


Form #3

SECRETARY OF THE
STATE OF NEW YORK


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 29, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No) West Virginia Department of Environmental Protection
Division of Air Quality

601 57th Street, S.E.

Charleston, West Virginia 25304

LEGISLATIVE RULE TITLE: REPEAL 45CSR37 - Mercury Budget Trading Program to
Reduce Mercury Emissions

1. Authorizing statute(s) citation W. Va. Code §22-5-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

July 9, 2008

b. What other notice, including advertising, did you give of the hearing?

Public Notice placed on Department of Environmental Protection's web site,
distributed via the agency's mailing list, and in a Class I legal ad published in the
Charleston Newspapers.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

Public Hearing/Comment Period Ended - August 11, 2008

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 29, 2008

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule: (Please type)

John A. Benedict, Director

601 57th Street, S.E.

Charleston, WV 25304

Phone: (304) 926-0499 ext. 1966

Fax: (304) 926-0488

John.A.Benedict@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

See "f" above

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY**

BRIEFING DOCUMENT

Rule Title: 45CSR37 - "Mercury Budget Trading Program to Reduce Mercury Emissions"

A. AUTHORITY: W.Va. Code §22-5-4

B. SUMMARY OF RULE:

The Department of Environmental Protection is proposing to repeal Mercury Budget Trading Program rule 45CSR37. This rule established the general provisions and designated representative, permitting, allowance and monitoring provisions for the Mercury Budget Trading Program, as a means of reducing national mercury emissions, pursuant to the federal Clean Air Mercury Rule established under Section 111 of the Clean Air Act (CAA) and 40 CFR 60, Subpart HHHH. 45CSR37 applies to coal-fired electric utility steam generating units that have greater than 25 MW_e generating capacity.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

45CSR37 is to be repealed due to vacature of the federal counterpart program by the US Court of Appeals for the District of Columbia Circuit (No. 05-1097, decided February 8, 2008).

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

Because the federal counterpart regulation has been vacated by federal court, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with W.Va. Code §§22-1A-1 and 3(c), the Secretary has determined that the repeal of this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

**F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION
ADVISORY COUNCIL:**

At its June 24, 2008 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. (See attached minutes for Council's discussion).

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Tuesday, June 24, 2008

601 57th Street, SE, Charleston, WV

West Virginia Room – 3rd Floor

IN ATTENDANCE:

Members of the Council:

Jackie Hallinan
Karen Price
Bill Raney
Rick Roberts

DEP:

Randy Huffman	Cabinet Secretary
Lisa McClung	Deputy Cabinet Secretary and Director, Division of Water and Waste Management
Raymond Franks II	General Counsel
Karen Watson	Associate General Counsel
Kathy Cosco	Communications Director
Pam Nixon	Environmental Advocate
Ken Politan	Mining & Reclamation
Lewis Halstead	Mining & Reclamation
Charlie Sturey	Mining & Reclamation
Carroll Cather	Water & Waste Management
Don Martin	Land Restoration
Brian Long	Water & Waste Management
Dan Arnold	Water & Waste Management
Mike Zeto	Environmental Enforcement
Terrie Sangid	Water & Waste Management
Jim Mason	Air Quality
Mike Johnson	Water & Waste Management
Kathy Emery	Water & Waste Management
Scott Mandirola	Water & Waste Management

Visitors:

Tom Boggs	Chamber of Commerce
Don Garvin	WV Environmental Council
Ruth Lemmon	WV Auto/Truck Dealers Association

OLD BUSINESS:

Secretary Huffman called the meeting to order at 1:35 p.m., and he announced that Members Lisa Dooley and Larry Harris would not be attending. On motion made by Mr. Raney and seconded by Ms. Hallinan, the Council approved the minutes from the March 18, 2008 meeting. Secretary Huffman then ceded the floor to Mr. Franks.

NEW BUSINESS:

Mr. Franks noted that for the 2009 regular legislative session, DEP was proposing changes to 20 rules, grouped by Division for presentation to the Council. Depending on who had shepherded the rule through its initial drafting, either Mr. Franks or Ms. Watson would lead the discussion, with program administrators available to assist in answering the Council's questions.

Ms. Watson presented 60 CSR 3, the "Brownfields" Rule. Ms. Watson explained that the Rule was currently pending before the Secretary of State for authorization as an emergency rule, and that the proposed changes included adjustments to the "de minimis" table and enhancing DEP's flexibility in obtaining risk assessments.

Ms. Price referred to a letter recently sent to DEP seeking clarification of the Rule's provisions concerning land use covenants and long-term maintenance agreements. Secretary Huffman stated that the letter would be retrieved and the issue noted for further consideration by the agency.

Mr. Raney inquired whether the Council could recommend changes to the rules as presented. Ms. Watson responded in the affirmative. Mr. Raney then asked whether written comments, such as those submitted by Mr. Harris prior to the meeting, would be appended to the minutes. Mr. Franks responded in the negative, and Ms. Watson expounded that Mr. Harris's comments would be summarized and addressed orally during the discussion of the particular rules involved.

Mr. Franks then presented 38 CSR 2, the Surface Mining Reclamation Rule. Mr. Franks explained that the proposed changes would expand the Secretary's oversight of "approved persons" authorized to render technical certifications contained within mining permit applications, and would clarify certain collateral activities as being within the scope of requests for incidental boundary revisions to existing permits. Mr. Franks also noted that the proposed Rule would set forth more relevant and exacting criteria for the Secretary to consider in evaluating applications for revisions.

Mr. Raney inquired generally about the provisions with respect to approved persons. Secretary Huffman replied that the increased oversight is necessary to improve the initial quality of the permit applications, such that the delays occasioned by subsequent corrections would be reduced or eliminated. Mr. Raney asked whether approved persons could include anyone other than engineers, and Mr. Halstead responded that the definition extended to surveyors and geologists. Mr. Raney noted the need to establish a procedure for suspension or revocation to limit the agency's unfettered discretion, to which Secretary Huffman and Mr. Franks replied that the Rule provided for notice and hearing prior to curtailing the privileges of anyone on the approved-person list.

Ms. Watson presented 47 CSR 30, establishing NPDES requirements for coal mining facilities. Ms. Watson explained that the proposed changes were relatively minor, designed to enhance consistency with the non-coal rule, to allow for digital signatures, and to permit correction of clerical errors.

The Council then considered the Air Quality rules. Mr. Franks presented 45 CSR 1 and 45 CSR 26, relating to control and reduction of nitrogen oxides from, respectively, non-electric and electric generating units, the latter by means of a budget trading program. The rules are to be repealed in their entireties, and Mr. Mason explained that both are being subsumed within the Clean Air Interstate Rule program.

Mr. Franks then presented 45 CSR 8, the Ambient Air Quality Rule. Mr. Franks explained that the 1-hour primary and secondary ozone standards were being replaced with 8-hour standards, with the maximum tolerance being reduced slightly. Mr. Raney inquired as to the practical effect of the proposed change, particularly with regard to whether non-compliance areas within the State might be expanded. Mr. Mason replied that an expansion might occur, but that it was difficult to predict at this early stage. Mr. Mason added that the time-period increase would inevitably lead to more accurate measurements.

Ms. Watson presented 45 CSR 13, governing permits for constructing and modifying non-major stationary sources of air pollutants. Ms. Watson explained that the Rule was being amended to reflect the recent statutory changes reducing the lag time for issuing permits and authorizing certain pre-permit construction. It was noted that Mr. Harris had submitted in writing his concern that courts would be loath to enforce agency cease-and-desist orders based on defects discovered during the permitting process after construction had already begun. Ms. Watson pointed out that the statute had been carefully crafted to avoid facile invocation of detrimental reliance, with Mr. Franks observing that the Rule strove to conform to the statute. Ms. Price wondered whether one or more of the timeframe provisions included within the existing Rule had been inadvertently omitted from the proposed version. Ms. Watson responded that the Rule had been carefully checked for completeness, but that she would once again verify the language to assure its accuracy.

Mr. Franks presented 45 CSR 14, governing permits for constructing and significantly modifying major stationary sources of air pollutants. Mr. Franks explained that references to pollution control projects and clean units were deleted in accordance with a federal appellate court decision vacating those provisions.

