

october 2008

# Regulatory Roundup

## Steps for Transitioning to XML in Q4 2008

Below is a brief list of steps to follow for XML reporting in the upcoming quarter:

- Download the Client Tool Preview (CTP) tool from Perrin Quarles Associates (PQA) and begin the clean-up of the historical inconsistencies in your monitoring plan. It is critical to begin the process in the CTP version because the official fourth quarter production tool will not be available until around December 15 (based on past releases). In order to access the data, you will also need to register the specific ORISPL numbers for the facilities you wish to test. You can do so by visiting: <http://ecmps.pqa.com/index.shtml>
- Register online with EPA to officially transition **BEFORE November 1, 2008**. To do so, you can visit <http://www.epa.gov/airmarkets/business/ecmps/registration.html>.
- Update the ESC|StackVision server to the latest software release (StackVision Version 2.2) and service pack version.
- Export the XML monitoring plan from the CTP. Import and deploy the file in your StackVision server. Generate sample QA and emissions files in StackVision and then import and evaluate them in the CTP.
- Update the configuration settings on the server to meet the new requirements for XML reporting. For a list of common configuration changes and basic guidelines, please use the latest copy of ESC's Transition to XML Reporting Guide which is available in the ESC|KnowledgeBase on ESC's website.
- Verify that the necessary personnel have ECMPS agent status in the CAMD Business System. All agents should be verified even if they were previously able to submit through the ETS-FTP system.
- Generate test XML files throughout the quarter in preparation for the official submission by January 30, 2009.

## ECMPS Production Version 3.0

The ECMPS Client Tool, both the Production and Test versions, were released on September 16 in preparation for third quarter reporting. The latest release included approximately forty coding/logic bugs that were fixed. Additionally, several new checks were added. There were also further minor revisions to the reporting instructions.

We anticipate the fine tuning of things to continue throughout future quarters in preparation for April 2009. For a complete list of items that were updated between the second and third quarters, review the release notes and reporting instruction addendum on the PQA website.

## ECMPS Update

With almost three reporting quarters of the optional period to transition to XML completed, it is time to reflect on where things stand.

Including the third quarter, approximately 775 total reporting units have made the transition to the new reporting format. This represents less than 25% of the total generating fleet across the country. We anticipate that an additional 15-25% of the fleet will join the group that has already made the move in the fourth quarter of 2008, **leaving at least half of the total reporting units to be among those making their first XML submission in April 2009.**

All Part 75 sources must submit their quarterly reports in XML format beginning the first quarter of 2009. EPA will **NOT** be extending the deadline. For those of you who are responsible for large corporate fleets, we believe it is vital to your success to begin the official transition, for at least a portion of your facilities, in fourth quarter so that you are able to personally experience the process, thus better preparing yourself and your personnel for the work to be completed by April.

Remember, registration for fourth quarter is done on a facility basis, not by individual emission units.

## Get Ready for XML Before 2009!

Become an ECMPS Client Tool tester to prepare for official XML reporting in 2009.

*Note: The deadline to become a tester is November 21, 2008! After this date, you will no longer be able to access the host server and synchronize your database. However, you will still be able to work offline, correct Monitoring Plan errors, and import and evaluate QA and emissions test files.*

# Reconsidering CAIR

On July 11, 2008, a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit ruled unanimously in *State of North Carolina, et al. v. EPA* to vacate the Clean Air Interstate Rule (CAIR). In its ruling, the Court went beyond a partial vacatur of some sections of the rule sought by North Carolina and other parties. Instead, the court vacated the rule in its entirety. This landmark ruling has upended national efforts to manage emissions from power plants. Consequently, it has created considerable uncertainty about future pollution controls in 28 states and the District of Columbia.

