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SENATE BILL NO. 651

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources on February 22, 2006)

(Patrons Prior to Substitute—Senators Puckett and Ticer [SB 242])

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 air emissions control.

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

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

"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 Commonwealth meets the emissions budgets established by the federal Environmental Protection Agency (EPA) in its CAIR, the Board shall promulgate regulations that provide:

1. Beginning on January 1, 2009, and each year continuing through January 1, 2014, 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, and each year continuing through January 1, 2014, all electric generating units within the Commonwealth shall collectively be allocated allowances of 63,478 tons of sulfur dioxide (SO2) annually, unless a different allocation is established by the Administrator of the EPA;

3. Beginning on January 1, 2015, all electric generating units within the Commonwealth shall collectively be allocated allowances of 44,435 tons of SO2annually, 30,062 tons of NOx annually, and 13,328 tons of NOx during an ozone season, unless a different allocation is established for SO2 by the Administrator of the EPA;

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. The regulation shall provide for participation in the EPA-administered cap and trade system for NOx and SO2 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 SO2compliance 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 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 EPA. This state-specific rule shall apply to the owner of one or more electric generating units that are located within the Commonwealth and whose combined emissions of mercury from such units exceeded 200 pounds in 1999. This state-specific rule shall differ from the model CAMR only in the following respects:

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

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

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

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

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

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