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ENVIRONMENTAL PROTECTION

SUSTAINABILITY AND GREEN ENERGY

CO₂ Budget Trading Program

Adopted Repeals: N.J.A.C. 7:27-22.28 and 7:27C

Adopted Amendments: 7:27-22.16, and 7:27A-3.2, 3.5, and 3.10

Proposed: July 7, 2014, at 46 N.J.R. 1510(a).

Adopted: July 7, 2015, by Bob Martin, Commissioner, Department of Environmental Protection.

Filed: July 7, 2015, as R.2015 d.

Authority: N.J.S.A. 13:1B-3.e, 13:1D-9, and 26:2C-1 et seq., particularly 26:2C-45 et seq.

DEP Docket Number: 04-14-15

Effective Date:

Operative Date: (60 days after adoption – N.J.S.A. 26:2C-8)

Expiration Date: N.J.A.C. 7:27 (Exempt)

The rule adoption may also be viewed or downloaded from the Department's website at www.nj.gov/dep/rules.

In accordance with the order of the Superior Court of New Jersey, Appellate Division, *In re Regional Greenhouse Gas Initiative (RGGI)*, Docket No. A-4878-11T4 (App. Div. March 25, 2014) (*In re RGGI*), the Department is repealing the CO₂ Budget Trading Program rules at N.J.A.C. 7:27C, and is repealing or deleting related provisions of the Air Pollution Control rules at N.J.A.C. 7:27-22, Operating Permits, and the Air Administrative Procedures and Penalties, N.J.A.C. 7:27A. The repealed rules and the provisions deleted are no longer operative because New Jersey withdrew from RGGI, effective January 1, 2012.

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In December 2005, New Jersey's then-Governor signed a memorandum of agreement with the governors of six other states (Connecticut, Delaware, Maine, New Hampshire, New York, and Vermont), agreeing to take legislative and regulatory action to implement a regional carbon dioxide (CO₂) budget trading program. (Maryland, Massachusetts, and Rhode Island signed the memorandum of agreement in 2007). The memorandum called for the creation of a regional organization to assist and coordinate the trading program. The regional organization came to be known as RGGI, and the 10 states referred to collectively as the RGGI states.

Legislation authorizing, but not mandating, the State's participation in RGGI became effective in 2008 (N.J.S.A. 26:2C-45 et seq.), and in the same year the Department promulgated the CO₂ Budget Trading Program rules, N.J.A.C. 7:27C, to implement New Jersey's component of the regional trading program. (40 N.J.R. 3792(a) and 6541(b)). The CO₂ Budget Trading Program rules were promulgated to specifically implement RGGI and there is no evidence of a legislative or administrative intention to create a stand-alone CO₂ budget trading program within New Jersey independent of RGGI.

The CO₂ Budget Trading Program was a cap-and-trade program, a market-based approach used to control pollution by providing economic incentives for achieving reductions in CO₂ emissions from power plants. The RGGI states established a regional emissions cap, which was then apportioned among the participating states. RGGI issued CO₂ allowances to each participating state in an amount equivalent to each state's emissions cap, thereby limiting total emissions among participants to the regional cap. Each allowance represented the right to emit or discharge one ton of CO₂. The CO₂ Budget Trading Program rules codified the limit for New Jersey sources. The rules required CO₂ budget sources to hold allowances equivalent to their emissions. The vast majority of the allowances were distributed through quarterly, regional CO₂ auctions, which were the main platform through which CO₂ budget sources could purchase the CO₂ allowances. Any CO₂ allowances not subject to auction or sale were directly allocated to cogeneration units meeting certain efficiency criteria, or were retired to

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support the functioning of the voluntary renewable energy market, as provided in the rules.

The first three-year control period of the regional CO₂ budget trading program ran from January 1, 2009 through December 31, 2011. During this time, the Department and New Jersey sources participated in 14 regional auctions and administered yearly fixed-price CO₂ allowance sales to CO₂ budget sources (primarily power plants, as discussed below) meeting the criteria in the CO₂ Budget Trading Program rules.

In May 2011, Governor Christie announced that the State would withdraw from RGGI by the end of 2011, which coincided with the end of the first control period of the regional CO₂ budget trading program. Consistent with the Governor's announcement, New Jersey formally notified the RGGI states on November 29, 2011, that it was withdrawing from RGGI and would no longer participate as of January 1, 2012. (http://www.rggi.org/docs/Documents/NJ-Statement_112911.pdf). The Department posted a notice to that effect on its website, explaining that because New Jersey was a participant in RGGI through the first control period (2009 through 2011), budget sources in New Jersey remained subject to the CO₂ Budget Trading Program rules for only this three-year control period. The budget sources would not be subject to compliance with CO₂ Budget Trading Program rules for control periods that commenced on or after January 1, 2012.

New Jersey's CO₂ Budget Trading Program rules applied to large, fossil fuel-fired electricity generating units (25 MW or larger) in the State, referred to as CO₂ budget units. A CO₂ budget source consists of one or more CO₂ budget units. There were 40 such sources in the State that were subject to the cap-and-trade provisions and reporting provisions of the rules. One additional source was subject only to the reporting requirements because it fell within the exemption provisions of the rules. Each of the 40 non-exempt CO₂ budget sources was required to have sufficient CO₂ allowances available to cover the amount of its reported CO₂ emissions for the three-year control period within two months after the end of a control period, that is, by March 1 of the succeeding year. Because New Jersey withdrew from the RGGI program as of the end of

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the first control period, the State's 40 non-exempt CO₂ budget sources were required to have sufficient allowances to cover their CO₂ compliance obligations for only the first control period, and each of these sources complied with that obligation.

The CO₂ Budget Trading Program rules contained reporting requirements for both non-exempt and exempt sources, which requirements extended beyond the State's withdrawal from RGGI. The rules required CO₂ budget sources to submit reports in 2012 that related to activities that took place on or before December 31, 2011. The reporting requirements allowed the Department to ensure that the CO₂ budget sources complied with the CO₂ Budget Trading Program rules during the first control period. Each of the State's sources complied with the reporting requirements in a timely manner.

In its opinion in *In re RGGI*, the Superior Court of New Jersey, Appellate Division, emphasized that the appellants "do not challenge the legality of New Jersey's withdrawal from RGGI." (*In re RGGI*, Slip op. at 11). With respect to the CO₂ Budget Trading Program rules, the Court recognized that "there can be little doubt . . . that they were intended to enable New Jersey's participation in RGGI, rather than to establish a stand-alone carbon dioxide cap-and-trade program in New Jersey." (*In re RGGI*, Slip op. at 12). However, the Court also acknowledged that "the Trading Program regulations are worded quite broadly and can be read to require action by the Department absent participation in a regional greenhouse program." (*In re RGGI*, Slip op. at 12). The Court therefore remanded the matter to the Department, directing the Department to take the necessary action under the New Jersey Administrative Procedure Act (APA) to formally repeal the CO₂ Budget Trading Program rules, or amend the rules to provide that they are applicable only when New Jersey is a participant in a regional or other established greenhouse gas program. (*In re RGGI*, Slip op. at 13). The Court ordered the Department to begin the APA process to repeal or amend the CO₂ Budget Trading Program rules, in accordance with N.J.S.A. 52:14B-4, within 60 days. (*In re RGGI*, Slip op. at 13). Accordingly, the Department proposed to repeal the CO₂ Budget Trading Program rules at N.J.A.C. 7:27C, and repeal or delete related provisions of N.J.A.C. 7:27-

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22 and 7:27A, as the Department never intended the CO₂ Budget Trading Program rules to create a stand-alone program within New Jersey, independent of RGGI.

