

## 12 DRAFTING

Pursuant to S.C. Code Section 1-23-120(H)(1), the proposed amendments in this Notice will not be more stringent than the current Federal requirements and thus do not require legislative review.

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

Statutory Authority: 1976 Code Sections 48-1-10 et seq.

#### Notice of Drafting:

The South Carolina Department of Health and Environmental Control (Department) is proposing to amend R.61-62, Air Pollution Control Regulations and Standards. The proposed amendments are necessary to meet requirements of the United States Environmental Protection Agency (EPA). Interested persons are invited to present their views in writing to Christopher L. Vaigneur, Regulatory Development Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received by October 27, 2008, the close of the drafting comment period.

#### Synopsis:

On May 18, 2005, the EPA published a final rule titled “*Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units*” (70 FR 28606), also referred to as the “Clean Air Mercury Rule” (CAMR). This final rule established standards of performance for mercury (Hg) for new and existing coal-fired electric utility steam generating units (EGUs), as defined in the Clean Air Act (CAA) section 111. The CAMR established measures by which Hg emissions from new and existing coal-fired EGUs are capped at specified, nation-wide levels. The rule also specified how facilities must demonstrate compliance with the standard by holding one “allowance” for each ounce of Hg emitted in any given year. These allowances were designed to be readily transferable among all regulated facilities. This final rule became effective July 18, 2005.

In accordance with this rule, states must adopt standards of performance for Hg emissions reductions by submitting an implementation plan, referred to as a “111(d) Plan”, which requires state rulemaking action followed by submittal to the EPA for review and approval. On January 11, 2007, a public hearing was held, wherein the Board of Health and Environmental Control gave approval for the regulation to be presented to the State Legislature. The Department submitted the State CAMR package to the EPA on March 8, 2007, for parallel processing. The State’s CAMR became state-effective upon its publication in the South Carolina *State Register* on June 22, 2007 (Vol. 31, Issue 6, Document No. 3083). The final package for the State CAMR was submitted to the EPA on August 16, 2007, for approval.

On February 8, 2008, the United States Court of Appeals for the District of Columbia Circuit (the Court) decided to vacate the CAMR (Case No. 05-1097) based on the petition of two final rules promulgated by the EPA regarding the emission of hazardous air pollutants from EGUs. The first rule, titled “*Revision of December 2000 Regulatory Finding*” (70 FR 15,994), also known as the “Delisting Rule,” removed coal- and oil-fired EGUs from the list of sources whose emissions are regulated under section 112 of the CAA. The second rule was the CAMR, defined under section 111 of the CAA (70 FR 28606). The Court found that delisting coal- and oil-fired power plants from section 112 was unlawful because section 112(c)(9) of the CAA requires the EPA to make specific findings before removing a source listed under section 112; the EPA conceded it did not. Accordingly, the court granted the petitions and vacated both rules.

The EPA filed a petition for a rehearing, seeking review by the full Court (Case No. 05-1097). On May 20, 2008, it was ordered that the petition be denied.

On May 16, 2003, the EPA published a final rule (68 FR 26690) establishing national emission standards for hazardous air pollutants (NESHAP) for new and existing sources at brick and structural clay products manufacturing facilities as well as new and existing sources at clay ceramics manufacturing facilities (40 CFR 63, subparts JJJJ and KKKKK). This final rule became effective May 16, 2003, and was incorporated by reference in R.61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories by a Notice of Final Regulation published in the South Carolina *State Register* Vol. 28, Issue 9, on September 24, 2004. On March 13, 2007, the Court vacated this rule (case No. 03-1202).

On September 13, 2004, the EPA published a final rule establishing NESHAP for industrial, commercial, and institutional boilers and process heaters (40 CFR 63, subpart DDDDD). This final rule became effective November 12, 2004, and was incorporated by reference in R.61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories by a Notice of Final Regulation published in the South Carolina *State Register* Vol. 29, Issue 8, on August 26, 2005. On June 8, 2007, the Court vacated this rule (case No. 04-1385).

The Department proposes to amend R.61-62, Air Pollution Control Regulations and Standards by repealing all provisions of the State CAMR. The Department also proposes to amend R. 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories by repealing all provisions of the aforementioned rules published in the *Federal Register* May 16, 2003, and September 13, 2004, respectively. The Department may also propose typographical corrections and clarifications to R.61-62 as necessary.

The proposed amendments will require legislative review.

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
CHAPTER 61

Statutory Authority: 1976 Code Sections 48-1-10 et seq.

**Notice of Drafting:**

The South Carolina Department of Health and Environmental Control (Department) is proposing to amend R. 61-62, Air Pollution Control Regulations and Standards, and the South Carolina State Implementation Plan or SIP. Specifically, the Department proposes to amend R. 61-62.96 Nitrogen Oxides (NO<sub>x</sub>) And Sulfur Dioxide (SO<sub>2</sub>) Budget Trading Program General Provisions (state CAIR) to address the Federal vacature of the Federal Clean Air Interstate Rule (CAIR) and to reinstate the NO<sub>x</sub> SIP Call/NO<sub>x</sub> Budget Trading Program due to be superseded on April 30, 2009. Interested persons are invited to present their views concerning these amendments in writing to Anthony T. Lofton, Regulatory Development Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received by October 27, 2008, the close of the drafting comment period.

**Synopsis:**

In 2004, the United States Environmental Protection Agency (EPA) determined that 28 states and the District of Columbia contributed significantly to nonattainment of National Ambient Air Quality Standards (NAAQS) for PM<sub>2.5</sub> and eight-hour ozone in downwind states.

On May 12, 2005, the EPA published the *Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call; Final Rule*. The CAIR would permanently cap emissions of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) in the eastern United States (U.S.) and achieve large reductions of SO<sub>2</sub> and/or NO<sub>x</sub> emissions across 28 eastern states and the District of Columbia. When fully implemented, the CAIR was expected to reduce SO<sub>2</sub> emissions in these states by over 70 percent and NO<sub>x</sub> emissions by over 60 percent from 2003 levels.