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SENATE BILL NO. 242

Offered January 11, 2006

Prefiled January 10, 2006

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 through 10.1-1330, relating to the Virginia Clean Smokestacks Act.

Patrons—Ticer, Miller, Potts and Whipple; Delegates: Brink, Callahan, Eisenberg, Englin and Watts

Referred to Committee on Agriculture, Conservation and Natural Resources

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 through 10.1-1330, as follows:

*Article 3.**Virginia Clean Smokestacks.**§ 10.1-1327. Policy.*

It is the intent of the General Assembly that the Commonwealth use all available resources and means, including (i) negotiation, (ii) participation in interstate compacts and interagency agreements, (iii) the purchase and retirement of pollution credits, (iv) petitions pursuant to 42 U.S.C. § 7426, and (v) litigation, to induce other states and entities to achieve reductions in emissions of oxides of nitrogen (NOx), sulfur dioxide (SO₂), and mercury comparable to those required under this article in order to improve and protect the air and water quality of the Commonwealth. The Commonwealth may give particular attention to those states and entities whose emissions negatively impact air quality in the Commonwealth or whose failure to achieve comparable reductions would place Virginia businesses that are undertaking efforts to improve air quality at a competitive disadvantage.

§ 10.1-1328. Definitions.

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

"BTU" means a British thermal unit of heat input.

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

"Emission rate" means the number of pounds of pollutant emitted per million British thermal units of heat input.

"Exhaust gas" means the flue gas exiting the combustion source prior to the application of any air pollution control device.

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

"Mercury emissions removal rate" means the percentage of mercury removed from the exhaust gas of an affected unit.

"Malfunction" means any sudden failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner, which failure is not due to intentional misconduct or negligent conduct on the part of the owner or other person. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Operating day" means any calendar day or portion thereof on which an electric generating unit combusts fossil fuel.

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

"PM 2.5" means particles that are less than or equal to 2.5 micrometers in diameter.

§ 10.1-1329. 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 without purchasing emissions credits from out-of-state facilities, the Board shall promulgate regulations that require:

1. Beginning on January 1, 2009, all electric generating units within the Commonwealth shall not collectively emit more than 63,478 tons of sulfur dioxide (SO₂) annually, more than 36,074 tons of nitrogen oxide (NOx) annually, or more than 15,994 tons of NOx during an ozone season;

2. Beginning on January 1, 2012, all electric generating units within the Commonwealth shall not collectively emit more than 44,435 tons of SO₂ annually, more than 30,062 tons of NOx annually, or more than 13,328 tons of NOx during an ozone season.

B. Beginning on May 1, 2009, each electric generating unit shall: (i) meet a mercury emissions rate equal to, or less than, 3 mg/MWh, or (ii) meet a mercury emissions removal rate equal to 90% of

59 mercury from the measured exhaust gas of the affected unit, whichever emissions rate is more readily
60 achievable, as determined by the owner or operator, by such affected unit.

61 C. If an owner or operator of an electric generating unit elects to meet the requirements of
62 subsection B of this section through the implementation of a multipollutant approach using both
63 selective catalytic reduction and flue gas desulfurization on an affected unit to control SO₂, NO_x, and
64 mercury, the owner or operator shall have until May 1, 2012, to comply with this emissions
65 requirement.

66 D. By May 1, 2008, each owner or operator of any solid fossil fuel fired electric generating unit in
67 the Commonwealth that generates more than 25 megawatts shall submit to the Department of
68 Environmental Quality a plan for compliance with mercury emissions rates and limitations detailed in
69 subsections B and C.

70 E. Compliance with the emissions rates required in this section does not alter the obligation of any
71 electric generating unit to comply with any other federal or state law, regulation, limitation, or rule
72 related to air quality or visibility. This section shall not be construed to limit the authority of the Board
73 to establish pollution control requirements or impose specific limitations on the emissions of NO_x, SO₂,
74 or mercury from an individual electric generating unit.

75 § 10.1-1330. Assessment of local air quality impacts

76 A. Each electric generating unit that is located within 1,000 meters of an occupied dwelling or
77 within 1,000 meters of a body of water shall complete a refined modeling analysis to assess the effects
78 of emissions from the facility on ambient concentrations of PM 2.5, gaseous SO₂, and mercury in the
79 area immediately surrounding the facility. The results shall be submitted to the Department of
80 Environmental Quality, which shall undertake an independent review of the analysis and compare the
81 results to the applicable ambient air quality standards or standards of performance for toxic pollutants
82 established by the Board and the EPA. For existing facilities, the results shall be submitted to the
83 Department of Environmental Quality on or before December 1, 2006. For all other facilities, such a
84 study shall be completed within one year after they begin operation.

85 B. By July 1, 2007, the Department of Environmental Quality shall implement a strategy to achieve
86 reductions in mercury emissions from nonelectric generating units by 90%. In developing this strategy,
87 the Department shall evaluate the sources of mercury emissions in the Commonwealth, the development
88 of federal and state regulations for the control of mercury emissions, the mercury reductions likely to be
89 achieved through this article, the extent to which mercury has been found in the waters of the
90 Commonwealth and aquatic life, and the impacts of mercury pollution on human health and the
91 environment.

92 C. The Department of Environmental Quality shall conduct an analysis of the issues related to the
93 development and implementation of standards and programs to control emissions of carbon dioxide
94 (CO₂) from coal-fired generating units and other stationary sources of air pollution. The Department
95 shall evaluate available control technologies and shall estimate the benefits and costs of alternative
96 strategies to reduce emissions of CO₂. The Department shall report its findings and recommendations to
97 the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on
98 Agriculture, Conservation and Natural Resources by November 1, 2008.