As emphasized at the August 8, 2014, public hearing on this rulemaking, the Department's repeal of these rules does not affect the State's lawful decision to end its participation and withdraw from RGGI. New Jersey's participation in RGGI ended effective December 31, 2011. The CO₂ Budget Trading Program rules no longer impose a compliance obligation on the Department or any budget source; this rulemaking serves to formally repeal the inoperative CO₂ Budget Trading Program rules in accord with the Court's directive to make clear that there are no further regulatory actions required by the Department or required of the regulated community under RGGI or any other trading program.

Summary of Hearing Officer's Recommendations and Agency Response:

The Department held a public hearing on the proposal on August 8, 2014, at 10:00 A.M. in the Department's Public Hearing Room, 1st Floor, 401 East State Street, Trenton, at which 34 people provided oral comments. Ray Cantor, Chief Advisor to the Commissioner, served as the hearing officer. The hearing officer has recommended that the repeals and amendments be adopted as proposed without change. The Department accepts the recommendation.

A record of the public hearing is available for inspection in accordance with applicable law by contacting:

Department of Environmental Protection
Office of Legal Affairs
ATTN: DEP Docket No. 04-14-15
401 East State Street
Mail Code 401-04L
PO Box 402
Trenton, New Jersey 08625-0402

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Summary of Public Comments and Agency Responses:

The Department accepted comments on the proposal through September 5, 2014.

The following individuals provided written and/or oral comments:

1. Abraham, Joel
2. Avins, Styra
3. Batlan, Richard
4. Battersby, Robert
5. Beavers, David
6. Block, Timothy
7. Boughton, Peter
8. Bourlotos, George
9. Bozarth, Hal, Chemistry Council of New Jersey (CCNJ)
10. Brincka, Frank A.
11. Brogan, David, New Jersey Business and Industry Association (NJBIA)
12. Brunker, Ronnie
13. Buchman, Michael
14. Cable, Kevin
15. Cappuccio, Frank
16. Caron, Mark
17. Chiarlone, Samantha
18. Clark, Matilda, Environment New Jersey
19. Clemente, Marianne
20. Cochrane, Barbara
21. Coe, Dr. Barbara
22. Coffey, Jennifer, Association of New Jersey Environmental Commissions
23. Cohen, Liz
24. Coyle, Debra, New Jersey Work Environment Council
25. Curry, Suzanne
26. Davis, Rebecca
27. De Castro, Brian
28. De Rosa, Dan, Environment New Jersey
29. Della Fave, Joseph, Ironbound Community Corporation
30. DiLeo, Susan, Moms Clean Air Force
31. Dowdy, Jennifer, Moms Clean Air Force
32. Dowdy, Vaughn
33. Doyle, John
34. Dutton, Rebecca
35. Edwards, Lucy
36. Egenton, Michael, NJ State Chamber of Commerce
37. Environment New Jersey on behalf of 61 individuals

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38. Farina, Laura
39. Farnham, Lee, Chair, Ewing Environmental Commission, presenting a petition with 104 signatures
40. Fisher, Carol
41. Foley, Peter
42. Foulks, John
43. Fritz, Peter
44. Fronapfel, Richard
45. Gaines, Camille
46. Gill, Constance
47. Goldsmith, Amy
48. Goodrich, Russell
49. Grant, Jeffrey
50. Grillo, John
51. Grobels, Carol
52. Grossman, Hans
53. Hamerslag, Peter
54. Hammond, Dosier
55. Hansen, Amy
56. Harding, Cheryl
57. Harper, Caleb Bennett
58. Harris, Dr. Daniel A.
59. Harrison, Rosalyn
60. Hillman, Tim, on behalf of Senator Bob Menendez
61. Holsten-Coleman, Karen
62. Hornsby, Mike, Chair of the West Windsor Environmental Commission
63. Hough, Richard
64. Hunt, Dr. C.
65. Imbora, Lexi
66. Junkowski, Ella
67. Kanter, Karen
68. Kaufman, Paul, Director of Advocacy for GreenFaith, Interfaith Partners for the Environment, and the Reform Jewish Voice of New Jersey
69. Kearns, Laurel
70. Kimmell, Ken, President, Union of Concerned Scientists
71. Kobylarz, Denise
72. Koontz, Andrew, Mercer County Board of Chosen Freeholders
73. Korsak, Patricia
74. Koven, Tom
75. Larrabee, David
76. Lesniak, Raymond, NJ State Senator
77. Liebhold, Kate
78. LoCicero, Robert

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79. Macellaro, Kim, submitting a resolution by the Township of Ewing
80. Mackintosh, Anne Dean
81. McCoy, Robert
82. McGrail, Timothy
83. McKillip, Linda
84. McLoughlin, Colleen
85. Monte, Bonnie
86. Mozeson, Steven
87. Murtha, Tom
88. Nagle, Patrick
89. Needham, Scott
90. Nelson, Josh, CREDO, presenting a petition with 2,144 signatures
91. Nesheiwat, Amanda, Representing Mayor and Council of Secaucus; NJ Sustainable Clean Air Partners
92. Nicholson, L J
93. Nigro, Meara
94. O'Malley, Doug, Environment New Jersey, joined by:
Akers, Fred, Great Egg Harbor Watershed Association
Arnold, Susan, Appalachian Mountain Club
Carlucchio, Tracy, Delaware Riverkeeper Network
Coffey, Jennifer M., ANJEC
Engler, Rick, New Jersey Work Environment Council
Harper, Rev. Fletcher, Greenfaith
Harris, Drew, New Jersey Public Health Institute
Hirshberg, Rev. Craig, Unitarian Universalist Legislative Ministry of NJ
Jaborska, Dean Mottola, New Jersey Citizen Action
Kibler, William S., Raritan Headwaters Association
McDermott, Melanie Hughes, PhD, Dept. of Human Ecology, SEBS, Rutgers University
Montgomery, Carlton, Pinelands Preservation Alliance
Potosnak, Ed, New Jersey League of Conservation Voters
Pringle, David, Clean Water Action
Rawlings, Lyle K, Advanced Solar Products
Somers, Julia M., New Jersey Highlands Coalition
Tittel, Jeff, New Jersey Sierra Club
95. O'Malley, Ed
96. Palmer, Dennis
97. Parker, Sam, New Jersey League of Conservation Voters
98. Pennoyer, Ruth
99. Petsonk, Judith, Environment New Jersey
100. Pisauro, Michael, the New Jersey Environmental Lobby, joined by:
Clean Water Action
Environment New Jersey