Mr. Franks went on to present 45 CSR 16, 45 CSR 25, and 45 CSR 34, relating respectively to performance standards for new stationary sources, pollution from hazardous waste treatment, storage, and disposal facilities, and emission standards for hazardous air pollutants. Mr. Mason noted that the changes incorporate revisions to the Rules' federal counterparts, except that some of the new standards were not incorporated within 45 CSR 34, because they constituted unfunded mandates. Mr. Garvin was recognized, and he asked whether the failure to incorporate equated to a lack of regulation. Mr. Mason responded in the negative, explaining that the monitoring and regulation would be performed by the federal government. Mr. Garvin inquired as to the affected industries, and Mr. Mason referred to a list including smaller gas facilities and paint-stripping shops.

Ms. Watson presented 45 CSR 37, detailing the budget trading program to reduce mercury emissions. Ms. Watson explained that the rule is being repealed as inconsistent with a federal appellate court decision, pending alternative action by the EPA. Mr. Garvin inquired whether the Rule repealed two years ago would be reinstated upon revocation of the current version, to which Ms. Watson and Mr. Franks replied that it would not, if there had indeed been a previous rule in place, which was somewhat in question. Mr. Mason explained that mercury emissions would be monitored and regulated as usual, except that budget trading would not be available as a method of reduction. He also stated that there have been discussions on a national level as to whether to reinstate the federal mercury monitoring requirements.

The Council then turned its attention to the Water and Waste Management Rules. Ms. Watson presented 33 CSR 20, governing hazardous waste management systems. Ms. Watson explained that the Rule incorporated by reference its federal counterpart, the most salient change to which is its attempt to reduce disposal by permitting facilities to stage hazardous waste for three days pending recycling. Mr. Raney asked whether three days was sufficient time, and Mr. Cather responded in the affirmative.

Mr. Franks presented 33 CSR 24, the Hazardous Waste Management Fee Rule. Mr. Franks explained that increases to the fee assessments are necessary to sustain the underlying Fund by ensuring sufficient matching revenue for federal grants. Ms. Price indicated her belief that, as part of the legislative compromise extending the fee's duration, no increases would be forthcoming until completion and review of the Fund's legislative audit. Secretary Huffman responded that the preliminary audit findings in no way indicate any misallocation within the Fund or contravene the agency's determination that fee increases are necessary. Ms. Lemmon was recognized, and she commented that the proposed increase was unfair to automobile and truck dealers, as well as other small generators. Ms. Lemmon suggested that a study be done to identify the industries causing DEP to incur program costs, with fee assessments to be made proportionately.

Ms. Watson presented 33 CSR 22 and 47 CSR 56, governing the assessment of civil administrative penalties for, respectively, hazardous and solid waste violations and violations relating to groundwater. Ms. Watson explained that the Rules were being modified for the first time since their initial promulgation, with the purpose of clarifying their application by listing additional factors to be considered in calculating penalties, providing ratings examples, and expanding facility categories.

Ms. Watson then presented 47 CSR 31, addressing the State Water Pollution Control Revolving Fund. Ms. Watson explained that the proposed changes include the creation of a state review process for sewer projects in lieu of a wholesale adoption of the federal requirements. Mr. Roberts observed that many of the eligibility criteria would be deleted, but Ms. Emery assured the Council that inasmuch as the criteria were not being uniformly met, the deletion would have no practical effect on the Fund's administration. Ms. Watson advised Mr. Roberts that if he continued to have concerns upon further review, he should submit written suggestions for changes during the formal comment period.

Mr. Franks presented 47 CSR 32, governing the certification of laboratories conducting analyses of waste and wastewater. Mr. Franks explained that the proposed changes are designed to modernize outdated procedures and protocols that have remained constant since 1995, and to increase program funding through increased certification fees and a new application fee. Mr. Raney asked whether the new fees would render the program self-sustaining, and Mr. Arnold replied that it would for the time-being. In response to further inquiry, Mr. Arnold stated that DEP conducts annual, on-site audits of commercial and industrial labs, with municipal labs typically audited every two years, depending on the experience of the support personnel.

Ms. Watson presented 47 CSR 34, the Dam Safety Rule. Ms. Watson explained that the Rule is being extensively augmented to govern disbursement and use of a new Revolving Fund to finance repair and rehabilitation of deficient dams. Secretary Huffman commented that it appeared imminent that the Legislature would approve a transfer of \$350,000 from excess general revenue as seed money for the Fund.

Lastly, Ms. Watson presented 47 CSR 2, the Water Quality Standards Rule. Ms. Watson explained that the proposed revisions are designed to clarify the definition of Category A use, while providing specific standards to be applied in the permitting process to determine in a more streamlined fashion whether the use is unsuitable in cases of insufficient flow and hydrologic modification. Mr. Raney commented that the Category A determination process has always been a significant problem for the coal industry. Ms. Price also agreed for her members. Mr. Garvin noted that the environmental community had expressed some initial concern regarding the proposed streamlining mechanisms, but that there was some general support for taking the matter out of the legislative arena. Mr. Huffman affirmed that the revisions are designed solely for the benefit of the regulated public and that the revisions must include the clarification that Category A applies statewide.

Ms. Watson reported that the rules will proceed to be filed with the Secretary of State, some perhaps as early as the week following the Council meeting, and that some will have an extended 45-day comment period.

Mr. Franks requested closing comments from Council members and from the public. Following the cessation of discussion, Mr. Franks reminded the Council that the next meeting is scheduled for 1:30 p.m. on September 9, 2008.

Secretary Huffman declared the meeting adjourned at 3:25 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR37 - "Mercury Budget Trading Program to Reduce Mercury Emissions"

Type of Rule: X Legislative Interpretive Procedural

Agency: Division of Air Quality

Address: 601 57th Street SE
Charleston, WV 25304

Phone Number: 926-0475

Email: tmowrer@wvdep.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR37, due to vacatur of the Mercury Budget Program by the US Court of Appeals for the District of Columbia Circuit. The proposed repeal of this rule will result in a loss of revenue, because the state will not sell mercury allowances in 2010 and thereafter.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2009 Increase/Decrease (use "-")	2010 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	- \$ 2,500,000	- \$ 2,500,000

Rule Title: 45CSR37 - "Mercury Budget Trading Program to Reduce Mercury Emissions"

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

Lost revenues from the selling of mercury allowances which would have been realized upon full program implementation in 2010 and thereafter may range from \$0 to \$4.4 million, based on the number of new electric generating units and the market value of mercury allowances. Therefore, \$2.5 million is a reasonable estimate of lost revenue due to vacateur of the Mercury Budget Program. EPA projects that mercury allowances would sell for approximately \$2000 per ounce.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 7/11/04


Signature of Agency Head

RECEIVED

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

2008 AUG 29 AM 11:01

SECRETARY OF STATE
STATE OF WEST VIRGINIA

SERIES 37-
MERCURY BUDGET TRADING PROGRAM
TO REDUCE MERCURY EMISSIONS

§45-37-1. General.

—1.1. Scope. -- This rule establishes the general provisions and the designated representative, permitting, allowance and monitoring provisions for the Mercury (Hg) Budget Trading Program, as a means of reducing mercury emissions, pursuant to the federal Clean Air Mercury Rule (CAMR) established under Section 111 of the Clean Air Act (CAA) and 40 CFR 60, Subpart HHHH. The Secretary of the Department of Environmental Protection authorizes the Administrator of the United States Environmental Protection Agency to assist the Secretary in implementing the multi-state Hg Budget Trading Program in West Virginia by carrying out the functions set forth for the Administrator in the requirements of this rule and 40 CFR §60.24(h)(6).

—1.2. Numbering and text breakdown. -- This rule generally meets the numbering, indentation and text breakdown requirements set forth in 153CSR6. However, its numbering structure intentionally follows the numbering structure of 40 CFR 60, Subpart HHHH, resulting in several minor areas of nonconformity with 153CSR6.

—1.3. Authority. -- W. Va. Code §22-5-4.

—1.4. Filing Date. -- April 28, 2006.

—1.5. Effective Date. -- May 1, 2006.

§45-37-2. Definitions.

—2.1. "Account number" means the identification number given by the Administrator to each Hg Allowance Tracking System account.

—2.2. "Acid Rain emissions limitation" means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

—2.3. "Acid Rain Program" means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under Title IV of the CAA and 40 CFR Parts 72 through 78.

