



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

NOV 17 2009

Rodney Williams
Wheelabrator Ridge Energy Inc.
3131 K-Ville Avenue
Auburndale, FL, 33823

OFFICE OF
AIR AND RADIATION

Re: Wheelabrator Ridge Energy, Inc.: Request for an Additional Extension of Compliance with the CAIR Requirements.

Dear Mr. Williams:

Wheelabrator Ridge Energy, Inc. (Ridge) has submitted a series of requests for alternatives to the provisions of the Clean Air Interstate Rule (CAIR) NO_x and SO₂ trading programs requiring Ridge to install and certify continuous emission monitoring systems (CEMS) on the multi-fuel boiler at Ridge's facility in Auburndale, Florida (the Ridge facility) and to begin reporting mass emissions and heat input. In its first request of November 30, 2007, Ridge requested an extension of these deadlines with regard to nitrogen oxides (NO_x) emissions, and subsequently Ridge requested extensions of these deadlines with regard to both NO_x and sulfur dioxide (SO₂) emissions. Ridge claimed, in support of each request, that the request met the requirements of 40 CFR 75.66(l). As of June 1, 2009, EPA has granted Ridge extensions of the deadline for installing CEMS until October 1, 2009 and extensions of the deadline for reporting emissions until October 30, 2009.

On September 25, 2009, Ridge requested "an additional extension of the [CAIR] NO_x and SO₂ Programs' requirements, including allowance reconciliation and [CEMS] certification, operating and reporting requirements" until six months after EPA issues a full applicability determination for the Ridge facility. In support, Ridge claimed that the request met the requirements of 40 CFR 75.66(l). For the reasons discussed below, EPA approves extension of the deadline for CEMS installation until October 1, 2010, approves extension of the deadline for emissions reporting until October 30, 2010, and denies the request for extension of any other requirements of the CAIR trading programs, including the requirement to hold allowances covering control period emissions and the requirement that EPA deduct allowances for such emissions.

Background

EPA's reasons for granting the previous requests for extension of the CEMS installation and certification and emissions reporting deadlines were twofold. First, EPA needed additional time to complete an applicability determination under CAIR for the Ridge facility's boiler due to the complexity of the issues raised in Ridge's petition for

such a determination. EPA notes that its response to Ridge's petition for an applicability determination was also delayed as a result of litigation concerning CAIR. On July 11, 2008, the U.S. Court of Appeals for the District of Columbia issued a decision in North Carolina v. EPA, 531 F.3d. 896 (D.C. Cir. 2008), vacating CAIR and the Federal Implementation Plans for CAIR and remanding them to EPA. With the Court's vacatur of CAIR, which would have made Ridge's petition for an applicability determination moot, EPA did not continue to process the determination. Subsequently, on December 23, 2008, in North Carolina v. EPA, 550 F.3d. 1176 (2008), in response to petitions for rehearing, the Court decided to remand CAIR, but not to vacate it. EPA then recommenced its consideration of Ridge's applicability petition. EPA approved the emissions monitoring and reporting extensions because, if Ridge were to install and certify CEMS on the boiler and EPA subsequently determined that the boiler is not a CAIR unit, Ridge would have incurred significant expense to purchase and certify CEMS that would not be required or used in the CAIR NO_x and SO₂ trading programs.

Second, while the CAIR trading programs require that NO_x and SO₂ mass emissions and heat input be monitored and reported, the absence of CEMS on the Ridge facility boiler during 2008-2009 will have little or no negative effect on the CAIR trading programs or the required NO_x and SO₂ mass reductions. This is because, as a condition for the approved extensions of the emissions monitoring and reporting deadlines, Ridge was required to substitute conservatively high substitute data in lieu of monitored emissions data.

On September 9, 2009, EPA issued an applicability determination for the Ridge facility that addressed some, but not all, of the issues concerning the applicability of the CAIR trading programs to the facility. Specifically, EPA noted that the Ridge facility will be subject to the CAIR trading programs unless the facility qualifies for an exemption applicable to solid waste incineration units whose annual heat input from fossil fuel is less than 20 percent. EPA also stated that, because of an ongoing rulemaking to establish a definition of the term "solid waste," the Agency could not determine whether the Ridge facility combusts "solid waste" and whether the boiler is a solid waste incineration unit. However, EPA determined that, if the boiler at the Ridge facility is a solid waste incineration unit, then it would not be subject to the CAIR programs because the boiler meets the limitation on fossil fuel heat input. See Wheelabrator Ridge Energy Facility at 5-14 (September 9, 2009).