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NJ Chapter Sierra Club

101. Pi-Sunyer, Dr. Nancy
102. Pizzo, Joseph
103. Polo, Deana, New Jersey Citizen Action
104. Polsky, Matt
105. Polsky, Matt, American Sustainable Business Council-NJ
106. Poor, Jonathan
107. Proto, Michael
108. Rack, Rev. Susan Joseph
109. Ramos, Joann
110. Rickly, Jack
111. Rittenbach, Klauss
112. Rogozin, George
113. Rosenstrauss, Dr. Maurice
114. Ruga, Elliott, NJ Highlands Coalition
115. Salerno, John
116. Sandberg, Bob
117. Santiago, Maria
118. Schneider, Dr. Patricia
119. Schryba, Paul
120. Shattuck, Peter, ENE
121. Sheats, Nicky, Thomas Edison State College Director of the Center of Urban Environment, and also representing the New Jersey Environment Justice Alliance
122. Sheehan, Trisha, Manager, Moms' Clean Air Force
123. Sierra Club on behalf of 800 individuals
124. Simester, Mr. James
125. Simester, Mrs. James
126. Sinden, Frank
127. Sinden, Grace
128. Sobel, Scott
129. Solomon, Philippa
130. Stanford, Dr. Catherine
131. Starrs, Francis Thomas
132. Starrs, Margaret Adele
133. Sternberg, Jessica
134. Stilp, Mark, Sierra Club
135. Sturm, Chris, New Jersey Future
136. Tiedemann, Dr. Richard
137. Tittel, Jeff, Director of New Jersey Sierra Club
138. Union of Concerned Scientists on behalf of 739 individuals
139. Usechak, Louise
140. Vanstrien, R

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141. Vreeland, Carol
142. Webster, Ann
143. Weitz, Dennis
144. Whitby, Theodore
145. Wile, Anthony
146. Woolley, Trishah
147. Wulff, Grexan
148. Yeager, Brian
149. Zavian, GK
150. Zeus, Dan
151. Zimmer, Toni, President, League of Women Voters of New Jersey
152. The following 218 people submitted a form comment identical to the form comments that the Sierra Club submitted (number 123 above):
 - A., Betty
 - Abbott, Katherine
 - Ahearn, Eileen
 - Albar, Michael
 - Andretta, Jeaneen
 - Apt, Jerzy
 - Armstrong, G. G.
 - Avery, Kevin
 - Ayer, Jennifer
 - Baker, Curt
 - Baldari, Charles
 - Barry, Amanda
 - Beeny, Diane
 - Benson, Eric
 - Berezansky, Nick
 - Bernstein, Robert
 - Bolognesoe, Eileen
 - Bolton, Patricia
 - Borge, Mary Anne
 - Boud, Theodore
 - Branca, Louanna
 - Brick, Lisa
 - Brochin, Murray
 - Buerley, Pau
 - Burns, Martin
 - Bykowski, Tom
 - C., Ken
 - Cable, Kevin
 - Carroll, Chris
 - Cavalier, Andre

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Chaleff, Annelise
Chiarelli, Marc
Chismar, Nancy
Cohen, Joshua
Cole, Maureen
Coleman, Bradley
Curran, James
Cutler, Joyce
Dalton, John
DeCesari, Susan
Delloio, Francine
Denmark, Lois
DeRose, Robert
Donnelly, Foliara
Donohue, Irene
Dumont, Phil
Dyer, Thomas
Elliker, Don
Evans, Martha
Fasulka, Laura
Fearon, Angela
Fenster, Steven
Ferguson, Paul
Fineberg, Steve
Fishman, Arnold
Fishman, Temma
Flannery, Ron
Fortin, Jeanne
Fortina, Brenda
Franklin, Laura
Frey, Holly
Frisbie, Nancy
Fuller, Richard
G., Yanina
Galarza, Paul
Gallagher, Linda
Gallagher, Meyer Cynthia
Garber, Julie
Garrison, Katharine
Garside, Cheryl
Genestra, Maryjane
Glatal, Catherine
Gonzalez, Claudia

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Graceffo, Jack
Granholm, Frank
Graver, Robert
Greffer, Chantal
Grogan, James
Grom, Ken
Grose, Harriet
Guderian, Catherine
Gueva, Albanese
Gutenkauf, Dorothy
H. Joellen
Hale, Roderick
Hamilton, Mary M.
Harmeyer, B.
Hatcher, John
Helliwell, Margo
Heppenstall, Patty
Hier, John
Hise, Ann Van
Holle, Joan
Holtzman, Donald
Holtzman, Dorothy
Horowitz, Philip
Hubbes, John
Iannucci, Lisa
Jarecha, Priyadarshan
Jeremiah, Dorothy
Johnson, Bertrano
Joyce, Andrew
Karolski, Barbara A.
Katchikian, A.
Khanna, Nisha
Kirsh, Eileen G.
Klansky, Shirley
Koranyi, Ana
Kotzas, George
Koven, Thomas
Kraynik, Robert
Lardiere, Michael
Lawler, Patricia
Lepis, Katherine
Leshe, Greg
Lindsay, Helen

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Lipari, Philip
Lopes, Mark
Lynch, Laura
Lyons, Glenn
Maciel, Bruno
Magdalena, Schepp
Maizel, Joshua
Marchioni, Ann
Martens, Faith
Martin, Glenn
Maryanski, Joseph Jr.
Maxwell, Scott
Mayer, Pam
McCumber, Kirsten
McHugh, Margaret
Megay, Gina
Milliken, Barbara
Monaghan, Thomas J.
Monfalcone, Ariadne
Morgan, Brian
Moss, Geralyn
Murphy, Aida
Murray, Diana
Olivestone, Mary
Ostrov, Sara
Padavano, Adam
Parks, Karen
Patten, Michael
Pazienza, Maryanne
Pellegrini, Pat
Petrocelli, Samuel
Picarello, Emily
Quinn, Charlie
Quinn, Diana
Quintana, Carol
R., David
Radice, Thomas
Radomskyj, Simon
Raich, Joseph
Ramirez, Isella
Ramos, Alexander
Rani, Vamsi
Rapp, James

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Reardon, Cheryl
Redzinak, Diane
Reu, Dona
Revesz, Hogah
Rickly, Jack
Riggs, Richard
Robertson, Debra
Rodriguez, Alison
Rojas, Rosa
Ruberg, Kevin
Ruiz, O.
Sabatino, Lisa
Schappa, Veronica
Schoggen, Stephen
Schutt, S.
Scott, Linda
Scoville, P.
Seacord, Chris
Segal, Eileen
Seigfried, Stephanie
Sikand, Vikram
Sisco, Matt
Solomon, Beverly
Sternner, Douglas
Stewart, Lisa
Suter, Judy
Tabachnik, Barbara
Taiani, Nancy-Jo
Talcach, Judy
Tamuts, Virginia
Tingley, Terry
Torre, Mark
Travellin, Karen
Trovell, Brandon
Troxell, Martha
Tunbridge, Joan
Turqman, Elsie
Uustal, Susan
Vargas, Lilianna
Vasey, Jill
Venello, Jim
Verducci, Kirsten
Verhaegh, Helga

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Vickers, Jennifer
Vincenti, Sabine
Wald, Gilbert
Wallash, Paul
Webbe, Christopher
Wolf, Susan
Wolfson, Margo
Wolman, Marty
Wright, Alice
Wroblewski, Carol
Yelenik, Barry
Yelenik, Margaret
Youngstein, Reva
Zega, Susan
Zeitler, John
Zingi, John