EPA, industry and environmental groups have recently filed petitions asking The U.S. Court of Appeals for the D.C. Circuit to reconsider the court's ruling. In its September 24, 2008 petition, EPA argues that the ruling poses dire consequences. The three-judge panel that issued the ruling "*did not have the opportunity to consider the public health, environmental and economic harms that will result from vacatur of CAIR, including tens of thousands of premature deaths, heart attacks, emergency room visits, and lost school and work days.*"

EPA also argues that the ruling, in addition to eliminating substantial emission reductions, has "*upended the settled expectations upon which substantial investment in control equipment and allowances has already been made [and] hamstring[s] EPA's ability to utilize trading programs to deal with broad-scale regional pollution problems.*"

Environmental activists also filed a petition on September 24, 2008, seeking a full D.C. Circuit rehearing in an attempt to preserve the

major environmental and health benefits from CAIR, particularly because Congress appears unable to agree on a legislative fix to revive the rule before its scheduled recess. One environmentalist says the vacatur has also created scores of problems for other EPA air programs which relied on the NO<sub>x</sub> and SO<sub>2</sub> emission reductions that would have been achieved by CAIR.

The National Mining Association also filed its petition for reconsideration on September 24, 2008, arguing that the D.C. Circuit panel's decision to vacate CAIR conflicts with a previous ruling "*as to both the validity of interstate trading and EPA's discretionary authority to use fuel factors under the cost-effectiveness test.*"

## What's Next for CAIR?

Despite broad opposition to the July 11, 2008 ruling, a successful appeal is considered, by some, to be an uphill battle because the original ruling was unanimously supported by the original D.C. Circuit panel. In the meantime, the court must decide whether to grant a rehearing or simply issue a final mandate (i.e. an order that puts the vacatur into official action) which would formally vacate CAIR. If the D.C. Circuit Court rejects the appeal, the parties could ask the Supreme Court to take the case.

## EPA Asks States to Reinstate NO<sub>x</sub> Budget Trading Programs

EPA is asking the states that were affected by the now-vacated CAIR to reinstate their NO<sub>x</sub> budget trading programs (NBP) so that the summer time ozone reduction program, known as the NO<sub>x</sub> SIP Call, will be in place for the 2009 ozone season.

"EPA is taking steps to be ready for its role in administering the NBP if continuation of the program in 2009 is necessary," say September letters from EPA Air Chief Robert Meyers.

*"I urge that you also begin taking any actions necessary to ensure that the NBP can be in place in your state for the 2009 season."*

The letters acknowledge the substantial uncertainty that remains and reflects attempts by EPA to have some type of NO<sub>x</sub> trading program in place should CAIR fail to be reinstated, either by an appeal or through Congressional action. EPA says its effort to reinstate the NO<sub>x</sub> SIP Call is in preparation for the May 1, 2009 start of the ozone season, assuming a

complete vacatur of the CAIR program. This is the first substantive guidance from EPA to the states following the Court's ruling, which has thrown state and federal NO<sub>x</sub> and SO<sub>2</sub> emissions reduction programs into disarray. The move to reinstate the NO<sub>x</sub> SIP Call is an attempt to ensure that a market for credits exists, allowing companies that have installed pollution control equipment to recoup some of their investments via the trading system.

# The Mercury Is Rising... All the Way to the Supreme Court

The Utility Air Regulatory Group (UARG) filed a petition on September 17, 2008 for a *writ of certiorari* with the Supreme Court of the United States asking that it reconsider the Federal Appeals Court ruling that vacated EPA's Clean Air Mercury Rule (CAMR).

In *UARG v. State of New Jersey, et al.*, the industry asks the justices to determine whether the D.C. Circuit failed to follow the precedent established in the high court's *Chevron* holding which requires

courts to grant agencies deference in decisions where Congress is silent. The court found that EPA was obligated to regulate hazardous emissions from power plants under § 112 of the Clean Air Act even though EPA determined that "such regulation was neither 'appropriate' nor 'necessary.'" In addition, UARG asks the high court to determine, "*Whether an outgoing EPA administrator may, without notice-and-comment, require a subsequent administrator to regulate [power plants under § 112] despite the subsequent administrator's*

*determination after rulemaking...*" and to revoke the earlier finding.

