MERCURY RULE (R-14)

Brief Summary of Proposal

The State of Wyoming Air Quality Division is proposing to adopt a market-based cap-and-trade program through rulemaking to satisfy requirements established by the U.S. EPA to reduce mercury emissions from coal-fired power plants. The proposed rule is a commitment to participate in a national trading program, recognition that EPA will administer the national program, and finally the creation of an allowance allocation process controlled by the State.

Background

After more than a decade of discussion, the U.S. EPA promulgated the first national standards for mercury (Hg) emissions from coal-fired electric power plants on May 18, 2005. Hg is a toxic, persistent pollutant that accumulates in the food chain. The principal route of exposure to Hg is through consumption of fish. Hg reaches water bodies from many sources, including the combustion of coal. While coal-fired power plants are currently the largest source of human-generated mercury emissions in the United States, they contribute very little to the global mercury pool. U.S. coal-fired power plants are estimated to account for only about one percent of the global total. In spite of the relatively small contribution from U.S. sources, Hg can cause significant adverse health effects at very low concentrations. For this reason, the EPA is moving forward on regulating Hg emissions.

Through the Clean Air Mercury Rule (CAMR), EPA has established stack limitations on Hg emissions from new coal-fired power plants (as January 30, 2004) and created a market-based cap-and-trade program to reduce Hg emissions from all coal-fired power plants in the U.S. The U.S. is also leading an effort within the United Nations to create partnerships with developing countries to reduce mercury emissions world-wide.

Under CAMR, each state is assigned a Hg budget and each state must submit a State Plan detailing how it will meet its budget for reducing mercury from coal-fired power plants. EPA has created a market-based cap-and-trade program as an option for states to achieve and maintain their budget. States are not required to adopt the cap-and-trade program, and some states will set Hg emission limitations on a per plant basis to meet the budget. Regardless of whether a state participates in the cap-and-trade program or not, all new plants (as of January 30, 2004) must meet new Federal emission limitations for Hg.

By November 17, 2006, states must submit plans to either adopt CAMR or create something at least as stringent. Failure to submit a plan will mean that EPA will impose CAMR through an EPA-run program. While EPA will administer the cap-and-trade program, by adopting its own allocation rule the state retains authority to decide how allocations are made within the state.

The State of Wyoming Air Quality Division has been to the Air Quality Advisory Board twice on the subject of Hg rulemaking. The Division met with the Board in 2005 to introduce the topic and take comment from the public and regulated industry on options that the state might consider in addressing the Federal requirements. The Division met with the Board again in July of 2006

to propose adoption of the Federal cap-and-trade program and once again take comment from the public and regulated industry. The Board unanimously recommended proceeding with the rulemaking.

What the State Rule Will Require

The State rule will require all affected coal-fired units to either hold allowances or purchase credits equal to the Hg emissions emitted on an annual basis. The State will be distributing allowances to both existing sources and new sources from the State budget. The distribution process for new and existing sources is defined by the rule. The State has chosen to adopt EPA's model rule for establishing the allowance allocation process with two exceptions. Wyoming has created a larger new source set-aside; ten percent of the entire budget will be allocated to new sources rather than six percent in the first period and three percent in the second period. Secondly, the State will distribute allocations to existing sources in five-year blocks rather than on an annual basis, to allow existing sources more certainty in environmental planning.

The proposed rule will also require continuous stack monitoring to verify that Hg emissions are equal to or less than the allocations held for any given coal-fired unit.

Comments on the Proposed Rule

The only comments which the Division received prior to or during either of the AQAB meetings were from industry. Utility industry representatives were supportive of the Division's decision to participate in a cap-and-trade program. Industry reps, however, did request that the State distribute allocations for longer periods of time than what EPA recommended and that we make certain that the new source set-aside was large enough to accommodate new growth in the power industry in Wyoming. The Division modified the EPA rule to respond to both of these requests.

Conclusions

As the first ever Hg rule, the proposed rule does not pretend to solve all of the Hg problems of the world. It is a first step toward controlling a toxic air pollutant in the U.S. that still gives the coal-fired utility industry some flexibility in planning for controls and allows for future growth for coal-fired power plants. In addition to the cap-and-trade program, all new sources built in the state will be required to meet New Source Performance Standards for mercury as well as BACT standards established during the permitting process. The Division is confident that mercury reduction requirements will be achieved and sustained in a manner that still allows for growth in the power sector.