153. The following 191 people submitted an identical form letter supporting the rulemaking:

Achord, Carol
Allen, Bill
Allison, Clayton
Arduini, Jack
Avery, Lynne
Barna, Walt
Bateman, Roy
Baum, John
Beckman, Phyllis
Britton, Barbara
Brueckner, Robin
Buren, John
Buren, Marianne
Burwell, Nancy
Byrd, Skip
Cardinale, Robert
Carfora, Jim
Carney, William
Castillo, Guillermo
Cavage, Ann
Celentano, Joseph
Cevasco, Kristine
Chinich, Barry
Ciccione, Joseph
Cifrese, Mikayla Eckel

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Clifford, Rich
Coady, Raymond
Cokefair, Richard
Condon, Neldon
Cooper, Robert
Cowan, Andrew
Crescitelli, Louis
Creswell, Carroll
Curry, Rob
Czachur, Kim
Czermak, Joe
D'Agostine, Diane
DeCrosta, Matthew
DeGiglio, Leonard
DelaBruere, Armand
DelGiudice, Nicholas
Delia, Lori
Delmoni, Rosalinda
DeLorenzo, Linda
Demboski, Suzanne
DeMeo, Alexander
DePugh, Kenneth
Devlin, Thomas
Di'Marco, John
Ditto, Laurence
Dooley, James
Dreker, Henry
Duleba, David
Dunn, Kevin
Eames, Barbara
Eberling, Carpl
Eden, Bruce
Eisenhart, Thomas
Elfstrum, James
Ernharth, Ronald
Faust, James
Federici, Jeff
Ferrand, Daniel
Flanagan, John
Foster, Barbara
Gilmartin, Hugh
Gonzales, Rick
Greenberg, Barbara

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Gurzo, Carol
Guzzo, Joseph
Hale, John
Hanle, Bill
Hannelly, Stephen
Harding, David
Harold, Lincoln
Hastings, Jeffrey
Hauck, John
Healy, Helen
Healy, Michael
Hevner, Michael
Hiller, Janet
Hoch, Joseph
Hurless, Sheila
Incantalupo, John
Jensen, Arthur
Jones, William
Jordan, Judy
Juliano, Louise
Kalmbach, Larry
Kennedy, Precilla
Kershaw, Barbara
Kessler, Paul
King, John
Knoll, Pete
Kreeger, Russell
Krug, Robert
Kruger, Jacqueline
Kuzyk, Robert
Lakatos, Joseph
Lathbury, Shirley
Lavis, Arthur
Levin, Frayda
Loce, Ivars
Lopez, Henry
LoPresti, Frank
Lufft, Harry
Lynch, William
Majewski, Stephen
Marinelli, Beverly
Marino, Dave
Marx, Fran

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Mason, Carl
Mason, Robert
Maull, Whitney
Maurillo, Ann
Mazza, Laraine
McCloskey, Edward
Mckenna, Ane
Mena, Ben
Mercer, Edward
Michael, Bette
Mills, Deborah
Miner, Richard
Mirenda, Max
Molinari, Paul
Moore, Barnes
Muench, Gabrielle
Mullen, Paul
Murnane, Katherine
Murray, Richard
Nover, Fred
Oxley, Rose
Ozoniak, Joseph
Palo, Bonnie
Petrella, Andrew
Pinkard, Florence
Pisatowski, Jacqueline
Pitcher, William
Powell, Charles
Proto, Mike
Proto, Sally
Radeke, Dennis
Ramsey, Eugenia
Reilly, George
Resto, Ferdinand
Riehman, James
Roames, Brenda
Roberts, Richard
Rockwell, Linda
Rockwell, Richard
Rogers, Bert
Roszkowski, Mary
Ruerup, Erwin
Ryan, Contance

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Sawey, Edward
Scherer, Joseph
Schmidt, Sarah
Schoepl, Leo
Schotz, Dorthy
Schuldner, Joseph
Sheilds, Harry
Sheppard, Clifton
Simpson, Robert
Sloan, Julia
Sloan, Philip
Smith, Beth
Smith, Brian
Smith, Jay
Smith, Kathleen
Soltys, Alan
Spina, Eileen
Steinbacher, Alice
Szkotnicki, Carroll
Szkotnicki, Marie
Teitelbaum, Israel
Tomale, Sam
Tovey, Susan
Troiano, James
Truby, Jenn
Tutu, Desomnd
Veghte, George Arthur
Vogt, William
Waldman, Justin
Waldron, Charles
Wallach, Carol
Wasik, Betty
Wasik, Joseph
Weidmann, Robert
Westlin, June
Zdanowicz, Wayne
Zeller, John

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The timely submitted comments and the Department's responses are summarized below. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

1. COMMENT: The repeal of the CO₂ Budget Trading Program rules simply facilitates or legitimizes the State's current policy. The Department should adopt the proposal without amendment. (36)
2. COMMENT: The CO₂ Budget Trading Program rules were promulgated with the specific purpose of New Jersey joining a regional trading program, specifically RGGI, and not with the intention that the State implement its own CO₂ Budget Trading Program. This repeal is the correct action in light of New Jersey's withdrawal from RGGI effective December 31, 2011. (153)
3. COMMENT: The Department should repeal the CO₂ Budget Trading Program rules to clarify that the State's electric power producers are not subject to the CO₂ Budget Trading Program requirements. (107, 153)
4. COMMENT: The Department should adopt the proposed rulemaking. As noted in the proposal, the rules to be repealed and provisions to be deleted are no longer necessary because New Jersey withdrew from participation in RGGI, for which the rules were promulgated. Formalizing New Jersey's withdrawal from RGGI by this rulemaking is commendable. (9)
5. COMMENT: The Department should repeal these regulations. (107, 148)
6. COMMENT: The Department should adopt the rulemaking and New Jersey should stay out of RGGI. (96)

RESPONSE to Comments 1 through 6: The Department acknowledges the commenters' support for this rulemaking. This rulemaking complies with the order of the Superior Court of New Jersey, Appellate Division, to repeal or amend the CO₂ Budget Trading Program rules in accordance with the APA at N.J.S.A. 52:14B-4.

7. COMMENT: The Department violated the APA in that it failed to quantify or describe the socio-economic impacts of its proposal. The Department must account for

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the legislative findings in the Global Warming Response Act, N.J.S.A. 26:2C-37 et seq., the Global Warming Response Act itself, proposed Federal greenhouse gas regulations, reports from RGGI member states of the economic benefits of RGGI, and statements of the New Jersey Board of Public Utilities that the State's energy efficiency programs are underperforming. (62, 134)

RESPONSE: This rulemaking complies with the order of the Superior Court of New Jersey, Appellate Division, to repeal or amend the CO₂ Budget Trading Program rules in accordance with the APA. Since the rules were rendered inoperative with the withdrawal from RGGI, the repeal of the CO₂ Budget Trading Program rules will have no environmental, social, or economic impacts. Comments about such impacts stemming from New Jersey's withdrawal from RGGI, or the means by which the State will meet its energy efficiency goals or comply with proposed Federal regulations, are beyond the scope of this rulemaking.

