

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 Broadway
Albany, New York 12233-1550

In the Matter

-of the-

PROPOSED PARTS 200, 243, 244, AND 245 CROSS STATE AIR POLLUTION
REGULATIONS AND PROPOSED REVISIONS TO PART 200 GENERAL PROVISIONS
AND PART 251 CO₂ PERFORMANCE STANDARDS FOR MAJOR ELECTRIC
GENERATING FACILITIES

HEARING REPORT

by

_____/s/_____
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_____/s/_____
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August 13, 2018

PROCEEDINGS

The New York State Department of Environmental Conservation (Department or DEC) scheduled a public hearing to provide an opportunity for comment on new rules to allocate emission allowances under the United States Environmental Protection Agency's (US EPA) Cross-State Air Pollution Rule (CSAPR) to regulated entities in New York, as well as to the New York State Energy Research and Development Authority (NYSERDA) and a revision to the State Implementation Plan (SIP). In addition, the Department provided an opportunity for the public to comment on amendments to 6 NYCRR parts 200 and 251 to adopt CO₂ emission standards for existing major electric generating facilities.

Notice of the proposed rulemakings and State Implementation Plan revision was published in the State Register and the Environmental Notice Bulletin on May 16, 2018, and posted on the Department's website under proposed regulations available for public comment. The Department held three public hearings. The first hearing was held on July 16, 2018 at the Department's office at 625 Broadway, Albany, New York, at 11:00 a.m. before Administrative Law Judge Lisa Wilkinson. A second hearing was held on July 18, 2018 at 11:00 a.m. at the Department's Region 2 office at 1 Hunters Point Plaza in Long Island City, New York before Administrative Law Judge Lisa Wilkinson. A third hearing was held on July 24, 2018 at 11:00 a.m. at the Department's Region 8 office at 6274 East Avon-Lima Road, Avon, New York before Administrative Law Judge Molly McBride. The deadline for written comments on the proposed rules, amendments and SIP revision, as stated in the ENB and State Register notices, was July 29, 2018. Information concerning the rulemakings is available on the Department's web site.

Marie Barnes, an Environmental Engineer with the Division of Air Resources, spoke at the hearing in Albany, New York regarding the changes to parts 243, 244, 245 and corresponding revisions to part 200. Ms. Barnes explained that the Department is proposing to repeal and replace Part 243, Transport Rule NO_x Ozone Season Trading Program, Part 244, Transport Rule NO_x Annual Trading Program and Part 245, Transport Rule SO₂ Annual Group 1 Trading Program and revise 6 NYCRR Part 200, General Provisions. The Transport Rule, which was renamed by EPA as the Cross-State Air Pollution Rule, CSAPR, is a regional cap-and-trade program that regulates emissions from large fossil fuel-fired electric generating units that produce electricity for sale and have a nameplate capacity greater than 25 megawatts of electrical output.

On November 12, 2015 New York State promulgated Parts 243, 244, and 245. These regulations set forth the allocation method New York uses to distribute federal CSAPR allowances for NO_x ozone season emissions, annual NO_x emissions and annual SO₂ emissions to regulated entities and the New York State Energy Research and Development Authority (NYSERDA). The responsibility for implementing all other aspects of CSAPR remains with EPA under a Federal Implementation Plan (FIP). The Department submitted these regulations to EPA as a partial State Implementation Plan (SIP).

Laura Stevens, Environmental Program Specialist 2 in the Division of Air Resources spoke about the proposed amendments to part 251 and corresponding changes to part 200. Part 251 currently imposes carbon dioxide (CO₂) emission limits on new major electric generating facilities, as well as on existing electric generating facilities that increase capacity by at least 25 megawatts (MW). The amendments to Part 251 would establish CO₂ emission standards for non-modified existing major electric generating facilities, while leaving unchanged the existing CO₂ emission standards for new and modified major electric generating facilities.

As part of Governor Cuomo's 40% by 2030 CO₂ emission reduction goal, the State must ensure that electric generating units (EGUs) burning coal are repowering to a cleaner fuel or closed no later than 2020. The proposed revisions to Part 251 serve to further CO₂ reductions from the power sector, in order to mitigate the State's contribution to climate change.

All non-modified fossil-fuel fired existing major electric generating facilities that are not currently subject to Part 251 would be required to meet a CO₂ emissions limit of either 1,800 lbs/MW-hr gross electrical output or 180 lbs/mm BTU of input. As part of an application for a permit or permit modification, an owner or operator will choose whether to include the relevant output- or input-based limit in the permit for purposes of compliance.

Diana Menasha, an Environmental Engineer with the Division of Air Resources, read the hearing statements for both the CSPAR and part 251 proposals at the second hearing at the Department's Region 2 office, and Marie Barnes read the hearing statements at the third hearing at the Department's Region 8 office.

Eighteen people spoke at the July 16th hearing in Albany, 20 people spoke at the July 18th hearing in Long Island City and 34 people spoke at the July 24th hearing in Avon. Speakers included individuals and representatives from the Sierra Club, Natural Resources Defense Council, New York Working Families, Food and Water Watch, Sunrise Movement, Parks and People with Disabilities, Partnership for Policy Integrity, Clean & Healthy New York, Adirondack Council, Mothers Out Front-Finger Lakes, Citizens Campaign for the Environment, Fossil Free Tompkins, and Environmental Justice.

Commenters expressed appreciation for the Department's promulgation of CO₂ emission standards to control greenhouse gas emissions from electric generating facilities and noted that the rule was urgently needed to control greenhouse gas emissions. Commenters spoke of the significant impacts of recent storm events, the impacts of climate change world-wide and how important it is to reduce greenhouse gas emissions. Some commenters raised concerns about the negative public health impacts associated with a warming planet and extreme weather events, including increased vector borne illnesses, heat related illnesses, and hospital admissions.

Many commenters urged the Department to enhance Part 251 by adopting standards for all fuels used in electric generation, including biomass and natural gas, and requiring additional data collection, monitoring and reporting. Commenters argued that no fossil based fuel should escape scrutiny. Commenters also urged the State to undertake a reliability analysis to ensure that generating plants that do not meet the new standards by the regulatory deadline do not continue to operate because of reliability concerns. Finally, commenters expressed concern for

communities and workers that may be adversely affected by plant closures and advocated that the State adopt a transition plan to provide adequate funding for worker retraining and community development.

No one spoke in opposition to the proposed rulemakings. The public comment period closed on July 29, 2018.