

NECA ENVIRONMENTAL COMMITTEE REPORT OCTOBER 11, 2007

The Environmental Committee met on September 20th, 2007 to discuss the Committee's mission and areas of focus for the coming year. These remain consistent with the summary presented to the Board in the September meeting. The committee also discussed potential meeting topics for the coming year, which are still under development. The next Committee meeting is scheduled for October 25th at Reservoir Place in Waltham. The topic and speaker are to be determined.

Following are updates on several matters being followed by the Committee.

CONNECTICUT GENERAL PERMIT FOR DISTRIBUTED GENERATION

The CTDEP published a notice on October 9th indicating that it plans to issue a General Permit (GP) to allow diesel fired emergency engines to operate in the Locational Forward Reserve Market (LFRM). Comments are due on November 9th and there will be a public hearing the same day. A status conference will be held on October 16th for those who wish to participate as intervenors. Others can attend also.

The General Permit language is largely consistent with the notice issued previously by CT DEP as commented upon by NECA. The primary elements of the GP include:

- Only diesel fired emergency engines less than or equal to 2 MW, which received DPUC approval to participate in the LFRM program, and are available to operate on or before 12/1/07 can register under the GP. Engines in all of CT can participate.
- Engines can operate up to 300 hours for emergencies (OP 4, Action 12 has been removed from the General Permit's emergency definition) and 200 hours for the LFRM.
- NOx must be controlled to 90% or more.
- New engines must meet a PM limit of 0.0086 lb/mmBtu. Existing engines must meet the same limit or install PM controls with 85% efficiency if within 328 ft from the closest sensitive receptor; 20% if between 328 and 500 ft; and 0% if > 500 ft.
- ULSD must be used.
- If the sum of NOx from all generators in CT greater than 15 MW with NOx emission rates greater than or equal to 1 lb/MWh, plus all engines registered under the GP, exceed 30.9 tons during any day in the ozone season, then either a permanent retirement of a minimum of \$5K of CAIR NOx allowances or other means acceptable by the DEP is required.
- The DEP is also requiring the retirement of two NOx CAIR allowances upon submission of the GP registration.

PM2.5 IMPLEMENTATION

Connecticut DEP's Interim PM2.5 New Source Review Policy was signed on August 21st by Commissioner McCarthy. The final rule largely follows the previously proposed draft rule but also allows for emissions offsets for projects in nonattainment counties (Fairfield and New Haven) to be provided by SO2 reductions at a rate greater than 1:1 on a case by case basis. The rule imposes several significant challenges to new energy projects including the need to specify both filterable and condensable PM2.5 emission rates, demonstrate compliance with PM2.5 ambient standards (most counties have background levels close to the 24 hour standard, leaving little room for new impacts), and the need to obtain offsets in nonattainment areas. The rule establishes very low Significant Impact Levels (SILs) for PM.5 based on NESCAUM

recommendations, which increase the likelihood that projects will need to conduct cumulative multi-source impact modeling analyses.

Massachusetts has developed a draft PM2.5 policy that differs significantly from Connecticut in several areas. Notable, the Massachusetts policy does not require consideration of condensable particulate emissions in determining applicability, emission limits, or compliance with ambient standards, consistent with EPA guidance. The policy also does not yet specify Significant Impact Levels (SILs) for PM2.5.

The **US EPA** issued a proposed rule on September 12th that presents options under consideration for establishing allowable PSD increments, Significant Impact Levels, and Significant Monitoring Concentrations. For each standard, EPA has proposed three options that vary significantly. EPA is seeking comments on the options until November 21, 2007.

Actual PM2.5 emissions data is virtually nonexistent leaving most applicants flying blind. Combustion turbine vendors are only specifying PM10 emission rates for use as surrogate PM2.5 emission rates, although at least one manufacturer is currently pursuing source testing of their equipment to develop more refined data. The situation is complicated by the fact that EPA has recognized the inherent inaccuracies with the method previously used to measure condensable particulate emissions and has rescinded that method until an improved methodology has been developed.

GREENHOUSE GAS EMISSIONS REGULATIONS

Massachusetts DEP held public hearings during the week of September 10th on its proposed CO₂ emissions rules. The primary areas of concern expressed by energy industry representatives revolved around DEPs proposal to auction 100% of the allowances, auction procedures proposed by DOER, the use of auction proceeds, allowable emissions offsets, and leakage. The 100% auction approach is unprecedented in a cap and trade program and has the potential to put control of the allowances in the hands of the highest bidder. Some energy representatives commented that if allowances to cover their emissions and assure compliance were not available to them at economically viable prices, they would be left with the untenable position of not operating. The written comment period closed on September 24th. Copies of comment letters are available at: <http://www.mass.gov/dep/service/regulations/proposed/rggiallc.doc>.

New York's Office of the Attorney General issued subpoenas on September 14th to five different generating companies (AES, Dominion, Dynegy, Peabody Energy, Excel Energy) inquiring about the companys' financial, regulatory, and litigation risks associated with their CO₂ emissions. The letters suggest that the companies have not adequately disclosed those risks to their shareholders. Several of the companies have refuted the claims, pointing at various means they have used to disclose CO₂ emissions and their future plans including 10-K filings and annual reports.

The Sierra Club, Western Resource Advocates and Environmental Defense are appealing a permit issued by the U.S. Environmental Protection Agency in August that would allow the Bonanza, Utah coal-fired power plant to expand. The Bonanza permit is the first issued since the Supreme Court's ruling in *Mass v. EPA* that the EPA has the authority under the Clean Air Act to regulate greenhouse gases. In the permit, EPA stated that they were not required to consider emissions of carbon dioxide and other greenhouse gas in setting the permit's pollution control requirements and emissions limitations.

PERMIT STREAMLINING

The Massachusetts Department of Environmental Protection (MassDEP) is moving into the next phase of its initiative to streamline air permitting. The workgroup of consultants, attorneys, and public interest groups have been meeting over the past 6 months to review permits issued over the past three years by MassDEP with consideration for aspects that may be changed to reduce the timeframe required to process air permit applications. The workgroup has identified several initiatives for the next phase of work including the development of improved permitting guidance, a clearinghouse for MassDEP permit determinations, new categories of application review, and improved communication with consultants and applicants. Of particular note, MassDEP has also identified an initiative to focus on the permitting process for energy projects, which comprise 18% of the applications processed over the past three years.

BOILER MACT

The EPA still has not taken action to address the "Boiler MACT" rule that was vacated in its entirety in June of this year. The rule primarily impacts large solid fuel fired (coal, wood) boilers. The general consensus by state agencies is that the effective compliance date for existing affected units that was to occur in September of this year was voided when the rule was vacated. States are awaiting guidance from EPA on how to act with regard to permits for new units. Some states (New Hampshire, Massachusetts) have indicated that they will consider a case-by-case MACT analysis developed by applicants. Others are in a holding pattern (New York). The situation is requiring prior applicants to re-file with significantly additional analysis (and likely extended permit review times), and is holding up the issuance of several permits for proposed biomass projects.