8. COMMENT: The Department's failure to continue implementing the CO₂ Budget Trading Program rules since 2011 was illegal. (2)

9. COMMENT: The CO₂ Budget Trading Program rules require New Jersey to take part in a regional effort to promote clean air and take strides towards curbing global warming, and it is the duty of the Department to abide by these rules. Failure to enforce the RGGI rules is illegal. (92)

RESPONSE to Comments 8 and 9: New Jersey is a participant in neither a regional program nor any other established greenhouse gas program. The Appellate Division recognized that the rules "do not create a stand-alone trading program." *In re RGGI*, Slip op. at 14. The CO₂ Budget Trading Program rules do not require the State to participate in a regional cap-and-trade program. See the response to Comments 10 and 11 for a discussion of statutory requirements. See the response to Comments 12 through 121 and the proposal Summary at 46 N.J.R. at 1511 for a discussion of the Appellate Division's order that the Department repeal or amend the CO₂ Budget Trading Program rules in accordance with the APA.

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10. COMMENT: The Department has a non-discretionary statutory duty to administer a CO₂ emissions allowance trading program and lacks the authority to repeal or amend the CO₂ Budget Trading Program rules. (62, 134)

11. COMMENT: The repeal of the CO₂ Budget Trading Program rules and the Department's failure to propose any regulatory program to address the emissions of greenhouse gases is against statutory dictates. (100)

RESPONSE to Comments 10 and 11: Pursuant to N.J.S.A. 26:2C-47a(1), the Department is required to adopt and maintain rules only if it enacts a CO₂ emissions allowance trading program. The statute is permissive and “authorizes” the Department to enact a CO₂ emissions allowance trading program, but does not require the Department to do so. See N.J.S.A. 26:2C-45.

The original version of the Global Warming Response Act was substantially amended before it was enacted into law, and the final enacted legislation did not require the establishment of a mandatory CO₂ cap-and-trade program by the Department. See A.C.S. for A.B. 4559, 212th Leg., §§ 1, 3 (2007). The amended bill authorized the establishment of a CO₂ cap-and-trade program and required the Department to enact rules only if New Jersey was a participant in such a program. See *ibid.*; see also N.J.S.A. 26:2C-45 and -47. Accordingly, there is no statutory requirement that the State administer or participate in a CO₂ emissions allowance trading program. As the Appellate Division recognized in *In re RGGI*, in the absence of such a program, the CO₂ Budget Trading Program rules do not apply.

12. COMMENT: New Jersey should not participate in RGGI because cap-and-trade programs transfer millions from ratepayers while having little impact on the global climate. (107)

13. COMMENT: The decision to exit RGGI was correct and the Department should adopt the rulemaking to facilitate that exit because RGGI never reached the high expectations of having a significant impact on CO₂ emissions and creating tens of

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thousands of jobs. RGGI was only an effort to establish a national CO₂ cap-and-trade system that never came to fruition. (11, 36)

14. COMMENT: The decision to exit RGGI was correct, because power capacity is critically important to New Jersey's economic competitiveness. Currently, New Jersey is part of the PJM power grid and does not produce enough power in-State to meet current demands. The State's energy policy should include all forms of energy (traditional base-load electric supply, natural gas, nuclear, solar, and wind), with a focus on incentivizing energy independence, while maintaining reliability and resiliency to be better prepared for future damaging storms. (36)

15. COMMENT: Power capacity and reliability are critically important to New Jersey's economic competitiveness. The State's energy policy should promote the creation of more in-State energy-producing facilities, rather than implementing policies that act as a disincentive toward in-State power generation. (11)

16. COMMENT: It is not true that RGGI creates jobs, or that New Jersey is losing out by not participating. For every dollar the RGGI tax takes, there is one less dollar being put to productive use by New Jersey families and job creators. There is no national cap-and-trade program because Senators did not agree with the costs it would impose on the economies of their states. The Congressional Budget Office and the Heritage Foundation have analyzed the impact of cap-and-trade programs on the economy. Similarly, RGGI imposes economic costs on participating states. (107)

17. COMMENT: The decision to withdraw from RGGI was a good one because RGGI was holding back New Jersey's economic growth by taxing electricity, New Jersey citizens, and New Jersey businesses, with no environmental benefit. (9)

18. COMMENT: New Jersey should not participate in RGGI because it results in increased electricity costs for all ratepayers. (11, 153)

19. COMMENT: New Jersey should not participate in RGGI, because costs associated with RGGI have been a contributing factor in participation and support from members of the New Jersey Chamber of Commerce, particularly during these difficult economic times. (36)

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20. COMMENT: New Jersey should not rejoin RGGI. The program is a tax on commerce and/or energy, rewards non-economically productive endeavors, and creates a revenue source open to cronyism. (63)
21. COMMENT: New Jersey should not participate in RGGI because subsidizing solar and wind with cap-and-trade dollars rewards uncompetitive technologies. (107)
22. COMMENT: Recent facts call into question whether global warming is happening at all. (107)
23. COMMENT: New Jersey should not participate in RGGI because the entire anthropogenic climate change thinking is hypothetical. New Jersey should not join a carbon trading scheme based on this hypothesis. (49)
24. COMMENT: The proposal states that there is no social, economic, or environmental impact. That is a disingenuous statement; there very much are environmental, social, and economic impacts associated with failing to deal with climate change. The 2014 Regional Economic Model Incorporated Study shows the environmental and economic benefits on the price of carbon. (62)
25. COMMENT: New Jersey should rejoin RGGI because the New Jersey Superior Court ruled that New Jersey could not leave RGGI without an opportunity for public participation. (72, 83, 113)
26. COMMENT: Pulling New Jersey out of RGGI violates legislative intent and violates New Jersey's Global Warming Response Act. (83, 113)
27. COMMENT: The Department's position that the Governor's withdrawal of RGGI in 2011 was lawful is wrong. The Court said no one challenged the withdrawal, not that it was lawful. (100)
28. COMMENT: The Governor's action in pulling New Jersey out of RGGI without following through as the courts have stated was not lawful. (145)
29. COMMENT: The Department should not adopt this rulemaking to make it legal to drop out of RGGI. The legislative intent is that New Jersey stay in RGGI. (130)

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30. COMMENT: New Jersey must uphold the intent of the Legislature and continue to participate in RGGI. (3, 19, 47, 59, 62, 68, 83, 94, 95, 97, 112, 113, 123, 124, 125, 130, 152)
31. COMMENT: The Department should withdraw the proposal and uphold the intent of the Legislature by continuing to participate in RGGI. (62, 123, 152)
32. COMMENT: The Department should not repeal the CO₂ Budget Trading Program rules. At the very least, it should keep these regulations on the books and resume enforcing them. (37, 62, 138)
33. COMMENT: Rather than repeal the CO₂ Budget Trading Program rules, the Department should update those rules to match RGGI program improvements made by the remaining nine participating states. (30, 37, 57, 62, 138)
34. COMMENT: The Department should not repeal the CO₂ Budget Trading Program rules and New Jersey should return to the RGGI program as a participating state. (55, 72, 90)
35. COMMENT: The Department should not repeal these rules. Although carbon trading is not the answer to climate change, it keeps us with our eye toward meaningful targets and it helps fund the adoption of new technologies and research toward the development of new technologies. (114)
36. COMMENT: Please vote for RGGI. (67)
37. COMMENT: New Jersey should participate in proven, common sense CO₂ reduction initiatives like RGGI. (143)
38. COMMENT: The Department should not repeal the rules for implementing RGGI because RGGI is beneficial to the State's economy. (5, 111, 122, 131, 132, 149)
39. COMMENT: RGGI takes the State in the direction that it needs to go economically. (119)
40. COMMENT: Rejoining RGGI would benefit the State's economy by increasing revenue. (4, 10, 22, 24, 68, 82, 83, 91, 129, 137, 151)
41. COMMENT: RGGI fostered economic growth in New Jersey. (14, 22, 65, 91, 137)