—2.4. "Administrator" means the Administrator of the United States Environmental Protection Agency (U.S. EPA) or the Administrator's duly authorized representative.

—2.5. "Allocate" or "allocation" means the determination by the Secretary or the Administrator of the amount of Hg allowances to be initially credited to a Hg Budget unit or a new unit set aside under sections 40 through 42.

—2.6. "Allowance transfer deadline" means, for a control period, midnight of March 1, if it is a business day or, if March 1 is not a business day, midnight of the first business day thereafter immediately following the control period and is the deadline by which a Hg allowance transfer must be submitted for recordation in a Hg Budget source's compliance account in order to be used to meet the source's Hg Budget emissions limitation for such control period in accordance with section 54.

—2.7. "Alternate Hg designated representative" means, for a Hg Budget source and each Hg Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with sections 10 through 14, to act on behalf of the Hg designated representative in matters pertaining to the Hg Budget Trading Program.

—2.8. "Automated data acquisition and handling system" or "DAHS" means that component of the continuous emission monitoring system (CEMS)

or other emissions monitoring system approved for use under sections 70 through 76, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required sections 70 through 76:

—2.9. “Boiler” means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam or other medium:

—2.10. “Bottoming-cycle cogeneration unit” means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production:

—2.11. “CAIR NO_x Annual Trading Program” means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with Subparts AA through H of 40 CFR Part 96 and 40 CFR §51.123, as a means of mitigating interstate transport of fine particulates and nitrogen oxides:

—2.12. “CAIR NO_x Ozone Season Trading Program” means a multistate nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with Subparts AAAA through IIII of 40 CFR Part 96 and 40 CFR §51.123, as a means of mitigating interstate transport of ozone and nitrogen oxides:

—2.13. “CAIR SO₂ Trading Program” means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with Subparts AAA through III of 40 CFR Part 96 and §51.124, as a means of mitigating interstate transport of fine particulates and sulfur dioxide:

—2.14. “Clean Air Act” or “CAA” means the Clean Air Act, 42 U.S.C. 7401, et seq:

—2.15. “Coal” means any solid fuel classified as anthracite, bituminous, subbituminous or lignite by the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388-77, 90, 91, 95, 98a or 99 (Reapproved 2004):

—2.16. “Coal-derived fuel” means any fuel (whether in a solid, liquid or gaseous state) produced by the mechanical, thermal or chemical processing of coal:

—2.17. “Coal-fired” means combusting any amount of coal or coal derived fuel, alone or in combination with any amount of any other fuel, during any year:

—2.18. “Cogeneration unit” means a stationary, coal-fired boiler or stationary, coal-fired combustion turbine:

—2.18.a. Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating or cooling purposes through the sequential use of energy; and

—2.18.b. Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity:

—2.18.b.1. For a topping-cycle cogeneration unit,

—2.18.b.1.A. Useful thermal energy not less than 5 percent of total energy output; and

—2.18.b.1.B. Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output:

—2.18.b.2. For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input:

~~2.19. "Combustion turbine" means:~~

~~2.19.a. An enclosed device comprising a compressor, a combustor and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine, and~~

~~2.19.b. If the enclosed device under subdivision 2.19.a is combined cycle, any associated heat recovery steam generator and steam turbine.~~

~~2.20. "Commence commercial operation" means, with regard to a unit serving a generator:~~

~~2.20.a. To have begun to produce steam, gas or other heated medium used to generate electricity for sale or use, including test generation, except as provided in section 5;~~

~~2.20.a.1. For a unit that is a Hg Budget unit under section 4 on the date the unit commences commercial operation as defined in subdivision 2.20.a and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date will remain the unit's date of commencement of commercial operation.~~

~~2.20.a.2. For a unit that is a Hg Budget unit under section 4 on the date the unit commences commercial operation as defined in subdivision 2.20.a and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit will be treated as a separate unit with a separate date for commencement of commercial operation as defined in subdivision 2.20.a or 2.20.b as appropriate.~~

~~2.20.b. Notwithstanding subdivision 2.20.a and except as provided in section 5, for a unit that is not a Hg Budget unit under section 4 on the date the unit commences commercial operation as defined in subdivision 2.20.a, the unit's date for commencement of commercial operation will be the date on which the unit becomes a Hg Budget unit under section 4.~~

~~2.20.b.1. For a unit with a date for commencement of commercial operation as~~

~~defined in subdivision 2.20.b and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source); such date will remain the unit's date of commencement of commercial operation.~~

~~2.20.b.2. For a unit with a date for commencement of commercial operation as defined in subdivision 2.20.b and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit will be treated as a separate unit with a separate date for commencement of commercial operation as defined in subdivision 2.20.a or 2.20.b as appropriate.~~

~~2.21. "Commence operation" means:~~

~~2.21.a. To have begun any mechanical, chemical or electronic process, including, with regard to a unit, startup of a unit's combustion chamber, except as provided in section 5.~~

~~2.21.a.1. For a unit that is a Hg Budget unit under section 4 on the date the unit commences operation as defined in subdivision 2.21.a and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date will remain the unit's date of commencement of operation.~~

~~2.21.a.2. For a unit that is a Hg Budget unit under section 4 on the date the unit commences operation as defined in subdivision 2.21.a and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit will be treated as a separate unit with a separate date for commencement of operation as defined in subdivision 2.21.a or 2.21.b as appropriate.~~

~~2.21.b. Notwithstanding subdivision 2.21.a and except as provided in section 5, for a unit that is not a Hg Budget unit under section 4 on the date the unit commences operation as defined in subdivision 2.21.a, the unit's date for commencement of operation will be the date on which the unit becomes a Hg Budget unit under section 4.~~

~~2.21.b.1. For a unit with a date for commencement of operation as defined in~~

~~subdivision 2.21.b and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date will remain the unit's date of commencement of operation.~~

~~2.21.b.2. For a unit with a date for commencement of operation as defined in subdivision 2.21.b and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit will be treated as a separate unit with a separate date for commencement of operation as defined in subdivision 2.21.a or 2.21.b as appropriate.~~

~~2.22. "Common stack" means a single flue through which emissions from two (2) or more units are exhausted.~~

~~2.23. "Compliance account" means a Hg Allowance Tracking System account, established by the Administrator for a Hg Budget source under sections 51 through 57, in which any Hg allowance allocations for the Hg Budget units at the source are initially recorded and in which are held any Hg allowances available for use for a control period in order to meet the source's Hg Budget emissions limitation in accordance with section 54.~~

~~2.24. "Continuous emission monitoring system" or "CEMS" means the equipment required under sections 70 through 76 to sample, analyze, measure and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of Hg emissions; stack gas volumetric flow rate; stack gas moisture content and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR Part 75. The following systems are the principal types of CEMS required under sections 70 through 76:~~

~~2.24.a. A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh); and~~

~~2.24.b. A Hg concentration monitoring system, consisting of a Hg pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of Hg emissions in units of micrograms per dry standard cubic meter ($\mu\text{g}/\text{dscm}$); and~~

~~2.24.c. A moisture monitoring system, as defined in 40 CFR §75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O ; and~~

~~2.24.d. A carbon dioxide monitoring system, consisting of a CO_2 concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2 ; or~~

~~2.24.e. An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2 , in percent O_2 ;~~

~~2.25. "Control period" means the period beginning January 1 of a calendar year, except as provided in subdivision 6.3.b, and ending on December 31 of the same year, inclusive.~~

~~2.26. "Department of Environmental Protection" or "DEP" means the West Virginia Department of Environmental Protection created by the provisions of W. Va. Code §22-1-1, et seq.~~

~~2.27. "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded and reported to the Administrator by the Hg designated representative and as determined by the Administrator in accordance with sections 70 through 76.~~

~~2.28. "Excess emissions" means any ounce of mercury emitted by the Hg Budget units at a Hg Budget source during a control period that exceeds the Hg Budget emissions limitation for the source.~~

~~—2.29. “General account” means a Hg Allowance Tracking System account, established under section 51, that is not a compliance account.~~

~~—2.30. “Generator” means a device that produces electricity.~~

~~—2.31. “Gross electrical output” means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).~~

