

Executive Summary

Amendments to 25 Pa. Code Chapter 123

Mercury Emissions: Repeal

Purpose of the Final-Omitted Rulemaking

The purpose of this final-omitted rulemaking is to repeal the “state-specific” requirements to reduce mercury emissions from coal-fired electric generating units (EGUs) with a nameplate rated capacity of more than 25 megawatts that produce electricity for sale, as set forth under §§ 123.201–123.215 (relating to standards for contaminants mercury emissions).

Summary of the Final-Form Rulemaking

These amendments will delete and reserve §§ 123.201-123.215, which were approved as final rulemaking by the Environmental Quality Board (Board) on October 16, 2006, and adopted as final on February 16, 2007, effective February 17, 2007 (37 Pa.B. 883).

The Federal Clean Air Mercury Rule (CAMR) published on May 18, 2005, established standards of performance for mercury for new and existing coal-fired EGUs, as defined in section 111 of the Federal Clean Air Act (CAA) (42 U.S.C.A. § 7411). See 70 FR 28606. The CAMR established a “cap-and-trade” program by which mercury emissions from new and existing coal-fired EGUs were to be capped at specified, Nationwide levels. In May 2005, petitions for review challenging this and other related final agency actions were filed with the U.S. Court of Appeals for the D.C. Circuit. On February 8, 2008, in *New Jersey v. Environmental Protection Agency*, 517 F.3d 574, 380, (D.C. Cir. 2008), the D.C. Circuit Court vacated CAMR. Pennsylvania had chosen to implement the provisions of CAMR through the Pennsylvania Mercury Rule codified at §§ 123.201-123.215, effective February 17, 2007 (37 Pa.B. 883). On September 15, 2008, after the *vacatur* of CAMR, several utilities challenged the validity of the Pennsylvania Mercury Rule promulgated at §§ 123.201-123.215. On December 23, 2009, the Pennsylvania Supreme Court upheld a lower court’s decision enjoining the Department from implementing and enforcing the Pennsylvania Mercury Rule. As a result, the Pennsylvania Mercury Rule is invalid and unenforceable.

Affected Parties

The Pennsylvania Mercury Rule affected owners and operators of coal-fired EGUs with a nameplate rated capacity of more than 25 megawatts that produce electricity for sale. The final-omitted rule has no practical effect other than to reduce confusion because the Pennsylvania Mercury Rule is already invalid.

Advisory Groups

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) about the final-form rulemaking on April 29, 2010. The AQTAC concurred with the Department's recommendation to seek Board approval of the final-omitted rulemaking.

Public Comments and Board Hearings

Notice of proposed rulemaking is omitted under section 204(3) of the act of July 31, 1968, P.L. 769, No. 240 (45 P.S. § 1204(3)). Omission of notice of proposed rulemaking is appropriate because the notice of proposed rulemaking procedure specified in sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) is, in this instance, impracticable, unnecessary and contrary to the public interest.