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42. COMMENT: RGGI supported the regional economy. (10, 31, 68, 70, 72, 79, 82, 83, 129)

43. COMMENT: New Jersey should participate in RGGI because it is pro-business, pro-economy. It helps companies get ready for a very different and challenging future for which they are already preparing voluntarily. It also is a market-based and impactful way for New Jersey to reduce its global warming emissions, while expanding its clean energy economy. RGGI generates benefits for businesses, and provides a positive impact on the economy. (104, 105)

44. COMMENT: RGGI lowered electricity prices in states participating in RGGI. (79, 129)

45. COMMENT: The Department should not adopt this rulemaking, because New Jersey should be a part of RGGI. RGGI demonstrates that cap-and-trade systems help economies. (84)

46. COMMENT: RGGI saves consumers money on energy costs. (22, 39, 31, 72, 122, 129, 131, 132)

47. COMMENT: Throughout the region, RGGI saved customers money on their energy bills. (10, 14, 82, 83, 103)

48. COMMENT: New Jersey should rejoin RGGI. RGGI reduced energy costs to New Jersey citizens, and provided economic benefits in funds for environmental initiatives. (100)

49. COMMENT: RGGI provides New Jersey with the resources needed to help lower energy costs, by reducing electricity prices, encouraging energy conservation, and giving residents more options to live in places where they need not rely on the automobile, but instead have more transportation choices. (135)

50. COMMENT: RGGI participants have improved air quality for their citizens, and grown their economies through their participation. New Jersey should remain and fully participate in RGGI. (3)

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51. COMMENT: Rejoining RGGI would benefit the State's economy by creating jobs. (3, 4, 7, 6, 10, 14, 22, 24, 28, 31, 55, 62, 65, 68, 72, 74, 79, 82, 83, 89, 98, 100, 104, 105, 109, 111, 120, 122, 129, 137, 138, 151)

52. COMMENT: New Jersey should rejoin RGGI because it supported the generation of clean energy. (4, 22, 57, 89, 91, 94, 95, 108, 138, 146, 151)

53. COMMENT: New Jersey should rejoin RGGI because the clean energy financing allowed New Jersey to become a national leader in solar energy and solving climate change. (28, 62)

54. COMMENT: New Jersey should participate in RGGI as a way to build more clean energy and employ energy efficiency in order to help consumers cut energy cost and electricity bills. (103)

55. COMMENT: Clean energy funding from RGGI could reduce air pollution and create economic activity. (109)

56. COMMENT: RGGI generated over 150 million dollars in revenue, which could be used for energy efficiency and clean renewables. (111)

57. COMMENT: New Jersey should participate in RGGI because it supports clean energy in lieu of fossils fuels. (24, 51)

58. COMMENT: New Jersey should rejoin RGGI, which provides a way to obtain emission reductions from our coal and gas and oil-burning power plants. The resulting increased efficiencies will also benefit ratepayers. The capital improvements and salaries will restore tax dollars to the State's budget shortfalls. (7)

59. COMMENT: New Jersey's participation in RGGI reduced air pollution while funding clean energy programs that have created thousands of jobs in the State. By not participating in the program, New Jersey is losing jobs and clean energy funding to other states in the region. (47, 53, 62, 123, 152)

60. COMMENT: New Jersey should participate in RGGI. By not participating, New Jersey is losing jobs and money to other northeast states. (124,125)

61. COMMENT: Participation in RGGI can benefit New Jersey economically. RGGI has attracted innovative clean energy enterprises, spurred capital investment, and created

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jobs in a sector of the economy that is poised for tremendous growth. RGGI has also used proceeds to boost energy efficiency and lower overall energy bills for residents and businesses alike, making New Jersey a better place to do business.

62. COMMENT: New Jersey should participate in RGGI; the Governor's determination to remove New Jersey from RGGI was politically motivated. (12, 16, 27, 41, 43, 46, 53, 61, 64, 71, 76, 80, 81, 93, 98, 116, 126, 127, 140, 144, 146)

63. COMMENT: The Department should not make a policy decision based on providing financial gain to billionaires. (115)

64. COMMENT: The Department should be protecting the interests of ecosystems, water resources, and clean air, not corporations or other powerful interests. (106)

65. COMMENT: New Jersey should participate in RGGI because New Jerseyans support this participation. (55, 79, 86, 92, 94, 95, 131, 132)

66. COMMENT: The Legislature can, and should, impose its legislative veto authority with a simple majority vote. The Senate has already introduced legislation finding the Department's rulemaking contrary to the Acts. (62, 134)

67. COMMENT: The Clean Air Act requires a plan to be in place; New Jersey will be non-compliant if the program is repealed. (74)

68. COMMENT: By leaving RGGI, New Jersey is losing its distinction as an environmental leader. (124, 125)

69. COMMENT: New Jersey must remain a leader in clean energy and continue to achieve carbon reduction goals through the RGGI program. (1, 21, 47, 53, 62, 69, 97, 123, 152)

70. COMMENT: The Jersey Shore still feels the impacts of Superstorm Sandy, such as power interruptions and renewable energy supplies off the grid. New Jersey needs more renewables, efficiencies and conservation. RGGI can generate the funds needed to make New Jersey more resilient, less expensive for ratepayers and create more secure renewable homegrown energy sources. (47)

71. COMMENT: Climate change and/or "climate disruption" or "global warming" is a proven fact of climate science as recognized by the Intergovernmental Panel on Climate

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Change (IPCC), remaining states participating in RGGI, and the Union of Concerned Scientists. Nations of the world must act quickly to confront climate change. (50, 56)

72. COMMENT: Global warming/climate change is a scientific fact. (48, 52)

73. COMMENT: New Jersey institutions are actively involved in studying climate change, and climate change science is getting clearer and clearer. New Jersey will bear its effects, including sea level rise, extreme weather events, and resulting economic costs. (94, 95)

74. COMMENT: The scientific evidence of global warming is overwhelming, and we cannot wait to act. (22, 30)

75. COMMENT: New Jersey should do its part now and join the millions of Americans who want to see significant reductions in greenhouse gases. (78)

76. COMMENT: New Jersey should rejoin RGGI because it addressed climate change. (20, 30, 33, 48, 80, 88, 145, 150)

77. COMMENT: New Jersey needs to participate in RGGI to address climate change, as the impacts are already being felt in the State. (5, 59, 66, 72, 79, 91, 133, 137, 139)

78. COMMENT: New Jersey should stay in RGGI because climate change is a danger to safety, health, economy, environment, and national security. As a volunteer firefighter, I see firsthand the increasingly frequent extreme weather events that are occurring as a result of climate change. (62)

79. COMMENT: New Jersey should participate in RGGI. New Jersey's extensive coastal development makes it quite vulnerable to sea level rise. Pulling out of RGGI increases the danger to New Jersey's coastal areas - one of New Jersey's biggest cash cows. (34)