~~—2.32. “Heat input” means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded and reported to the Administrator by the Hg designated representative and determined by the Administrator in accordance with sections 70 through 76 and excluding the heat derived from preheated combustion air, recirculated flue gases or exhaust from other sources.~~

~~—2.33. “Heat input rate” means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.~~

~~—2.34. “Hg authorized account representative” means, with regard to a general account, a responsible natural person who is authorized, in accordance with section 52, to transfer and otherwise dispose of Hg allowances held in the general account and, with regard to a compliance account, the Hg designated representative of the source.~~

~~—2.35. “Hg allowance” means a limited authorization issued by the Secretary or the Administrator under sections 40 through 42 to emit one ounce of mercury during a control period of the specified calendar year for which the authorization is allocated or of any calendar year~~

~~thereafter under the Hg Budget Trading Program. An authorization to emit mercury that is not issued under the provisions of a state plan that adopts the requirements of 40 CFR Part 60, Subpart HHHH and is approved by the Administrator in accordance with 40 CFR §60.24(h)(6) will not be a “Hg allowance.”~~

~~—2.36. “Hg allowance deduction” or “deduct Hg allowances” means the permanent withdrawal of Hg allowances by the Administrator from a compliance account in order to account for a specified number of ounces of total mercury emissions from all Hg Budget units at a Hg Budget source for a control period, determined in accordance with sections 51 through 57 and sections 70 through 76 or to account for excess emissions.~~

~~—2.37. “Hg allowances held” or “hold Hg allowances” means the Hg allowances recorded by the Administrator or submitted to the Administrator for recordation, in accordance with sections 51 through 62, in a Hg Allowance Tracking System account.~~

~~—2.38. “Hg Allowance Tracking System” means the system by which the Administrator records allocations, deductions and transfers of Hg allowances under the Hg Budget Trading Program. Such allowances will be allocated, held, deducted or transferred only as whole allowances.~~

~~—2.39. “Hg Allowance Tracking System account” means an account in the Hg Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring or deducting of Hg allowances.~~

~~—2.40. “Hg Budget emissions limitation” means, for a Hg Budget source, the equivalent in ounces of the Hg allowances available for deduction for the source under subsections 54.1 and 54.2 for a control period.~~

~~—2.41. “Hg Budget permit” means the legally binding and federally enforceable written document or portion of such document, issued by the Secretary under sections 20 through 24, including any permit revisions, specifying the Hg Budget Trading Program requirements applicable~~

to a Hg Budget source, to each Hg Budget unit at the source and to the owners and operators and the Hg designated representative of the source and each such unit:

—2.42. “Hg Budget source” means a source that includes one or more Hg Budget units:

—2.43. “Hg Budget Trading Program” means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance with 40 CFR §60.24(h)(6), as a means of reducing national Hg emissions:

—2.44. “Hg Budget unit” means a unit that is subject to the Hg Budget Trading Program under section 4:

—2.45. “Hg designated representative” means, for a Hg Budget source and each Hg Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with sections 10 through 14, to represent and legally bind each owner and operator in matters pertaining to the Hg Budget Trading Program:

—2.46. “Life-of-the-unit, firm power contractual arrangement” means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit’s total costs, pursuant to a contract:

—2.46.a. For the life of the unit;

—2.46.b. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

—2.46.c. For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period:

—2.47. Reserved:

—2.48. “Maximum design heat input” means, starting from the initial installation of a unit, the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady-state basis as specified by the manufacturer of the unit or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady-state basis, such decreased maximum amount as specified by the person conducting the physical change:

—2.49. “Monitoring system” means any monitoring system that meets the requirements of sections 70 through 76, including a continuous emissions monitoring system, an alternative monitoring system or an excepted monitoring system under 40 CFR Part 75:

—2.50. “Nameplate capacity” means, starting from the initial installation of a generator, the maximum electrical generating output (in MW_e) that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MW_e) that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as specified by the person conducting the physical change:

—2.51. “Operator” means any person who operates, controls or supervises a Hg Budget unit or a Hg Budget source and will include, but not be limited to, any holding company, utility system or plant manager of such a unit or source:

—2.52. “Ounce” means 2.84×10^7 micrograms: For the purpose of determining compliance with the Hg Budget emissions limitation, total ounces of mercury emissions for a control period will be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with sections 70 through 76, but with any remaining fraction of

an ounce equal to or greater than 0.50 ounces deemed to equal one ounce and any remaining fraction of an ounce less than 0.50 ounces deemed to equal zero ounces.

~~2.53. "Owner" means any of the following persons:~~

~~2.53.a. With regard to a Hg Budget source or a Hg Budget unit at a source, respectively:~~

~~2.53.a.1. Any holder of any portion of the legal or equitable title in a Hg Budget unit at the source or the Hg Budget unit;~~

~~2.53.a.2. Any holder of a leasehold interest in a Hg Budget unit at the source or the Hg Budget unit; or~~

~~2.53.a.3. Any purchaser of power from a Hg Budget unit at the source or the Hg Budget unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner will not include a passive lessor or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such Hg Budget unit; or~~

~~2.53.b. With regard to any general account, any person who has an ownership interest with respect to the Hg allowances held in the general account and who is subject to the binding agreement for the Hg authorized account representative to represent the person's ownership interest with respect to Hg allowances:~~

~~2.54. "Person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country and any firm, partnership or association of whatever nature.~~

~~2.55. "Potential electrical output capacity" means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh and multiplied by 8,760 hr/yr.~~

~~2.56. "Receive" or "receipt of" means, when referring to the Secretary or the Administrator, to come into possession of a document, information or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official correspondence log or by a notation made on the document; information or correspondence, by the Secretary or the Administrator in the regular course of business.~~

~~2.57. "Recordation", "record" or "recorded" means, with regard to Hg allowances, the movement of Hg allowances by the Administrator into or between Hg Allowance Tracking System accounts, for purposes of allocation, transfer or deduction:~~

~~2.58. "Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR §75.22:~~

~~2.59. "Repowered" means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:~~

~~2.59.a. Atmospheric or pressurized fluidized bed combustion;~~

~~2.59.b. Integrated gasification combined cycle;~~

~~2.59.c. Magnetohydrodynamics;~~

~~2.59.d. Direct and indirect coal-fired turbines;~~

~~2.59.e. Integrated gasification fuel cells; or~~

~~2.59.f. As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under subdivisions 2.59.a through 2.59.e and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.~~

~~2.60. "Secretary" means the Secretary of the~~

Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

~~2.61. "Serial number" means, for a Hg allowance, the unique identification number assigned to each Hg allowance by the Administrator.~~

~~2.62. "Sequential use of energy" means:~~

~~2.62.a. For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or~~

~~2.62.b. For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.~~

~~2.63. "Source" means all buildings, structures or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the CAA, a "source," including a "source" with multiple units, will be considered a single "facility."~~

~~2.64. "State" means:~~

~~2.64.a. For purposes of referring to a governing entity, one of the States in the United States, the District of Columbia or, if approved for treatment as a State under 40 CFR Part 49, the Navajo Nation or Ute Indian Tribe that adopts the Hg Budget Trading Program pursuant to 40 CFR §60.24(h)(6); or~~

~~2.64.b. For purposes of referring to geographic areas, one of the States in the United State, the District of Columbia, the Navajo Nation Indian country or the Ute Tribe Indian country.~~

~~2.65. Reserved.~~

~~2.66. "Submit" or "serve" means to send or transmit a document, information or correspondence to the person specified in accordance with the applicable regulation:~~

~~2.66.a. In person;~~

~~2.66.b. By United States Postal Service; or~~

~~2.66.c. By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline will be determined by the date of dispatch, transmission or mailing and not the date of receipt.~~

~~2.67. "Title V operating permit" means a permit issued under 45CSR30.~~

~~2.68. Reserved.~~

~~2.69. "Topping-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.~~

~~2.70. "Total energy input" means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.~~

~~2.71. "Total energy output" means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.~~

~~2.72. "Unit" means a stationary coal-fired boiler or a stationary coal-fired combustion turbine.~~

~~2.73. "Unit operating day" means a calendar day in which a unit combusts any fuel.~~

~~2.74. "Unit operating hour" or "hour of unit operation" means an hour in which a unit combusts any fuel.~~

~~2.75. "Useful power" means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).~~

