

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1550

In the Matter

- of the -

PROPOSED REVISIONS TO PARTS 242 (CO₂ Budget Trading
Program) and 200 (General Provisions) OF THE OFFICIAL
COMPILATION OF CODES, RULES AND REGULATIONS OF THE
STATE OF NEW YORK, and ACCEPTANCE OF THE DRAFT
SUPPLEMENTAL GENERIC ENVIRONMENTAL IMPACT STATEMENT

Hearing Report

- by -

_____/s/_____

P. Nicholas Garlick
Administrative Law Judge

_____/s/_____

Helene G. Goldberger
Administrative Law Judge

September 18, 2013

PROCEEDINGS

Background

In 2005, New York State entered into a regional agreement to reduce greenhouse gas (GHG) emissions from power plants in order to address climate change. The Governors of ten northeast and mid-Atlantic states, including New York, committed to adopt the Regional Greenhouse Gas Initiative (RGGI). In 2008, the New York State Department of Environmental Conservation (Department or DEC) adopted the regulations implementing RGGI - Part 242 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) - CO₂ Budget Trading Program (Program).

At this time, the Department proposes to revise Part 242 and Part 200 (General Provisions) to cap regional CO₂ emissions at 91 million tons annually beginning in 2014. In addition, the Department staff prepared a Supplemental Generic Environmental Impact Statement (SGEIS) to evaluate the environmental impacts that will result from these regulatory changes. The SGEIS was available for public review and comment in conjunction with the proposed changes to the program.

On July 3, 2013, DEC's Division of Air Resources (DAR) requested that the Department's Office of Hearings and Mediation Services assign Administrative Law Judges (ALJs) to conduct the legislative hearing sessions and to provide a report summarizing the comments. On July 12, 2013, Chief Administrative Law Judge James T. McClymonds assigned ALJ P. Nicholas Garlick to the Albany and Avon hearings and ALJ Helene Goldberger to the Long Island City hearing.

Prior to the hearings, the DAR staff provided the ALJs with a copy of the Department's notice of proposed rulemaking as well as the publication information for the notice. The notice appeared in the July 10, 2013 editions of the *State Register*, the *Environmental Notice Bulletin*, the *Albany Times Union*, *Buffalo Evening News*, *Glens Falls Post Star*, *New York Post*, *Newsday*, *Rochester Democrat*, and on July 9, 2013 in the *Syracuse Post-Standard*.

The Department accepted written comments on this rulemaking and its acceptance of the SGEIS through 5:00 p.m. on September 9, 2013.

Public Hearing

Albany Hearing

At the Albany hearing, held at the DEC's offices at 625 Broadway, ALJ Garlick called the hearing to order on August 26, 2013 at 2:00 p.m. There were approximately twenty people in attendance and four people made oral statements.

To start, Michael Sheehan of the DAR provided a summary of the purpose of the proposed revisions to the regulations. He explained that the change to Part 242 represents a nearly 45 percent reduction from the existing cap. After 2020, the cap will remain at 78 million tons annually. To account for the existing private bank of CO₂ emissions allowances acquired at auction and to create a binding cap, the proposed Program revisions also create the Cost Containment Reserve (CCR) which will provide additional flexibility and cost containment for the Program. The proposed Program revisions provide for an interim compliance obligation. This revision addresses the potential for a budget source to avoid its compliance obligation as a result of the business closing or falling into bankruptcy prior to the third year compliance obligation.

Mr. Sheehan further explained that the proposed Program revisions also include minor revisions such as setting the reserve price at \$2.00 in 2014, to rise at 2.5 percent per year in subsequent years, updating all references, and deleting the early reduction allowance provisions. The majority of the proceeds from the sale of New York's allowances will continue to be dedicated to strategic energy or consumer benefits such as energy efficiency and clean energy technologies.

The second speaker was Kevin Chlad who was representing the Adirondack Council. Mr. Chlad spoke in favor of the proposed regulations and their impact on limiting global climate change. However, he stated that the regulations should be strengthened to further reduce annual carbon emissions. He concluded that the additional costs would be negligible compared to the costs associated with climate change.

The third speaker was Conor Bambrick who was representing Environmental Advocates. Mr. Bambrick made several comments that he believed would strengthen the regulations. First, he suggested that New York was proposing a flawed methodology to

calculate the baseline emissions and urged the adoption of the approach used in Maine, New Hampshire, Rhode Island, and Vermont, which would result in greater reductions. Second, he suggested that another look should be taken at the issue of leakage and its proposed remedies. Third, he advocated that the program be expanded to cover other sources of emissions.

The final speaker was Sean Mahar who was representing Audubon New York, the State program of the National Audubon Society. Mr. Mahar spoke on the impacts of climate change on birds and other wildlife and stated that his organization strongly supported the proposed regulations. He also stated that other strategies needed to be developed to combat climate change.

Avon Hearing

At the Avon hearing, held at the DEC's regional offices at 6274 East Avon-Lima Road, ALJ Garlick called the hearing to order on August 27, 2013 at 2:00 p.m. There were five people in attendance and four people made oral statements.

Thomas L. Marriott, P.E., from Region 8, provided the summary for the DAR as given at the Albany hearing. The second speaker was Brian Smith who was representing Citizen's Campaign for the Environment (CCE). Mr. Smith expressed CCE's strong support for the proposed regulation as a means to combat global climate change. Mr. Smith said that the RGGI program serves a model for the rest of the nation to follow. Mr. Smith stated that CCE supports adopting more stringent reductions in the carbon cap such as done by the states of Maine, New Hampshire, Rhode Island, and Vermont, which would result in an estimated 90% reduction in emissions by 2050.

The third speaker was Paul M. Flansburg who was representing the Sierra Club's Great Lakes Committee. Mr. Flansburg spoke in support of the proposed regulations and talked about the impacts of climate change on the Great Lakes.

The fourth speaker was Douglas Roll who was representing the Upstate New York Power Producers. Mr. Roll noted that in the past 21 years, New York's power plants had cut greenhouse gas emissions by 47% and urged DEC to work with the United States Environmental Protection Agency to assure that power plant owners received credit for these reductions. Mr. Roll also expressed concern about the price of allowances and the role of non-generators in auctions, suggesting a 10% cap on the

number of allowances that may be purchased by a non-generator entity. The third point raised by Mr. Roll dealt with the allowance auction's minimum reserve price. He suggested that the current formula be retained, which would have the effect of easing the burden on power producers and lowering costs for consumers. The fourth point raised by Mr. Roll involved electricity imported to New York State. Mr. Roll urged that a comprehensive review of the impacts of such imports be undertaken. Finally, Mr. Roll addressed the issue of long-term contract allowance set-asides and stated his group's opposition to any restructuring thereof due to the significant financial impacts this would have.

Long Island City Hearing

At the LIC hearing, ALJ Goldberger commenced the hearing on August 29, 2013 at 2:00 p.m. Cicily Nirappil of the Region 2 DAR provided the Department staff's comments as given at the Albany hearing. No members of the public came to provide comments and ALJ Goldberger adjourned the hearing at 2:34 p.m.