

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

In the Matter

- of the -

PROPOSED AMENDMENTS OF PART 200  
(General Provisions) AND ADOPTION OF  
NEW PARTS 243 (CAIR NOx Ozone Season  
Trading Program), 244 (CAIR NOx  
Annual Trading Program) AND 245  
(CAIR SO2 Trading Program) OF TITLE  
6 OF THE OFFICIAL COMPILATION OF  
CODES, RULES AND REGULATIONS OF  
THE STATE OF NEW YORK, AND REVISIONS  
TO THE STATE IMPLEMENTATION PLAN (SIP).

HEARING REPORT

- by -

/s/

Richard Sherman  
Administrative Law Judge

/s/

Helene G. Goldberger  
Administrative Law Judge

/s/

Mark D. Sanza  
Administrative Law Judge

May 23, 2007

## Background

The New York State Department of Environmental Conservation (DEC or Department) is proposing a rulemaking for three New York State Clean Air Interstate Rules (CAIR) that will establish cap-and-trade programs designed to mitigate interstate transport of nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) to help reduce ozone and fine particulate formation in CAIR states located in the eastern United States. These rules, to be codified at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), consist of new Part 243 (CAIR NO<sub>x</sub> Ozone Season Trading Program), Part 244 (CAIR NO<sub>x</sub> Annual Trading Program), and Part 245 (CAIR SO<sub>2</sub> Trading Program). In addition, 6 NYCRR Part 200 will be amended to update section 200.9 (Referenced Material) and the State Implementation Plan (SIP) will be revised to incorporate these changes and to address additional requirements outlined in section 110(a)(2)(D) of the federal Clean Air Act.

The United States Environmental Protection Agency (EPA) has promulgated a new National Ambient Air Quality Standard (NAAQS) for fine particulate matter that has resulted in a new non-attainment area designation in New York State requiring the Department to amend the definition of "non-attainment area" found in Part 200 of 6 NYCRR.

Also, DEC is proposing to amend 6 NYCRR Part 200 in order to update the tables referencing Federal National Emission Standards for Hazardous Air Pollutants regulations (40 C.F.R. Part 63) and two Federal Emissions Guidelines for Existing Large Municipal Waste Combustors and Other Solid Waste Incinerators. This rulemaking will update the regulations by referencing the 2005 CFR that contains the most recent regulations for which DEC is delegated to implement.

## Hearing Notice

Notice of these hearings was published in the April 11, 2007 *Albany Times Union*, *Buffalo News*, *Glens Falls Post Star*, *New York Post*, *Rochester Democrat & Chronicle* and *Syracuse Post-Standard* and the April 28, 2007 *Newsday*. In addition, the hearing notice was also published in the April 11, 2007 *Environmental Notice Bulletin* and the *New York State Register*. Written comments will be received by Department staff through May 24, 2007 at 5:00 P.M.

## Hearings

Hearings took place as follows:

Tuesday, May 15, 2007 - NYSDEC Region 8, 6274 E. Avon-Lima Road, at 2:00 P.M., Avon, NY 14414;

Wednesday, May 16, 2007 - NYSDEC Annex, Region 2, 11-15 47<sup>th</sup> Avenue, at 2:00 P.M., Long Island City, NY 11101; and

Thursday, May 17, 2007 - NYSDEC Central Office, 625 Broadway, at 2:00 P.M., Albany, NY 12233.

DEC Administrative Law Judge (ALJ) Richard Sherman presided over the Avon hearing, ALJ Helene G. Goldberger presided over the Long Island City hearing, and ALJ Mark D. Sanza presided over the Albany hearing.

At the Avon hearing, two members of the public attended but did not offer comment. Daniel Walsh, P.E., Environmental Engineer II, DEC Region 8, read a series of statements describing the proposed rulemaking. See attached statements.

Following Mr. Walsh's statement, the hearing was recessed for fifteen minutes, to allow time for any additional members of the public who might arrive late and wish to comment. The hearing was reconvened at 2:25 P.M. and, there being no one who wished to comment, the hearing was concluded.

At the Long Island City hearing, two members of the public came to observe the proceedings but no persons offered comment. DEC Region 2 Environmental Engineer Diana Menasha gave a summary of the purposes of the rulemaking. See attached statements.

At the Albany hearing, three members of Department staff read separate statements describing the proposed rulemaking. These were Mike Miliani, P.E., Environmental Engineer, Robert Bielawa, P.E., Environmental Engineer, and Edward Pellegrini, P.E., Environmental Engineer. See attached statements.

In addition, eleven members of the public attended the Albany hearing, two of whom offered comments. Sandra Meier, Director of the Environmental Energy Alliance of New York (EEANY), spoke on behalf of members of its Generating Committee consisting of participating generators AES NY, Dynegy NE Generating, KeySpan, Mirant, NRG Energy, PSEG Power, Rochester Gas & Electric, and Selkirk Cogen. Ms. Meier expressed EEANY

members' concern that the Department's proposed rulemaking would implement emissions requirements that are more stringent than the requirements of the Clean Air Act, and that the proposed regulations underestimate financial issues and create emission allowances amounting to an unconstitutional tax. See May 17, 2007 stenographic transcript.

David Gahl, Air and Energy Program Director at Environmental Advocates of New York, spoke on behalf of the American Lung Association of New York State, the Natural Resources Defense Council, the New York Public Interest Research Group, and the Pace Law School Energy Project. Mr. Gahl commended the Department for including an auction component in its draft regulations but expressed the organizations' concern that the proposal on allocation of allowances to affected sources based on historical operation is a lost opportunity and not in keeping with a related agency policy under the Regional Greenhouse Gas Initiative (RGGI). Id.

Following Mr. Gahl's statement, the hearing was recessed for fifteen minutes, to allow time for any additional members of the public who might arrive late and wish to comment. The hearing was reconvened at 2:40 P.M. and, there being no one who wished to comment, the Albany hearing was concluded.