~~2.76. "Useful thermal energy" means, with regard to a cogeneration unit, thermal energy that is:~~

~~2.76.a. Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;~~

~~2.76.b. Used in a heat application (e.g., space heating or domestic hot water heating); or~~

~~2.76.c. Used in a space cooling application (i.e., thermal energy used by an absorption chiller).~~

~~2.77. "Utility power distribution system" means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.~~

~~2.78. Other words and phrases used in this rule, unless otherwise indicated, will have the meaning ascribed to them in W.Va. Code §22-5-1 et seq. and 40 CFR §72.2.~~

~~§45-37-3. Measurements, Abbreviations and Acronyms.~~

~~3.1. Measurements, abbreviations and acronyms used in this rule are defined as follows:~~

~~Btu - British thermal unit.~~

~~CO₂ - carbon dioxide.~~

~~Hg - mercury.~~

~~hr - hour.~~

~~kW - kilowatt electrical.~~

~~kWh - kilowatt hour.~~

~~mmBtu - million Btu.~~

~~MW_e - megawatt electrical.~~

~~MWh - megawatt hour.~~

~~NO_x - nitrogen oxides.~~

~~O₂ - oxygen.~~

~~ppm - parts per million.~~

~~lb - pound.~~

~~scfh - standard cubic feet per hour.~~

~~SO₂ - sulfur dioxide.~~

~~H₂O - water.~~

~~yr - year.~~

~~§45-37-4. Applicability.~~

~~4.1. The following units in West Virginia will be Hg Budget units, and any source that includes one or more such units will be a Hg Budget source, subject to the requirements of sections 5 through 76:~~

~~4.1.a. Except as provided in subdivision 4.1.b, a unit serving at any time, since the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MW_e producing electricity for sale; and~~

~~4.1.b. For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MW_e and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit will be subject to subdivision 4.1.a starting on the day on which the unit first no longer qualifies as a cogeneration unit.~~

~~§45-37-5. Retired Unit Exemption.~~

~~5.1.a. Any Hg Budget unit that is permanently retired will be exempt from the Hg Budget~~

Trading Program, except for the provisions of this section, sections 2, 3, 4, subdivisions 6.3.d through 6.3.g, section 7, and sections 51 through 62:

~~—5.1.b. The exemption under subdivision 5.1.a will become effective the day on which the Hg Budget unit is permanently retired. Within 30 days of the unit's permanent retirement, the Hg designated representative must submit a statement to the Secretary otherwise responsible for administering any Hg Budget permit for the unit and must submit a copy of the statement to the Administrator. The statement must state, in a format prescribed by the Secretary, that the unit was permanently retired on a specific date and will comply with the requirements of subsection 5.2.~~

~~—5.1.c. After receipt of the statement under subdivision 5.1.b, the Secretary will amend any permit under sections 20 through 24 covering the source at which the unit is located to add the provisions and requirements of the exemption under subdivision 5.1.a and subsection 5.2.~~

~~—5.2. Special provisions:~~

~~—5.2.a. A unit exempt under subsection 5.1 must not emit any mercury, starting on the date that the exemption takes effect.~~

~~—5.2.b. The Secretary will allocate Hg allowances under sections 40 through 42 to a unit exempt under subsection 5.1.~~

~~—5.2.c. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under subsection 5.1 must retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the Secretary or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.~~

~~—5.2.d. The owners and operators and, to the extent applicable, the Hg designated representative of a unit exempt under subsection~~

~~5.1 must comply with the requirements of the Hg Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise or must be complied with, after the exemption takes effect.~~

~~—5.2.e. A unit exempt under subsection 5.1 and located at a source that is required, or but for this exemption would be required, to have a Title V operating permit must not resume operation unless the Hg designated representative of the source submits a complete Hg Budget permit application under section 22 for the unit not less than 18 months (or such lesser time provided by the Secretary) before the later of January 1, 2010 or the date on which the unit resumes operation.~~

~~—5.2.f. On the earlier of the following dates, a unit exempt under subsection 5.1 will lose its exemption:~~

~~—5.2.f.1. The date on which the Hg designated representative submits a Hg Budget permit application for the unit under subdivision 5.2.e;~~

~~—5.2.f.2. The date on which the Hg designated representative is required under subdivision 5.2.e to submit a Hg Budget permit application for the unit; or~~

~~—5.2.f.3. The date on which the unit resumes operation, if the Hg designated representative is not required to submit a Hg Budget permit application for the unit.~~

~~—5.2.g. For the purpose of applying monitoring, reporting and recordkeeping requirements under sections 70 through 76, a unit that loses its exemption under subsection 5.1 will be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.~~

~~§45-37-6. Standard Requirements:~~

~~—6.1. Permit requirements:~~

~~—6.1.a. The Hg designated representative of each Hg Budget source required to have a Title V operating permit and each Hg Budget unit~~

required to have a Title V operating permit at the source must:

~~— 6.1.a.1. Submit to the Secretary a complete Hg Budget permit application under section 22 in accordance with the deadlines specified in subsections 21.1 and 21.2; and~~

~~— 6.1.a.2. Submit in a timely manner any supplemental information that the Secretary determines is necessary in order to review a Hg Budget permit application and issue or deny a Hg Budget permit;~~

~~— 6.1.b. The owners and operators of each Hg Budget source required to have a Title V operating permit and each Hg Budget unit required to have a Title V operating permit at the source must have a Hg Budget permit issued by the Secretary under sections 20 through 24 for the source and operate the source and the unit in compliance with such Hg Budget permit; and~~

~~— 6.1.c. The owners and operators of a Hg Budget source that is not required to have a Title V operating permit and each Hg Budget unit that is not required to have a Title V operating permit are not required to submit a Hg Budget permit application, and to have a Hg Budget permit, under sections 20 through 24 for such Hg Budget source and such Hg Budget unit.~~

~~— 6.2. Monitoring, reporting and recordkeeping requirements:~~

~~— 6.2.a. The owners and operators, and the Hg designated representative, of each Hg Budget source and each Hg Budget unit at the source must comply with the monitoring, reporting and recordkeeping requirements of sections 70 through 76:~~

~~— 6.2.b. The emissions measurements recorded and reported in accordance with sections 70 through 76 will be used to determine compliance by each Hg Budget source with the Hg Budget emissions limitation under subsection 6.3:~~

~~— 6.3. Mercury emission requirements:~~

~~— 6.3.a. As of the allowance transfer deadline for a control period, the owners and operators of each Hg Budget source and each Hg Budget unit at the source must hold, in the source's compliance account, Hg allowances available for compliance deductions for the control period under subsection 54.1 in an amount not less than the ounces of total mercury emissions for the control period from all Hg Budget units at the source, as determined in accordance with sections 70 through 76.~~

~~— 6.3.b. A Hg Budget unit will be subject to the requirements under subdivision 6.3.a for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under subdivision 70.3.a or 70.3.b and for each control period thereafter.~~

~~— 6.3.c. A Hg allowance will not be deducted, for compliance with the requirements under subdivision 6.3.a, for a control period in a calendar year before the year for which the Hg allowance was allocated.~~

~~— 6.3.d. Hg allowances must be held in, deducted from or transferred into or among Hg Allowance Tracking System accounts in accordance with sections 60 through 62:~~

~~— 6.3.e. A Hg allowance is a limited authorization to emit one ounce of mercury in accordance with the Hg Budget Trading Program. No provision of the Hg Budget Trading Program, the Hg Budget permit application, the Hg Budget permit or an exemption under section 5 and no provision of law will be construed to limit the authority of the State or the United States to terminate or limit such authorization.~~

~~— 6.3.f. A Hg allowance does not constitute a property right.~~

~~— 6.3.g. Upon recordation by the Administrator under sections 51 through 62, every allocation, transfer or deduction of a Hg allowance to or from a Hg Budget unit's compliance account is incorporated automatically in any Hg Budget permit of the source that includes the Hg Budget unit.~~

~~6.4. Excess emissions requirements.~~

~~6.4.a. If a Hg Budget source emits mercury during any control period in excess of the Hg Budget emissions limitation, then:~~

~~6.4.a.1. The owners and operators of the source and each Hg Budget unit at the source must surrender the Hg allowances required for deduction under subdivision 54.4.a and pay any fine, penalty or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and~~

