



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

January 30, 2007

Robert Scott, Director
Air Resources Division
Department of Environmental Services
6 Hazen Drive
P.O. Box 95
Concord, NH 03301

Dear Mr. Scott:

Enclosed, please find our comments on your draft regulations for limiting mercury emissions from coal-fired electric generating units (EGUs). As currently written, the draft regulations do not meet the requirements of EPA's Clean Air Mercury Rule.

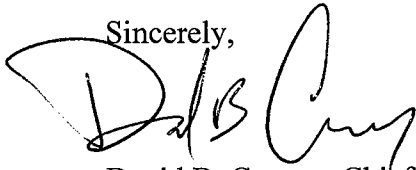
There are two main issues with the state's proposed approach to reducing mercury emissions from EGUs. First, it is our understanding that mercury emissions from coal-fired electric generating units (EGUs) in New Hampshire may exceed the state's mercury emission budget in 2010, 2011 and 2012, before the scrubber for units 1 and 2 at the Merrimack Station facility is fully operational. Once the scrubber is installed and operational, however, it is our understanding that mercury emissions will be limited to below 126 pounds per year between the years 2013-2017, and below 50 pounds per year in 2018 and thereafter. Those levels are consistent with the state budgets under EPA's Clean Air Mercury Rule (CAMR).

However, prior to 2013, the state's draft rule does not meet the requirements of 40 CFR 60.24(h) which requires that mercury emissions from coal-fired EGUs in the State not exceed the State budget in any given year. If the state's EGUs need the flexibility to exceed the state's mercury budget before 2013, then New Hampshire has three options: 1) the state could simply allow the federal plan for mercury to be in effect from January 1, 2010 through December 31, 2012; 2) the state may be able to submit an abbreviated plan consisting of its own allocation scheme and allow emission trading in accordance with EPA's proposed Federal Implementation Plan; or 3) the state can write its own trading rule that would meet the requirements of 40 CFR 60.24.

The second issue involves the inclusion of all of Env-A 4400, including Env-A 4403 and certain sections of Env-A 4404, instead of just the necessary sections of Env-A 4400 to ensure compliance with CAMR. Under the draft plan, EGUs are allowed to create mercury credits and exchange the mercury credits for SO2 allowances. This type of trading cannot be approved under CAMR and must not be part of the state's final plan.

Our detailed comments on the draft rule and plan are attached. We look forward to working with you to address these issues. If you have any questions regarding the comments please contact me or Donald Dahl at (617) 918-1657.

Sincerely,

A handwritten signature in black ink, appearing to read "David B. Conroy". The signature is stylized with a large, sweeping initial "D" and "C".

David B. Conroy, Chief
Air Programs Branch

Enclosure

Cc: Mike Fitzgerald, NH DES
Joe Fontaine, NH DES

Enclosure

1. Env-A 506.01. In order to insure that all existing and new units covered by the applicability provision of CAMR (i.e., all “electric generating units or EGU” as defined in 40 CFR 60.24(h)(8)) are included, the following change is suggested

“State Cap for Mercury Mass Emissions from Coal-Fired Power Plants. The owner or operator of any electric generating unit (EGU) as defined in 40 CFR 60.24(h)(8) shall comply with the following provisions, as applicable:”

2. Env-A 506.01. This section must include all of the definitions contained in 40 CFR 60.24(h)(8) and 60.4102. Such adoption could be accomplished by including the following language in 506.01:

“For the purposes of Env-A 506.01, the definitions contained in 40 CFR 60.24(h)(8) and 40 CFR 60.4102 shall apply. The terms “Hg budget unit” and “permitting authority” shall refer to “electric generating unit” and “the department.”

3. Env-A 506.01(a)(1). This section relies on Env-A 4404.06 for the monitoring and reporting of mercury emissions. However, it is not clear what sections of Env-A 4404.06 would apply to a new source since most of the subsections of Env-A 4404.06 are limited to just Merrimack Station. Under 40 CFR 60.4170(b)(2)(i), any new source that commences operation after July 1, 2008 must either install a continuous emission monitoring system (CEM) before January 1, 2009, or 90 operating days or 180 calendar days after the first date of operations. Env-A 4404.06 must be amended so that all requirements for monitoring, record keeping, and reporting requirements contained in 40 CFR part 75 and 40 CFR 60.4170-4176 are applicable to any new EGU. Due to possible inconsistencies between Env-A 4404.06 and CAMR, the following language should be used in Env-A 506.01(a):

“(a) The owner or operator of any new electric generating unit commencing commercial operation on or after the effective date of the Part shall:

(1) Monitor, report, and record keep mercury mass emissions in accordance with the mercury mass provisions of 40 CFR 60.4170 through 60.4176 and subpart I of 40 CFR part 75, and

(2) Follow the designated representative requirements of 40 CFR 60.4110 through 60.4114. The references to “Hg Allowance Tracking System account,” “Hg allowances,” and “proceeds of transactions involving Hg allowances” are not applicable under Env-A 506.”