80. COMMENT: The Department should not repeal the RGGI program rules so that New Jersey can rejoin RGGI, which is a strong proven option for addressing global warming. Global warming is impacting New Jersey's infrastructure and causing an increase in the intensity and frequency of storms in the State as well as flooding and sea level rise. New Jersey should rejoin RGGI as a successful tool in fighting and mitigating the unavoidable consequences of global warming. (22)

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81. COMMENT: Climate change is among the most important environment and economic concerns for New Jersey. Sea level rise in the coming centuries will significantly impact our coastal communities. (97)
82. COMMENT: New Jersey needs to remain in the forefront of the conversation on climate change and in working toward a cleaner environment and economy. Climate change is a problem that we must face head on. (60)
83. COMMENT: New Jersey needs to be part of the region's effort to reduce our carbon footprint, and to be in the forefront fighting climate change. (54)
84. COMMENT: New Jersey should participate in RGGI to work collaboratively and regionally to address climate change. (35, 62, 70, 141, 142)
85. COMMENT: New Jersey should stay in RGGI because it is part of a critical consortium and should be supporting others in minimizing carbon impact. (77, 99)
86. COMMENT: New Jersey should rejoin RGGI because the power plant limitations under RGGI are an important piece of our regional and national response to carbon pollution. (60)
87. COMMENT: Not participating in RGGI subjects the citizens of New Jersey to increased carbon pollution and endangers the sustainability of our planet. The dangerous effects of climate change are happening now and we all must do our part to reduce emissions or risk environmental and economic disaster in our lifetimes. (93)
88. COMMENT: New Jersey should stay in RGGI because RGGI mitigates the risk of climate change, rising sea levels, and extreme weather events. (104, 105)
89. COMMENT: Superstorm Sandy was a truly dramatic demonstration of the effects of climate change on New Jersey. It is unconscionable for New Jersey to pull out of a pact to reduce greenhouse gases. (128)
90. COMMENT: Superstorm Sandy and the toll of asthma are just two of the local effects of high CO₂ emissions affecting New Jersey, highlighting the need to reduce the atmospheric CO₂ levels that are driving global warming. New Jersey should rejoin RGGI. RGGI states have reduced their CO₂ emissions by 29 percent since the program was initiated, and last year's reductions were five percent below the required cap. Recent

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changes to RGGI have made the program more efficient; this is a good time for New Jersey to rejoin. (129)

91. COMMENT: New Jersey should rejoin RGGI. We must act now and decisively to greatly reduce greenhouse gas emissions, even if there is a cost in doing so, because we are now facing the consequences of global warming. (110)

92. COMMENT: New Jersey should rejoin RGGI to address global warming. Superstorm Sandy made clear the State's vulnerability to global warming. Future sea level rise driven by warming caused by the overuse of fossil fuels is going to make it worse. (37, 62)

93. COMMENT: The Department should not adopt the rulemaking that would officially remove New Jersey from RGGI. Global warming is already having an impact on New Jersey. RGGI has proven effective -- in participating states, global warming emissions are down more than 40 percent since its inception. (138)

94. COMMENT: New Jersey should rejoin RGGI because it reduced greenhouse gases and carbon pollution. (10, 13, 14, 15, 22, 25, 28, 31, 39, 51, 57, 62, 65, 70, 72, 74, 82, 83, 91, 122, 123, 131, 132, 137, 152)

95. COMMENT: New Jersey should participate in RGGI because it reduces carbon emissions. (4, 15, 22, 25, 55, 70, 77, 79, 91, 122)

96. COMMENT: The State should rejoin RGGI. This program is cutting carbon pollution from power plants, and is helping New Jersey lead on solving climate change. Our State needs to be part of that, because climate change is happening and impacting New Jersey. (28, 62)

97. COMMENT: RGGI is helping to reduce carbon pollution. As a result of New Jersey's withdrawal from the program, power plants are no longer governed by a limit on the amount of carbon pollution they can produce. By renewing New Jersey's participation in RGGI, power plants would have an incentive to reduce carbon pollution and other dangerous pollutants. (120)

98. COMMENT: New Jersey should participate in RGGI because it is good for air quality. (2, 8, 73)

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99. COMMENT: New Jersey should participate in RGGI because it is good for the environment. (5, 19, 22, 38, 44, 101, 147)

100. COMMENT: New Jersey should not withdraw from RGGI because that will have damaging effects on air quality in our region. During the years of New Jersey's RGGI participation, the State achieved the RGGI greenhouse gas reduction goal of 10 percent in the first three years. (68)

101. COMMENT: New Jersey should participate in RGGI because it works well and sends us on the right track to reduce the sources of greenhouse gasses and other pollutants. (74)

102. COMMENT: RGGI takes the State in the direction that it needs to go environmentally. (119)

103. COMMENT: New Jersey should participate in RGGI. A cap and trade system in the 1990s was also initially opposed by business, but within two years had successfully addressed sulfur dioxide. (39)

104. COMMENT: New Jersey should participate in RGGI and reap the same benefits as the other RGGI states. (14, 19)

105. COMMENT: New Jersey should rejoin RGGI. RGGI added 167,000 megawatt hours of new, clean energy generated per year. (4)

106. COMMENT: The Department should not adopt this rulemaking. RGGI has generated \$700 million for investment in clean energy and energy efficiency since the program started. We need clean, sustainable sources of energy and to end our dependence on carbon-based fuels. (6)

107. COMMENT: RGGI has been establishing New Jersey as a leader in the Green Energy economy and in the development in clean renewable energy. (97)

108. COMMENT: The Department says that it is satisfying 2020 standards for carbon emissions, but what about 2021 to 2050 and beyond? (59)

109. COMMENT: RGGI will not only work to cut harmful emissions, but will help New Jersey to take the next steps towards clean renewable energy. (60)

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110. COMMENT: New Jersey should participate in RGGI because that will help New Jersey meet the U.S. Environmental Protection Agency's (EPA's) proposed new national standards to limit carbon pollution from power plants by 2016. (22, 55, 70, 79)

111. COMMENT: New Jersey's participation in RGGI would help the State comply with the regulations EPA proposed in June 2014, under Section 111(d) of the Clean Air Act (42 U.S.C. §7411(d)) that would impose limits on emissions from existing power plants. See 79 Fed. Reg. 34830, proposed June 18, 2014, to be codified at 40 CFR Part 60. (22, 19, 39, 60, 62, 72, 83, 94, 95, 104, 105, 112, 122, 129, 138)

112. COMMENT: By leaving the RGGI program, New Jersey is losing health benefits from cleaner air that would have resulted from lower carbon emissions. (13, 44, 45, 58, 62, 85, 111, 118, 122, 126, 127, 131, 132, 149)

113. COMMENT: New Jersey should participate in RGGI to protect the environment for future generations. (17, 18, 23, 26, 31, 32, 40, 42, 51, 54, 59, 62, 66, 69, 75, 87, 102, 117, 136, 141, 144)

114. COMMENT: Renewing New Jersey's participation in RGGI would generate a number of benefits. Power plants would have an incentive to reduce carbon pollution and other dangerous pollutants. Allowance auctions would support investment in clean energy programs that benefit consumers and the State economy. (120)

