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SENATE BILL NO. 128

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources on February 8, 2010)

(Patron Prior to Substitute—Senator McDougle)

A BILL to amend and reenact § 10.1-1328 of the Code of Virginia, relating to the Air Pollution Control Board; regulations under the Clean Air Interstate Rule.

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1328 of the Code of Virginia is amended and reenacted as follows:

§ 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 SO2 annually, 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 *an area of the Commonwealth designated as* a nonattainment area ~~in the Commonwealth~~ *as of January 1, 2010,* 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 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

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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 § 112(d) of the Clean Air Act, and (ii) facilities subject to review under § 112(k) of the Clean Air Act and that receive scrap metal from persons subject to § 46.2-635 of the Code of Virginia.

F. To further protect Virginia's environment, the Board shall prohibit any electric generating facility located within a nonattainment area from meeting its mercury compliance obligations through the purchase of allowances from another facility, except that such facilities shall be able to demonstrate compliance with allowances allocated to another facility that is under the control of the same owner or operator or under common control by the same parent corporation and is located within 200 km of Virginia's border.