~~6.4.a.2. Each ounce of such excess emissions and each day of such control period will constitute a separate violation of this rule, the Clean Air Act, and W. Va. Code §22-5-1 et seq.~~

~~6.5. Recordkeeping and reporting requirements.~~

~~6.5.a. Unless otherwise provided, the owners and operators of the Hg Budget source and each Hg Budget unit at the source must keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the Secretary or the Administrator:~~

~~6.5.a.1. The certificate of representation under section 13 for the Hg designated representative for the source and each Hg Budget unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents must be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under section 13 changing the Hg designated representative;~~

~~6.5.a.2. All emissions monitoring information, in accordance with sections 70 through 76, provided that to the extent that sections 70 through 76 provides for a 3-year period for recordkeeping, the 3-year period will apply.~~

~~6.5.a.3. Copies of all reports, compliance certifications and other submissions and all records made or required under the Hg Budget Trading Program.~~

~~6.5.a.4. Copies of all documents used to complete a Hg Budget permit application and any other submission under the Hg Budget Trading Program or to demonstrate compliance with the requirements of the Hg Budget Trading Program.~~

~~6.5.b. The Hg designated representative of a Hg Budget source and each Hg Budget unit at the source must submit the reports required under the Hg Budget Trading Program, including those under sections 70 through 76.~~

~~6.6. Liability:~~

~~6.6.a. Each Hg Budget source and each Hg Budget unit must meet the requirements of the Hg Budget Trading Program.~~

~~6.6.b. Any provision of the Hg Budget Trading Program that applies to a Hg Budget source or the Hg designated representative of a Hg Budget source will also apply to the owners and operators of such source and of the Hg Budget units at the source.~~

~~6.6.c. Any provision of the Hg Budget Trading Program that applies to a Hg Budget unit or the Hg designated representative of a Hg Budget unit will also apply to the owners and operators of such unit.~~

~~6.7. Effect on other authorities. -- No provision of the Hg Budget Trading Program, a Hg Budget permit application, a Hg Budget permit or an exemption under section 5 will be construed as exempting or excluding the owners and operators, or the Hg designated representative of a Hg Budget source or Hg Budget unit from compliance with any other provision of the applicable, approved state implementation plan, a state or federally enforceable permit, order, or the CAA.~~

~~§45-37-7. Computation of Time:~~

~~7.1. Unless otherwise stated, any time period~~

scheduled, under the Hg Budget Trading Program, to begin on the occurrence of an act or event will begin on the day the act or event occurs:

—7.2. Unless otherwise stated, any time period scheduled, under the Hg Budget Trading Program, to begin before the occurrence of an act or event will be computed so that the period ends the day before the act or event occurs.

—7.3. Unless otherwise stated, if the final day of any time period, under the Hg Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period will be extended to the next business day:

§45-37-8. Appeal Procedures:

—8.1. The appeal procedures for decisions of the Administrator under the Hg Budget Trading Program will be the procedures set forth in 40 CFR Part 78, applied by replacing the terms “Subparts AA through II of Part 96 of this chapter,” “§96.141(b)(2) or (c)(2),” “§96.154,” “§96.156,” “§96.161,” “§96.175,” “CAIR NO_x allowances,” “CAIR NO_x Allowance Tracking System account,” “CAIR designated representative,” “CAIR authorized account representative,” and “§96.106” by the terms “45CSR37,” “45CSR37§41.2.b or 3.b,” “45CSR37§54,” “45CSR37§56,” “45CSR37§61,” “45CSR37§75,” “Hg allowances,” “Hg Allowance Tracking System Account,” “Hg designated representative,” “Hg authorized account representative,” and “45CSR37§6.”

§45-37-10. Authorization and Responsibilities of Hg Designated Representatives:

—10.1. Except as provided under section 11, each Hg Budget source, including all Hg Budget units at the source, must have one and only one Hg designated representative, with regard to all matters under the Hg Budget Trading Program concerning the source or any Hg Budget unit at the source:

—10.2. The Hg designated representative of the Hg Budget source must be selected by an agreement binding on the owners and operators of the source and all Hg Budget units at the source

and must act in accordance with the certification statement in paragraph 13.1.d.4:

—10.3. Upon receipt by the Administrator of a complete certificate of representation under section 13, the Hg designated representative of the source must represent and, by his or her representations, actions, inactions or submissions, legally bind each owner and operator of the Hg Budget source represented and each Hg Budget unit at the source in all matters pertaining to the Hg Budget Trading Program, notwithstanding any agreement between the Hg designated representative and such owners and operators. The owners and operators will be bound by any decision or order issued to the Hg designated representative by the Secretary, the Administrator or a court regarding the source or unit:

—10.4. No Hg Budget permit will be issued, no emissions data reports will be accepted, and no Hg Allowance Tracking System account will be established for a Hg Budget unit at a source, until the Administrator has received a complete certificate of representation under section 13 for a Hg designated representative of the source and the Hg Budget units at the source:

—10.5.a. Each submission under the Hg Budget Trading Program must be submitted, signed, and certified by the Hg designated representative for each Hg Budget source on behalf of which the submission is made. Each such submission must include the following certification statement by the Hg designated representative: “I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

~~10.5.b. The Secretary and the Administrator will accept or act on a submission made on behalf of owner or operators of a Hg Budget source or a Hg Budget unit only if the submission has been made, signed, and certified in accordance with subdivision 10.5.a.~~

~~§45-37-11. Alternate Hg Designated Representative.~~

~~11.1. A certificate of representation under section 13 may designate one and only one alternate Hg designated representative, who may act on behalf of the Hg designated representative. The agreement by which the alternate Hg designated representative is selected must include a procedure for authorizing the alternate Hg designated representative to act in lieu of the Hg designated representative.~~

~~11.2. Upon receipt by the Administrator of a complete certificate of representation under section 13, any representation, action, inaction or submission by the alternate Hg designated representative will be deemed to be a representation, action, inaction or submission by the Hg designated representative.~~

~~11.3. Except in this section and section 2, subsections 10.1 and 10.4, sections 12, 13, 51 and 74, whenever the term "Hg designated representative" is used, the term will be construed to include the Hg designated representative or any alternate Hg designated representative.~~

~~§45-37-12. Changing Hg Designated Representative and Alternate Hg Designated Representative; Changes in Owners and Operators.~~

~~12.1. Changing Hg designated representative. -- The Hg designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under section 13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Hg designated representative before the time and date when the Administrator receives the superseding certificate of representation will be binding on the new Hg designated representative and the owners~~

~~and operators of the Hg Budget source and the Hg Budget units at the source.~~

~~12.2. Changing alternate Hg designated representative. -- The alternate Hg designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under section 13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg designated representative before the time and date when the Administrator receives the superseding certificate of representation will be binding on the new alternate Hg designated representative and the owners and operators of the Hg Budget source and the Hg Budget units at the source.~~

~~12.3. Changes in owners and operators.~~

~~12.3.a. In the event a new owner or operator of a Hg Budget source or a Hg Budget unit is not included in the list of owners and operators in the certificate of representation under section 13, such new owner or operator will be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the Hg designated representative and any alternate Hg designated representative of the source or unit, and the decisions and orders of the Secretary, the Administrator or a court, as if the new owner or operator were included in such list.~~

~~12.3.b. Within 30 days following any change in the owners and operators of a Hg Budget source or a Hg Budget unit, including the addition of a new owner or operator, the Hg designated representative or any alternate Hg designated representative must submit a revision to the certificate of representation under section 13 amending the list of owners and operators to include the change.~~

~~§45-37-13. Certificate of Representation.~~

~~13.1. A complete certificate of representation for a Hg designated representative or an alternate Hg designated representative must include the following elements in a format prescribed by the Administrator:~~

~~13.1.a. Identification of the Hg Budget source, and each Hg Budget unit at the source, for which the certificate of representation is submitted;~~

~~13.1.b. The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the Hg designated representative and any alternate Hg designated representative;~~

~~13.1.c. A list of the owners and operators of the Hg Budget source and of each Hg Budget unit at the source;~~

~~13.1.d. The following certification statements by the Hg designated representative and any alternate Hg designated representative:~~

~~13.1.d.1. "I certify that I was selected as the Hg designated representative or alternate Hg designated representative, as applicable, by an agreement binding on the owners and operators of the source and each Hg Budget unit at the source.";~~