115. COMMENT: RGGI has already helped participating states lock in more than \$1.8 billion in long-term savings on energy bills through energy efficiency. (79, 120)

116. COMMENT: New Jersey should support RGGI as a model meant to progressively take steps toward minimizing air pollution and its contributions to global warming. Failure to support RGGI would be a fundamental failure of the Department's core mission. (76)

117. COMMENT: In February 2013 RGGI Inc. estimated that the proposed changes to RGGI would reduce projected 2020 power sector CO₂ pollution by more than 45 percent below 2005 levels, while having a minimal net impact to consumer's electricity bills. (151)

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118. COMMENT: The Department should amend the CO₂ Budget Trading Program rules to make them flexible enough to apply to any alternative program that puts a price on carbon while helping New Jersey achieve the goals of the Global Warming Response Act. (151)

119. COMMENT: An increasingly toxic environment will have disproportionate effects on the health of the most vulnerable populations--people of color, senior citizens, impoverished communities, children, and people who already deal with health issues. (68)

120. COMMENT: The State should fight climate change and reduce greenhouse gases, but should also address equity and environmental justice issues. The State must ensure that reductions and emissions occur in and near vulnerable environmental justice neighborhoods that are already overburdened with pollution. (121)

121. COMMENT: New Jersey should participate in RGGI. While New Jersey's non-participation in RGGI is a matter of concern, not having an established alternative Statewide strategy to effectively and equitably reduce harmful greenhouse gases and co-pollutants is more concerning. A carbon trading system does not address reductions in emissions of greenhouse gas co-pollutants, such as ultrafine particulate matter, nitrogen oxide, and sulfur dioxide, that abound in Newark and long-term exposure to which has detrimental health impacts. Additionally, carbon trading does not ensure emission reductions in or near overburdened environmental justice communities. (29)

122. COMMENT: Climate change policy should intentionally maximize the reduction of co-pollutants and greenhouse gases; if it does not do both it should not be used. In order to know where to prioritize the reductions and emissions, environmental justice analysis must be performed. (121)

123. COMMENT: There should be a Statewide climate change policy and strategy to reduce greenhouse gas emissions, and to lead to a more equitable and just system to stop climate change and address the current unequal distribution of environmental hazards and assets. Across the globe, poor communities of color are the most negatively impacted by

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climate change. A Statewide policy should also focus on hot spot areas, which are more often than not located in or around poor communities of color. (29)

124. COMMENT: The Department should adopt supervisory and inspection measures that will assure that the net effect of RGGI will be to improve or, at the very least, not degrade the air quality in or near environmental justice communities that currently bear the greatest burden of damaged air quality. (68)

125. COMMENT: The environmental justice community nationally does not support carbon trading, because carbon trading does not ensure reductions in any specific location. New Jersey should aggressively pursue the Global Warming Response Act 2050 goal of an 80 percent reduction of greenhouse gases. The State needs to aggressively fight climate change, but in a way that does not leave equity to chance. (121)

126. COMMENT: The Department should identify the most environmentally overburdened New Jersey communities through a geographic information system (GIS) tool similar to the CalEnviro Screen Version 2.0 used by the California Environmental Protection Agency to effectively target and prioritize mitigation and policy implementation in such communities. (29)

127. COMMENT: Fourth generation nuclear power is preferable to fossil fuel combustion in producing electric energy. New Jersey's nuclear power plants need to be updated and replaced with newer nuclear technology, such as nuclear as a base load with renewable power. Natural gas could replace coal, but is still a fossil fuel. Replacing nuclear power with natural gas would be a mistake. (15)

RESPONSE TO COMMENTS 12 through 127: The bulk of the comments received on the proposal, set forth herein as Comments 12 through 127, are beyond the scope of the rulemaking, and no response to them is required.

New Jersey is a participant in neither a regional program nor any other established greenhouse gas program. The Appellate Division recognized that the rules “do not create a stand-alone trading program.” *In re RGGI*, Slip op. at 14. The Department's action in

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repealing the CO₂ Budget Trading Program rules is pursuant to a directive from the New Jersey Superior Court, Appellate Division, ordering the Department to “(1) repeal the Trading Program regulations or (2) amend them to provide that they are applicable only when New Jersey is a participant in a regional program or other established greenhouse gas program.” *In re Regional Greenhouse Gas Initiative (RGGI)*, Docket No. A-4878-11 (App. Div. March 25, 2014).

As discussed above in the Response to Comments 10 and 11, the Department is required to adopt and maintain rules only if it enacts a CO₂ emissions allowance trading program. The statute is permissive, not imperative. The rules were originally promulgated to support the State’s participation in the RGGI program. Since the current rules were rendered inapplicable with the withdrawal from RGGI, the repeal of the CO₂ Budget Trading Program rules will have no environmental, social, or economic impacts and comments about the environmental and socio-economic impacts stemming from New Jersey’s withdrawal from RGGI are outside the scope of this rule proposal. This rulemaking relates only to the repeal of the CO₂ Budget Trading Program rules, not New Jersey’s participation in RGGI.

As hearing officer Ray Cantor emphasized at the August 8, 2014 public hearing on the proposal,

Before we begin to take testimony today it is important to clear up a good deal of misinformation concerning what the proposal is and what it is not. Whether the Department repeals these rules or not will not affect the prior decision to withdraw from the Regional Greenhouse Gas Initiative (RGGI). In May 2011, Governor Christie announced his intention to end New Jersey’s participation in RGGI effective December 31, 2011.

Notice of this intention was sent to RGGI, Inc. on May 31, 2011 and the formal withdrawal notice was sent on November 29, 2011. As of that date New Jersey was no longer a participant in RGGI regardless of the status of these rules. No

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action the Department is taking regarding these rules will have the effect of re-joining the State in RGGI.

The hearing officer stressed that the groups that filed the legal challenge to the Department's action – Environment New Jersey and Natural Resource Defense Council – did not at all challenge the Governor's authority to withdraw from RGGI, as underscored by the Court in its decision. Accordingly, the Hearing Officer requested that commenters speak to the rule itself, and not to objectives outside the scope of the actual rule proposal. Thus, to the extent that any comment addresses an issue outside the scope of the repeal of the CO₂ Budget Trading Program rules and the repeal or deletion of related rules, the comment is beyond the scope of this rulemaking and no response is required.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

The CO₂ Budget Trading Program rules at N.J.A.C. 7:27C are not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, no Federal standards analysis is required.

Full text of the adopted repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:27C.

Full text of the adoption follows:

7:27-22.16 Operating permit contents

(a) through (l) (No change.)

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(m) **(Reserved.)**

(n) through (t) (No change.)

7:27-22.28 **(Reserved.)**

7:27A-3.2 Definitions

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise. Unless otherwise specified below, all words and terms are as defined in N.J.S.A. 26:2C-2 and N.J.A.C. 7:27.

(No change to definitions.)

7:27A-3.5 Civil administrative penalty determination—general

(a) through (c) (No change.)

(d) The Department may assess a civil administrative penalty for a violation of any provision of N.J.A.C. 7:27 for which no penalty amount is specified under N.J.A.C.

7:27A-3.6 through 3.11. The Department shall base the amount of such a penalty assessment upon the following factors:

1. and 2. (No change.)

(e) through (h) (No change.)