Meanwhile, the acting U.S. Solicitor General filed a request on behalf of EPA asking for a second deadline extension stating, "*The additional time sought in this application is needed to complete consultation with the Environmental Protection Agency, and to assess the legal and practical impact of the court's ruling.*" EPA now had until October 17, 2008, to file its own petition to the high court.

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## Update on EPA's New PGVP Requirements

In the Part 75 rule revisions published on January 24, 2008, EPA requires Part 75 sources to ensure that they comply with the new requirements for calibration gases under EPA's Protocol Gas Verification Program (PGVP) beginning January 1, 2009.

For more information on this program, see the preamble to the final rule (73 FR 4325) or contact John Schakenbach at 202. 343.9158 or [schakenbach.john@epa.gov](mailto:schakenbach.john@epa.gov).

### PGVP Requirements

Any EPA Protocol Gases must be from a vendor participating in the PGVP.

ESC submitted several questions to EPA about the new PGVP. Below are those questions along with EPA's response.

- Q. Does EPA's PGVP requirement only apply to calibration gases bought on or after January 1, 2009?**
- Q. Can sources continue to use calibration gases bought prior to January 1, 2009?**
- Q. Where can sources get access to a list of PGVP participants along with audit results?**

- A.** The PGVP and the PGVP compliance deadline are not final. EPA will let all interested parties know the status as soon as possible. Please check the following website periodically for news: <http://www.epa.gov/airmarkets/whatsnew.html>.

ESC will provide the latest information on EPA's PGVP at the upcoming User Group in Orlando, Florida. Don't miss it!

## AETB Requirements

### Do you understand EPA's new AETB requirements?

Beginning January 1, 2009, EPA mandates that Part 75 sources ensure their stack testers meet the requirements to be considered an Air Emission Testing Body (AETB). A brief description of the AETB requirements is detailed in the table below.

Program	Requirements	Steps to Comply
AETB	Anyone performing Part 75 RATAs, Appendix E or LME testing must comply with ASTM D 7036.	Any source doing a RATA, Appendix E or LME test on or after January 1, 2009, must ensure that their stack tester meets AETB requirements.

ESC submitted several questions to EPA about the new AETB requirements. Below are those questions along with EPA's responses.

**Q. A source is doing a stack test in Q1 2009. What should they rely on to ensure that their stack tester meets the AETB requirements?**

**A.** They should rely on one of the following:

- A certificate of accreditation of relevant scope issued by a recognized, national accreditation body
- A letter of certification signed by senior management of the AETB. The on-site Qualified Individual shall provide the affected source with copies of the qualification credentials relevant to the scope of the testing conducted.

**Q. Can you direct sources to a website for a list of accredited stack testing companies and qualified individuals?**

**A.** Stack testing companies that have received interim accreditation are identified at: <http://www.betterdata.org/accreditedorganizations.htm>.

Individuals who have met the Qualified Individual requirements are listed at: <http://www.sesnews.org/qualifiedindividuals.htm>.

*For more information on the AETB program, see the preamble to the final rule (73 FR 4325 - 4327) or contact John Schakenbach at 202.343.9158 or [schakenbach.john@epa.gov](mailto:schakenbach.john@epa.gov).*

## GHG Update

### The CO<sub>2</sub> Programs are Heating Up...

#### Regional Greenhouse Gas Initiative (RGGI)

The first CO<sub>2</sub> allowance auction in the nation was recently held by the RGGI organization with future auctions planned for later this year. All participating states are expected to have rules in place to support the program and to participate in the quarterly allowance auctions beginning in 2009. Facilities must hold enough allowance credits by March 31, 2012 for the first compliance period, which covers reporting years 2009, 2010 and 2011.

If you are a source located in a RGGI state, you must begin reporting CO<sub>2</sub> mass emissions in first quarter 2009.

Visit RGGI's new website at: <http://rggi.org/home> for more information.

#### Western Climate Initiative (WCI)

On September 23, 2008, the Western Climate Initiative released the draft program design document. This program is similar to RGGI in that it will be a cap-and-trade based program, but it will expand beyond the power generation industry to other industries and consumer groups.