~~13.1.d.2. "I certify that I have all the necessary authority to carry out my duties and responsibilities under the Hg Budget Trading Program on behalf of the owners and operators of the source and of each Hg Budget unit at the source and that each such owner and operator will be fully bound by my representations, actions, inactions or submissions.";~~

~~13.1.d.3. "I certify that the owners and operators of the source and of each Hg Budget unit at the source will be bound by any order issued to me by the Administrator, the Secretary or a court regarding the source or unit.";~~

~~13.1.d.4. Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a Hg Budget unit, or where a customer purchases power from a Hg Budget unit under a life-of-the-unit, firm power contractual arrangement, "I certify that: I have given a written notice of my selection as the 'Hg designated representative' or 'alternate Hg designated representative,' as applicable, and of the agreement by which I was selected to each owner~~

~~and operator of the source and of each Hg Budget unit at the source; and Hg allowances and proceeds of transactions involving Hg allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of Hg allowances by contract, Hg allowances and proceeds of transactions involving Hg allowances will be deemed to be held or distributed in accordance with the contract.";~~ and

~~13.1.e. The signature of the Hg designated representative and any alternate Hg designated representative and the dates signed;~~

~~13.2. Unless otherwise required by the Secretary or the Administrator, documents of agreement referred to in the certificate of representation will not be submitted to the Secretary or the Administrator. Neither the Secretary nor the Administrator will be under any obligation to review or evaluate the sufficiency of such documents, if submitted;~~

~~§45-37-14. Objections Concerning the Hg Designated Representative:~~

~~14.1. Once a complete certificate of representation under section 13 has been submitted and received, the Secretary and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under section 13 is received by the Administrator;~~

~~14.2. Except as provided in subsection 12.1 or 12.2, no objection or other communication submitted to the Secretary or the Administrator concerning the authorization or any representation, action, inaction or submission, of the Hg designated representative will affect any representation, action, inaction or submission of the Hg designated representative or the finality of any decision or order by the Secretary or the Administrator under the Hg Budget Trading Program;~~

~~14.3. Neither the Secretary nor the Administrator will adjudicate any private legal~~

~~dispute concerning the authorization or any representation, action, inaction or submission of any Hg designated representative, including private legal disputes concerning the proceeds of Hg allowance transfers:~~

~~§45-37-20. General Hg Budget Trading Program Permit Requirements.~~

~~—20.1. For each Hg Budget source required to have a Title V operating permit, such permit must include a Hg Budget permit administered by the Secretary. The Hg Budget portion of the Title V permit will be administered in accordance with 45CSR30, except as provided otherwise by this section and sections 21 through 24.~~

~~—20.2. Each Hg Budget permit must contain, with regard to the Hg Budget source and the Hg Budget units at the source covered by the Hg Budget permit, all applicable Hg Budget Trading Program requirements and must be a complete and separable portion of the Title V operating permit.~~

~~§45-37-21. Submission of Hg Budget Permit Applications.~~

~~—21.1. Duty to apply. -- The Hg designated representative of any Hg Budget source required to have a Title V operating permit must submit to the Secretary a complete Hg Budget permit application under section 22 for the source covering each Hg Budget unit at the source at least 18 months (or such lesser time provided by the Secretary) before the later of January 1, 2010 or the date on which the Hg Budget unit commences operation.~~

~~—21.2. Duty to reapply. -- For a Hg Budget source required to have a Title V operating permit, the Hg designated representative must submit a complete Hg Budget permit application under section 22 for the source covering each Hg Budget unit at the source to renew the Hg Budget permit in accordance with the Title V provisions addressing permit renewal.~~

~~§45-37-22. Information Requirements for Hg Budget Permit Applications.~~

~~—22.1. A complete Hg Budget permit application~~

~~must include the following elements concerning the Hg Budget source for which the application is submitted, in a format prescribed by the Secretary:~~

~~—22.1.a. Identification of the Hg Budget source;~~

~~—22.1.b. Identification of each Hg Budget unit at the Hg Budget source; and~~

~~—22.1.c. The standard requirements under section 6;~~

~~—22.1.d. A copy of the certificate of representation submitted to the Administrator in accordance with section 13.~~

~~§45-37-23. Hg Budget Permit Contents and Term.~~

~~—23.1. Each Hg Budget permit will contain, in a format prescribed by the Secretary, all elements required for a complete Hg Budget permit application under section 22.~~

~~—23.2. Each Hg Budget permit is deemed to incorporate automatically the definitions of terms under section 2 and, upon recordation by the Administrator under sections 51 through 62, every allocation, transfer or deduction of a Hg allowance to or from the compliance account of the Hg Budget source covered by the permit.~~

~~—23.3. The term of the Hg Budget permit will be set by the Secretary, as necessary to facilitate coordination of the renewal of the Hg Budget permit with issuance, revision or renewal of the Hg Budget source's Title V operating permit.~~

~~§45-37-24. Hg Budget Permit Revisions.~~

~~—24.1. Except as provided in subsection 23.2, the Secretary will revise the Hg Budget permit, as necessary, in accordance with the provisions of 45CSR 30 addressing permit revisions.~~

~~§45-37-30. Reserved.~~

~~§45-37-40. Hg Trading Budget.~~

~~—40.1. The West Virginia trading budget for~~

annual allocations of Hg allowances for the control periods in 2010 through 2017 and in 2018 and thereafter are, respectively, as follows:

	2010- 2017	2018 and thereafter
Hg Trading Budget (tons)	1.394	0.55

~~§45-37-41. Timing Requirements for Hg Allowance Allocations:~~

~~—41.1. By October 31, 2006, the Secretary will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with subsections 42.1, 42.2 and 42.3, for the control periods in 2010, 2011, 2012, 2013, and 2014.~~

~~—41.2. By October 31, 2009 and October 31 of each year thereafter, the Secretary will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with subsections 42.1, 42.2 and 42.3, for the control period in the sixth year after the year of the applicable deadline for submission under this subsection.~~

~~—41.2.a. If the Secretary fails to submit to the Administrator the Hg allowance allocations in accordance with subdivision 41.2, the Administrator will assume that the allocations of Hg allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period; except that, if the applicable control period is in 2018, the Administrator will assume that the allocations equal the allocations for the control period in 2017, multiplied by the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable trading budget under section 40 for 2018 and thereafter and divided by such amount of ounces of Hg emissions for 2010 through 2017.~~

~~§45-37-42. Methodology for the Allocation and Sale of Hg Allowances:~~

~~—42.1. The baseline heat input (in mmBtu) used~~

~~with respect to Hg allowance allocations under subsections 42.2 and 42.3 for each Hg Budget unit will be:~~

~~—42.1.a. For units commencing operation before January 1, 2001, the average of the three highest amounts of the unit's adjusted control period heat input for 2000 through 2004;~~

~~—42.1.b. For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years;~~

~~—42.1.c. A unit's control period heat input for a calendar year under paragraph 42.1.a will be determined in accordance with 40 CFR Part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR Part 75 for the year or will be based on the best available data reported to the Secretary for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year;~~

~~—42.1.d. A unit's converted control period heat input for a calendar year specified under subdivision 42.1.b equals:~~

~~—42.1.d.1. Except as provided in paragraph 42.1.d.2 or 42.1.d.3, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by two (2) or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;~~

~~—42.1.d.2. For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or~~

~~—42.1.d.3. For a unit that is a combustion~~

turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

—42.2. For each control period in 2010 and thereafter, the Secretary will allocate to all Hg Budget units that have a baseline heat input (as determined under subsection 42.1) a total amount of Hg allowances equal to 95 percent of the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under section 40.

—42.3. The Secretary will allocate Hg allowances to each Hg Budget unit under subdivision 42.2 in an amount determined by multiplying the total amount of Hg allowances allocated under subdivision 42.2 by the ratio of the baseline heat input of such Hg Budget unit to the total amount of baseline heat input of all such Hg Budget units in the State and rounding to the nearest whole allowance as appropriate.

—42.4. The Secretary will establish a separate pool of allowances for each control period for sale by the State of West Virginia. Each pool will be allocated Hg allowances equal to 5 percent for a control period in 2010 and thereafter, of the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable trading budget under section 40;

—42.4.a. The State of West Virginia shall establish an account pursuant to subsection 51.2 for the purpose of selling the Hg allowances specified in subsection 42.4. The proceeds from the sale of Hg allowances shall be deposited in a fund of the State of West Virginia to be established by legislation.