Response

In light of these circumstances and for the same reasons that previous extensions were approved for Ridge, EPA is extending the deadline for Ridge to install and certify CEMS for NO_x and SO₂ mass emissions and heat input on the boiler at the Ridge facility to October 1, 2010 and is extending the deadline to begin reporting to EPA NO_x and SO₂ mass emissions and heat input to October 30, 2010. These extensions are being approved for an additional year to give time for further action by EPA on the applicability determination. EPA recognizes, of course, that Ridge requested extensions until six months after EPA issues a complete applicability determination. However, in order to

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retain flexibility to address any future changes in circumstances (concerning, e.g., the status of the ongoing rulemaking on the "solid waste" definition and the Ridge facility's fuel use), EPA is approving 1-year extensions of these deadlines. Moreover, as necessary, Ridge may request additional extensions of these deadlines depending on the status of EPA's response to Ridge's petition for an applicability determination. EPA intends to respond expeditiously to any such future extension requests by Ridge.

However, to the extent that Ridge's September 25, 2009 request sought an extension of any other requirements of the CAIR trading programs (including the requirement to hold allowances covering control period emissions and the requirement that EPA deduct allowances for such emissions), EPA denies the request. EPA's authority to consider and approve requests for alternatives to regulatory requirements of the CAIR trading programs arises under 40 CFR 96.175, 96.275, and 96.375, with regard to State Implementation Plans, and 40 CFR 97.175, 97.275, and 97.375, with regard to Federal Implementation Plans, and each of these provisions cite 40 CFR 75.66. On their face, 40 CFR 75.66, and the CAIR trading program provisions citing it, authorize consideration and approval of alternatives to only emissions monitoring, reporting, and recordkeeping requirements. See, e.g., 40 CFR 75.66(a) (providing that a designated representative may submit a petition for approval of "an alternative to any requirement prescribed in this part [i.e., 40 CFR part 75] or incorporated by reference in this part") and 40 CFR 96.175(a) and (b)(1) (providing that a CAIR designated representative may submit a petition "under [40 CFR] 75.66" for approval of "an alternative to any requirement of this subpart [i.e., 40 CFR part 96, subpart HH]"). Neither these provisions nor any other provisions of the CAIR trading programs provide for request or approval of an alternative to any other CAIR requirements, such as the requirement to hold allowances covering emissions as of the applicable allowance transfer deadline and EPA's deduction of allowances to account for emissions (which requirements Ridge's September 25, 2009 request seems to refer to as "allowance reconciliation"). Indeed, the alternative deadlines previously approved by EPA for Ridge expressly involve only the deadlines for CEMS installation and certification and for reporting emissions data to EPA. EPA did not grant any extensions of any other requirements of the CAIR trading programs.

Conditions of Approval

The conditions of this approval are as follows:

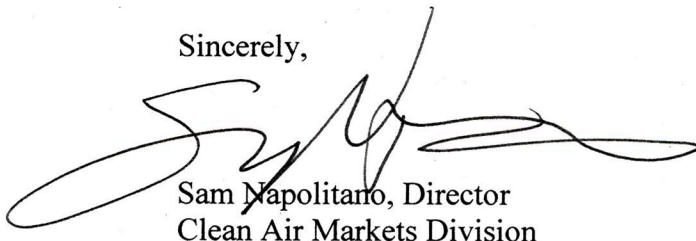
1. Ridge shall install and certify the required CEMS for the Ridge facility boiler's NO_x mass emissions, SO₂ mass emissions, and heat input by October 1, 2010. Ridge shall begin electronic reporting of the unit's NO_x mass emissions, SO₂ mass emissions, and heat input data to EPA, in accordance with the CAIR trading programs (40 CFR part 96, subparts HH, HHH, and HHHH), by October 30, 2010. However, Ridge's emissions reporting by October 30, 2010 shall include NO_x mass emissions and heat input data for 2009 and shall include NO_x mass emissions, SO₂ mass emissions, and heat input data for the first, second, and third quarters of 2010. For operating

hours lacking quality-assured data, Ridge shall use the applicable substitute data provisions, but Ridge may petition EPA to use alternative substitute data under the CAIR trading program regulations.

2. Notwithstanding paragraph 1 above, Ridge shall be exempt from the requirements of that paragraph if EPA determines before October 1, 2010 that the Ridge facility boiler is not subject to the CAIR NO_x annual and ozone season and SO₂ trading programs.

If you have any questions regarding this correspondence, please contact Art Diem of my staff, at (202) 343-9340. Thank you for your continued cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sam Napolitano', is written over the typed name and title.

Sam Napolitano, Director
Clean Air Markets Division

cc: David McNeal, EPA Region IV
Errin Pichard, Florida DEP
Patricia Comer, Florida DEP, Office of General Counsel

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bcc: Art Diem, Rey Forte, Dwight Alpern

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