

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

4
5 Approved

[S 651]

6 **Be it enacted by the General Assembly of Virginia:**

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

9 *Article 3.*

10 *Air Emissions Control.*

11 *§ 10.1-1327. Definitions.*

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

13 *"Electric generating facility" means a facility with one or more electric generating units.*

14 *"Electric generating unit" means (i) a unit that is a generator with nameplate capacity of more than*
15 *25 megawatts (MW) of electricity producing electricity for sale; or (ii) a cogeneration unit serving a*
16 *generator with a nameplate capacity of more than 25 MW and supplying in any calendar year more*
17 *than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to*
18 *any utility power distribution system for sale. For subsections A and B of § 10.1-1328, the term shall*
19 *only include those units that combust any fossil fuel, and are covered by the Clean Air Interstate Rule*
20 *(CAIR). For subsections C and D of § 10.1-1328, the term shall include only those units that are fueled*
21 *by coal.*

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

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

24 *§ 10.1-1328. Emissions rates and limitations.*

25 *A. To ensure that the Commonwealth meets the emissions budgets established by the federal*
26 *Environmental Protection Agency (EPA) in its CAIR, the Board shall promulgate regulations that*
27 *provide:*

28 *1. Beginning on January 1, 2009, and each year continuing through January 1, 2014, all electric*
29 *generating units within the Commonwealth shall collectively be allocated allowances of 36,074 tons of*
30 *nitrogen oxide (NOx) annually, and 15,994 tons of NOx during an ozone season;*

31 *2. Beginning on January 1, 2010, and each year continuing through January 1, 2014, all electric*
32 *generating units within the Commonwealth shall collectively be allocated allowances of 63,478 tons of*
33 *sulfur dioxide (SO2) annually, unless a different allocation is established by the Administrator of the*
34 *EPA;*

35 *3. Beginning on January 1, 2015, all electric generating units within the Commonwealth shall*
36 *collectively be allocated allowances of 44,435 tons of SO2 annually, 30,062 tons of NOx annually, and*
37 *13,328 tons of NOx during an ozone season, unless a different allocation is established for SO2 by the*
38 *Administrator of the EPA;*

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

41 *5. The regulation shall provide for participation in the EPA-administered cap and trade system for*
42 *NOx and SO2 to the fullest extent permitted by federal law except that the Board may prohibit electric*
43 *generating facilities located within a nonattainment area in the Commonwealth from meeting their NOx*
44 *and SO2 compliance obligations through the purchase of allowances from in-state or out-of-state*
45 *facilities.*

46 *B. To further protect Virginia's environment regarding control of NOx emissions from electric*
47 *generating units, the owner of one or more electric generating units that are located within the*
48 *Commonwealth and whose combined emissions of NOx from such units exceeded 40,000 tons in 2004*
49 *shall achieve an amount of early reductions in NOx emissions during the 2007 or 2008 annual control*
50 *periods equal to the total number of allowances in the Virginia compliance supplement pool established*
51 *by the EPA in the CAIR. The reductions achieved under this provision will be fully eligible for early*
52 *reduction credits and allowance allocations provided from the compliance supplement pool under the*
53 *early reduction credit provisions of the CAIR rule. The regulations shall include provisions for the*
54 *distribution of the allowances from the Virginia compliance supplement pool established by the EPA for*
55 *early reduction credits, and the state shall award the owner of electric generating units subject to this*
56 *subsection NOx allowances in accordance therewith. The requirement to achieve early reductions of*

57 *NOx under this subsection shall not restrict the ability to bank or sell the allowances provided to the*
 58 *owner under the early reduction credit provisions of the CAIR rule submitted to the EPA in the federal*
 59 *CAIR annual NOx trading program or restrict the ability of the use of such allowances to demonstrate*
 60 *compliance with the CAIR.*

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

67 *D. To further protect Virginia's environment regarding control of mercury emissions from electric*
 68 *generating units, the Board shall adopt a separate state-specific rule that shall not be submitted to the*
 69 *EPA. This state-specific rule shall apply to the owner of one or more electric generating units that are*
 70 *located within the Commonwealth and whose combined emissions of mercury from such units exceeded*
 71 *200 pounds in 1999. This state-specific rule shall differ from the model CAMR only in the following*
 72 *respects:*

73 *1. For the owner of one or more electric generating units that are located within the Commonwealth*
 74 *and whose combined emissions of mercury from such units exceeded 900 pounds in 1999, the*
 75 *state-specific rule shall allocate a separate set of state-only mercury allowances equal to the CAMR*
 76 *allocation, and such owner shall be permitted to demonstrate compliance with the state-specific rule by*
 77 *showing that total mercury emissions from all of its electric generating units located within the*
 78 *Commonwealth do not exceed the total mercury allowances allocated to those units in the aggregate,*
 79 *and the compliance date for Phase 2 emission limits shall be January 1, 2015.*

80 *2. The owner of one or more electric generating units that are located within the Commonwealth and*
 81 *whose combined emissions of mercury from those units in 1999 were less than 900 pounds and whose*
 82 *combined capacity within the Commonwealth is greater than or equal to 600 MW, shall be permitted to*
 83 *satisfy its compliance obligations under the state-specific rule through the surrender of CAMR*
 84 *allowances that meet the following requirements: the allowances to be used are allocated to a facility*
 85 *under the control of the same owner or operator or under common control by the same parent*
 86 *corporation; the allowances used are generated and capable of being lawfully traded under the CAMR;*
 87 *and the surplus allowances are generated through the installation of emission controls at a facility*
 88 *located a straight line distance from the border of the Commonwealth of less than or equal to 200 km.*

89 *3. The owners subject to the state-specific rule shall not be permitted to purchase allowances to*
 90 *demonstrate compliance with the regulations the Board adopts to implement this subsection. This*
 91 *prohibition does not include the transfer of credits authorized by subdivision 2.*

92 *4. Nothing in the state-specific mercury rule shall be construed to prohibit the banking, use, or*
 93 *selling of allowances under the CAMR, and compliance with the CAMR and the state-specific mercury*
 94 *rule shall be determined separately and in accordance with the terms of each rule.*

95 *E. The Board shall adopt regulations governing mercury emissions that meet, but do not exceed, the*
 96 *requirements and implementation timetables for (i) any coke oven batteries for which the EPA has*
 97 *promulgated standards under § 112(d) of the Clean Air Act, and (ii) facilities subject to review under*
 98 *§ 112(k) of the Clean Air Act and that receive scrap metal from persons subject to § 46.2-635 of the*
 99 *Code of Virginia.*

100 **2. That the Department of Environmental Quality shall conduct a detailed assessment of mercury**
 101 **deposition in Virginia in order to determine whether particular circumstances exist that justify,**
 102 **from a health and cost and benefit perspective, requiring additional steps to be taken to control**
 103 **mercury emissions within Virginia. The assessment shall also include (i) an evaluation of the state**
 104 **of mercury control technology for coal-fired boilers, including the technical and economic**
 105 **feasibility of such technology and (ii) an assessment of the mercury reductions and benefits**
 106 **expected to be achieved by the implementation of the CAIR and CAMR regulations. The**
 107 **Department shall complete its preliminary assessment as soon as practicable, but not later than**
 108 **October 15, 2007, and shall report the final findings and recommendations made as a result of the**
 109 **assessment to the Chairmen of the House Committee on Agriculture, Chesapeake and Natural**
 110 **Resources and the Senate Committee on Agriculture, Conservation and Natural Resources as soon**
 111 **as practicable, but no later than October 15, 2008.**