4. Env-A 506.01(a)(2). This section states that mercury emissions for any new coal-fired power plant will be limited via a permit. However, it is not clear under what authority New Hampshire DES will issue such a permit. If the authority is the state's new source review regulations in Env-A 600, then a reference to that chapter should be included in Env-A 506. Furthermore, it must be stated that any permit issued to a new EGU contain a limit on the annual mass mercury emissions and permit conditions that address CAMR's monitoring, record keeping, reporting, and Hg designated representative requirements. (See 40 CFR 60.4102 and 60.4110-60.4114 for Hg Designated Representative, 40 CFR 60.4170-60.4176 and 40 CFR part 75 for monitoring record keeping, and reporting requirements.)

In addition, unless the existing coal-fired EGU's in the state are limited in an enforceable manner to below 126 pounds of mercury per year before January 1, 2018, the provisions of Env-A 506.01(a)(2) will not be meaningful.

5. Env -A 506.01(a)(3). As currently written, New Hampshire's CAMR plan limits the annual mercury emissions from existing coal-fired EGU's to 50 pounds after January 1, 2018. If it's New Hampshire DES's intention to create a growth margin for new sources, then emissions from existing units must be restricted to some level below 50 pounds per year.
6. Env-A 506(b)(1). The reference to test, monitor, and report in this section should be Env-A 4404.06 and not the broader Env-A 4400. In addition, the deadline for installing a CEM at existing EGUs needs to be clarified. For existing EGUs, a CEM must be installed by January 1, 2009. (See 40 CFR 60.4170(b)(1).) When Merrimack Station installs the flue gas desulfurization system, they will need to recertify the CEM system. We understand that the EGUs at Schiller station are not being modified. We suggest that New Hampshire clarify the monitoring requirements for existing EGUs by rewriting the beginning portion of Env-A 4404.06 and Env-A 4404.06(a) as follows:

Env-A 4404.06: Monitoring. The owner and operator of each unit at Schiller and Merrimack Stations that meet the requirements of 40 CFR 75.81(c) shall use the Hg low mass emissions methodology under 40 CFR part 75 subparagraph 75.81(b) starting on January 1, 2009. If a unit at Merrimack or Schiller Station does not meet the requirements of 40 CFR 75.81(c), then the owner or operator of the unit shall install monitoring systems for monitoring Hg mass emissions (including all systems required to monitor Hg concentration, stack gas moisture content, stack gas flow rate, and CO₂ or O₂ concentration) in accordance with 40 CFR subpart I of part 75 and 40 CFR 60.4170-4176.

(a): No later than the earlier of either 90 unit operating days or 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or wet flue gas desulfurization system, the owner and operator at Merrimack Station shall install monitoring systems for monitoring Hg mass emissions (including all systems required to monitor Hg concentration, stack gas moisture content, stack gas flow rate, and CO₂ or O₂ concentration in accordance with Code of Federal Regulations 40 CFR subpart I of part 75 and 40 CFR 60.4170-4176.

7. Env-A 506.01(b)(3). It is not acceptable under EPA's Clean Air Mercury Rule to allow the state's coal-fired EGUs to exceed the state's budget without participating in the national trading program. For the period between January 1, 2010 and December 31, 2012, New Hampshire should either adopt the federal trading program (40 CFR part 60, subpart HHHH), or operate under the Federal Plan.

EPA's proposed Federal Plan was signed on December 8, 2006, and EPA is proposing to allow states to submit an abbreviated Federal Plan, referred to as an allocation scheme. Under this option, a State could choose to submit a State allocation methodology, rather than submitting a State Plan addressing all elements of the Hg model trading rule (see Section III.C of the preamble for a discussion of allocations). In this way, the State could choose to allocate Hg allowances to its EGU sources as it deems most appropriate, while leaving other elements of CAMR implementation to the Federal Plan. (See pages 26 and 27 of the proposed rule.)

If New Hampshire decides on submitting an allocation scheme for the years 2010-2012, the state is not obligated to allocate all of its budget and can retain allowances for purposes such as a set aside for new sources.

8. Env-A 506.01(b)(3)b. It is unclear which 6 year period emissions are to be averaged since the regulation simply states "prior to December 31, 2015" Please be aware that EPA cannot rely on this provision that potentially offsets emissions in earlier years that may be over the state's budget with emissions decreases from future years. A true-up period greater than one year is not allowed under CAMR.

9. Env-A 4400. EPA appreciates the interest the State has in creating incentives for power plants to lower mercury emissions. However, the incentives created in Chapter Env-A 4400 are not approvable under CAMR. We are also concerned over the State wanting to offer power plant operators an increase in SO₂ allowances for additional pounds of mercury reduction. This type of trading cannot be approved under CAMR and must not be part of the state's final plan.
10. Env-A 4404.06. Since New Hampshire's CAMR plan is supposed to contain monitoring, record keeping, and reporting for all new and existing EGUs, we recommend removing the numerous references to Merrimack station contained throughout this section. For example, subsections (o) through (q) apply to all EGUs, not just Merrimack. See 40 CFR part 75, subpart G.
11. Env-A 4404.06. This section must include a definition of "Hg Designated Representative" that meets the requirements of 40 CFR 60.4110-60.4114. The person who is designated the Hg representative serves as the person responsible for submitting reports and certifying compliance. As currently written, the state's draft rule simply refers to the owner or operator without designating who can represent the owner or operator.
12. Env-A 4404.06(c) and (d). Please remove these sections and use the exceptions to CEMs contained in 40 CFR 60.4170(c) and (d). All exceptions or alternatives to monitoring must be approved by EPA.