NOx annually, and 13,328 tons of NOx during an ozone season;

4. The rules shall include a 5% set aside of NOx allowances during the first five years of the program and 2% thereafter for new sources, including renewables and energy efficiency projects; and

5. Regulated facilities shall be entitled to participate in the EPA-administered cap and trade system to the fullest extent permitted by federal law except that the Board may prohibit electric generating facilities located within a nonattainment area in the Commonwealth from meeting their NOx and SO2 compliance obligations through the purchase of allowances from in-state or out-of-state facilities.

B. To further protect Virginia's environment regarding control of NOx emissions from electric generating units, the owner of one or more electric generating units that are located within the Commonwealth and whose combined emissions of NOx from such units exceeded 40,000 tons in 2004 shall achieve an amount of early reductions in NOx emissions during the 2007 or 2008 annual control periods equal to the total number of allowances in the Virginia compliance supplement pool established by the EPA in the Clean Air Interstate Rule (CAIR). The reductions achieved under this provision will be fully eligible for early reduction credits and allowance allocations provided from the compliance supplement pool under the early reduction credit provisions of the CAIR rule. The regulations shall include provisions for the distribution of the allowances from the Virginia compliance supplement pool established by the EPA for early reduction credits, and the state shall award the owner of electric generating units subject to this subsection NOx allowances in accordance therewith. The requirement to achieve early reductions of NOx under this subsection shall not restrict the ability to bank or sell the allowances provided to the owner under the early reduction credit provisions of the CAIR rule submitted to the EPA in the federal CAIR annual NOx trading program or restrict the ability of the use of such allowances to demonstrate compliance with the CAIR.

C. To ensure compliance with the EPA requirements regarding control of mercury emissions from electric generating units, the Board shall adopt and submit to the EPA the model Clean Air Mercury Rule (CAMR) promulgated by the EPA, including full participation by Virginia electric generating units in the EPA's national mercury trading program. This model rule shall include a set-aside of mercury allowances for new sources not to exceed 5% of the total state budget for each control period during the first five years of the program and 2% thereafter.

D. To further protect Virginia's environment regarding control of mercury emissions from electric generating units, the Board shall adopt a separate state-specific rule that shall not be submitted to the

60 EPA. This state-specific rule shall apply to the owner of one or more electric generating units that are
61 located within the Commonwealth and whose combined emissions of mercury from such units exceeded
62 900 pounds in 1999. This state-specific rule shall allocate a separate set of state-only mercury
63 allowances and shall differ from the model CAMR only in the following respects:

64 1. The owner subject to the requirements of this subsection shall not be permitted to purchase
65 allowances to demonstrate compliance with the CAMR. However, such owner shall be permitted to
66 demonstrate compliance by showing that total mercury emissions from all of its electric generating units
67 located in the Commonwealth do not exceed the total mercury allowances allocated to those units and
68 held in their accounts.

69 2. The owner subject to the requirements of this subsection shall be required to meet the Phase 2
70 emission limits set forth in the Clean Air Mercury Rule by January 1, 2015.

71 3. Nothing in the state-specific mercury rule shall be construed to prohibit the banking or selling of
72 allowances under the CAMR, and compliance with the CAMR and the state-specific mercury rule shall
73 be determined separately and in accordance with the terms of each rule.

74 E. The owner of one or more electric generating units that are located in the Commonwealth whose
75 combined emissions of mercury from those units in 1999 were less than 900 pounds and whose
76 combined capacity in the Commonwealth is greater than or equal to 600 MW, shall be permitted to
77 satisfy its compliance obligations under the CAMR through the surrender of allowances that meet the
78 following requirements: the allowances to be used are allocated to a facility under the control of the
79 same owner or operator, the allowances used are generated and capable of being lawfully traded under
80 the CAMR, and the allowances are generated at a facility located a straight line distance from the
81 border of the Commonwealth of less than or equal to 200 km.

82 F. The Board shall adopt regulations that meet, but do not exceed, the requirements and
83 implementation timetables for (i) any coke oven batteries for which the EPA has promulgated standards
84 under Section 112(d) of the Clean Air Act, and (ii) facilities subject to review under Section 112(k) of
85 the Clean Air Act and that receive scrap metal from persons subject to § 46.2-635 of the Code of
86 Virginia.

87 2. That the Department of Environmental Quality shall conduct a detailed assessment of mercury
88 deposition in Virginia in order to determine whether particular circumstances exist that justify,
89 from a health, and cost and benefit perspective, requiring additional steps to be taken to control
90 mercury emissions within Virginia. The assessment shall also include (i) an evaluation of the state
91 of mercury control technology for coal-fired boilers, including the technical and economic
92 feasibility of such technology and (ii) an assessment of the mercury reductions and benefits
93 expected to be achieved by the implementation of the CAIR and CAMR regulations. The
94 Department shall report the findings and recommendations made as a result of study to the
95 Chairmen of the House Committee on Agriculture, Chesapeake and Natural Resources and the
96 Senate Committee on Agriculture, Conservation and Natural Resources by October 15, 2008.