The WCI program is scheduled to begin collecting emissions data in 2010 which will then be reported in 2011. The first three-year compliance period will begin in 2012 with a second phase to follow in 2015. To view the entire draft design document, visit:

<http://www.westernclimateinitiative.org/>.

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## EPA's Draft Rule for Reporting CO<sub>2</sub>

As of September 26, 2008 (the deadline set by the Fiscal Year 2008 consolidated appropriations bill), the required draft rule for CO<sub>2</sub> data collection as part of a national greenhouse gas registry program had not been published. EPA had committed to meeting this deadline as recently as March.

Senator Feinstein (D-CA) drafted a letter to EPA Administrator Stephen Johnson in which she states, "EPA has yet to even initiate the Office of Management and the Budget (OMB) interagency review process, which typically takes 90 days or longer."

In her letter, she also urged Administrator Johnson to personally intervene and expedite the process.

## Get the Latest Available Regulatory Information

The latest available information on these topics, as well as others, will be discussed during the Regulatory Update session at User Group in Orlando. You don't want to miss this important information session!

## PADEP Update

### PADEP Moves Forward with Revision 8

The Pennsylvania Department of Environmental Protection (PADEP) posted the draft version of the "Applicability Determination and Implementation Procedures for Continuous Source Monitoring Manual (CSMM) Revision No. 8" on September 13, 2008 in the PA Bulletin. This document proposes the procedures and schedule for monitored sources that must comply with the requirements of 25 Pa. Code § 139.102(3) and use Revision 8 of the CSMM. Written comments were due to PADEP on October 13, 2008. A copy of the draft technical guidance document is available on PADEP's website at: <http://www.dep.state.pa.us/dep/deputate/airwaste/aq/cemspage/cems.htm>.

### Get Prepared for PADEP CSMM Revision 8

Are you prepared to meet the requirements under CSMM Rev. 8? A brief summary of the steps to Rev. 8 compliance are listed below.

- Determine the implementation date for your source(s). Be prepared to meet the notification and submittal requirements listed in the "final" version of the PADEP's "Applicability Determination and Implementation Procedures for Continuous Source Monitoring Manual (CSMM) Revision No. 8" once it is posted in the PA Bulletin.
- Complete and submit a registration form to use PADEP's new tool - "CEMDPS\*Online" Go to PADEP's website (listed above), download, complete and submit the form.
- Update the monitoring plan(s) for the source(s) that are transitioning to Rev. 8 using PADEP's CEMDPS tool. **IMPORTANT! You must have an up-to-date complete, error-free PADEP monitoring plan for each unit at the facility making the transition.** The monitoring plan EDR file (.txt) will be imported into your DAS to meet the reporting requirements.
- Determine and make the configuration changes required to be Rev. 8 compliant *before* the implementation date.
- Obtain the StackVision software release that meets PADEP Rev. 8 reporting requirements prior to the end of the first reporting quarter under Rev. 8 (or soon thereafter within the reporting month).
- Generate the required EDR files to submit to PADEP via their new tool - "CEMDPS\*Online."
- Upload the files into the CEMDPS\* Online tool and validate the submittal.

### PADEP Issues Mercury Technical Draft

On September 27, 2008, PADEP posted the draft version of the "Interim Technical Guidance Pertaining to Continuous Source Monitoring Systems for Mercury" in the PA Bulletin. This technical guidance document is needed for sources (EGUs) subject to 25 Pa. Code § 123.210 - 123.215 to comply with the January 1, 2009, deadline for monitoring and reporting mercury emissions.

Once finalized, this interim guidance document will provide specifications and procedures for mercury continuous source monitoring systems and will remain in effect until PADEP adopts revisions to Revision 8 of the CSMM. Many of the requirements in this document reference provisions of 40 CFR 75 Subpart I (for determining Hg mass emissions). A copy of the draft interim guidance document is available on PADEP's website at: <http://www.dep.state.pa.us/dep/deputate/airwaste/aq/cemspage/cems.htm>.

Written comments on this draft document must be submitted by October 27, 2008, via email to [tpitts@state.pa.us](mailto:tpitts@state.pa.us) or snail mail to the following address:

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