§45-37-50. Reserved.

§45-37-51. Establishment of Accounts:

—51.1. Compliance accounts. -- Upon receipt of a complete certificate of representation under section 13, the Administrator will establish a compliance account for the Hg Budget source for which the certificate of representation was submitted unless the source already has a compliance account.

—51.2. General accounts:

—51.2.a. Application for general account:

—51.2.a.1. Any person may apply to open a general account for the purpose of holding and transferring Hg allowances. An application for a general account may designate one and only one Hg authorized account representative and one and only one alternate Hg authorized account representative who may act on behalf of the Hg authorized account representative. The agreement by which the alternate Hg authorized account representative is selected must include a procedure for authorizing the alternate Hg authorized account representative to act in lieu of the Hg authorized account representative.

—51.2.a.2. A complete application for a general account must be submitted to the Administrator and must include the following elements in a format prescribed by the Administrator:

—51.2.a.2.A. Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the Hg authorized account representative and any alternate Hg authorized account representative;

—51.2.a.2.B. Organization name and type of organization, if applicable;

—51.2.a.2.C. A list of all persons subject to a binding agreement for the Hg authorized account representative and any alternate Hg authorized account representative to represent their ownership interest with respect to the allowances held in the general account;

—51.2.a.2.D. The following certification

statement by the Hg authorized account representative and any alternate Hg authorized account representative: "I certify that I was selected as the Hg authorized account representative or the alternate Hg authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the Hg Budget Trading Program on behalf of such persons and that each such person will be fully bound by my representations, actions, inactions or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."²²

——— 51.2.a.2.E. The signature of the Hg authorized account representative and any alternate Hg authorized account representative and the dates signed:

——— 51.2.a.3. Unless otherwise required by the Secretary or the Administrator, documents of agreement referred to in the application for a general account will not be submitted to the Secretary or the Administrator. Neither the Secretary nor the Administrator will be under any obligation to review or evaluate the sufficiency of such documents, if submitted:

——— 51.2.b. Authorization of Hg authorized account representative:

——— 51.2.b.1. Upon receipt by the Administrator of a complete application for a general account subdivision 51.2.a:

——— 51.2.b.1.A. The Administrator will establish a general account for the person or persons for whom the application is submitted:

——— 51.2.b.1.B. The Hg authorized account representative and any alternate Hg authorized account representative for the general account will represent and, by his or her representations, actions, inactions or submissions, legally bind each person who has an ownership interest with respect to Hg allowances held in the general account in all matters pertaining to the Hg

Budget Trading Program, notwithstanding any agreement between the Hg authorized account representative or any alternate Hg authorized account representative and such person. Any such person will be bound by any order or decision issued to the Hg authorized account representative or any alternate Hg authorized account representative by the Administrator or a court regarding the general account:

——— 51.2.b.1.C. Any representation, action, inaction or submission by any alternate Hg authorized account representative will be deemed to be a representation, action, inaction or submission by the Hg authorized account representative:

——— 51.2.b.2. Each submission concerning the general account must be submitted, signed, and certified by the Hg authorized account representative or any alternate Hg authorized account representative for the persons having an ownership interest with respect to Hg allowances held in the general account. Each such submission must include the following certification statement by the Hg authorized account representative or any alternate Hg authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the Hg allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."²³

——— 51.2.b.3. The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph 51.2.b.2:

~~51.2.c. Changing Hg authorized account representative and alternate Hg authorized account representative; changes in persons with ownership interest.~~

~~51.2.c.1. The Hg authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under subdivision 51.2.a. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Hg authorized account representative before the time and date when the Administrator receives the superseding application for a general account will be binding on the new Hg authorized account representative and the persons with an ownership interest with respect to the Hg allowances in the general account.~~

~~51.2.c.2. The alternate Hg authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under subdivision 51.2.a. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg authorized account representative before the time and date when the Administrator receives the superseding application for a general account will be binding on the new alternate Hg authorized account representative and the persons with an ownership interest with respect to the Hg allowances in the general account.~~

~~51.2.c.3.A. In the event a new person having an ownership interest with respect to Hg allowances in the general account is not included in the list of such persons in the application for a general account, such new person will be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the Hg authorized account representative and any alternate Hg authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the new person were included in such list.~~

~~51.2.c.3.B. Within 30 days following any change in the persons having an ownership interest with respect to Hg allowances in the general account, including the addition of persons, the Hg authorized account representative or any alternate Hg authorized account representative must submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the Hg allowances in the general account to include the change.~~

~~51.2.d. Objections concerning Hg authorized account representative.~~

~~51.2.d.1. Once a complete application for a general account under subdivision 51.2.a has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under subdivision 51.2.a is received by the Administrator.~~

~~51.2.d.2. Except as provided in paragraph 51.2.c.1 or 51.2.c.2, no objection or other communication submitted to the Administrator concerning the authorization or any representation, action, inaction or submission of the Hg authorized account representative or any alternative Hg authorized account representative for a general account will affect any representation, action, inaction or submission of the Hg authorized account representative or any alternative Hg authorized account representative or the finality of any decision or order by the Administrator under the Hg Budget Trading Program.~~

~~51.2.d.3. The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction or submission of the Hg authorized account representative or any alternative Hg authorized account representative for a general account, including private legal disputes concerning the proceeds of Hg allowance transfers.~~

~~51.3. Account identification. -- The Administrator will assign a unique identifying number to each account established under~~

~~subsection 51.1 or 51.2.~~

~~§45-37-52. Responsibilities of Hg Authorized Account Representative:~~

~~—52.1. Following the establishment of a Hg Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of Hg allowances in the account, must be made only by the Hg authorized account representative for the account.~~

~~§45-37-53. Recordation of Hg Allowance Allocations:~~

~~—53.1. The Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at a source, as submitted by the Secretary in accordance with subsection 41.1, for the control periods in 2010, 2011, 2012, 2013 and 2014.~~

~~—53.2. By December 1, 2008, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the Secretary or as determined by the Administrator in accordance with subsection 41.2, for the control period in 2015.~~

~~—53.3. In 2011 and each year thereafter, after the Administrator has made all deductions (if any) from a Hg Budget source's compliance account under section 54, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the Secretary or determined by the Administrator in accordance with subsection 41.2, for the control period in the sixth year after the year of the control period for which such deductions were or could have been made.~~

~~—53.4. By December 1, 2010 and December 1 of each year thereafter, the Administrator will record the Hg allowances determined by the Administrator in accordance with subsection 42.4, for the control period in the year of the applicable deadline for recordation under this subsection:~~

~~—53.5. Serial numbers for allocated Hg allowances. -- When recording the allocation of Hg allowances for a Hg Budget unit in a compliance account, the Administrator will assign each Hg allowance a unique identification number that will include digits identifying the year of the control period for which the Hg allowance is allocated.~~

~~§45-37-54. Compliance with Hg Budget Emissions Limitation:~~

~~—54.1. Allowance transfer deadline. -- The Hg allowances are available to be deducted for compliance with a source's Hg Budget emissions limitation for a control period in a given calendar year only if the Hg allowances:~~

~~—54.1.a. Were allocated for the control period in the year or a prior year;~~

~~—54.1.b. Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a Hg allowance transfer correctly submitted for recordation under sections 60 through 62 by the allowance transfer deadline for the control period; and~~

~~—54.1.c. Are not necessary for deductions for excess emissions for a prior control period under subsection 54.4.~~

~~—54.2. Deductions for compliance. -- Following the recordation, in accordance with sections 60 through 62, of Hg allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account Hg allowances available under subsection 54.1 in order to determine whether the source meets the Hg Budget emissions limitation for the control period, as follows:~~

~~—54.2.a. Until the amount of Hg allowances deducted equals the number of ounces of total Hg emissions, determined in accordance with sections 70 through 76, from all Hg Budget units at the source for the control period; or~~

~~—54.2.b. If there are insufficient Hg allowances to complete the deductions in subdivision 54.2.a, until no more Hg allowances available under subsection 54.1 remain in the compliance account.~~

~~—54.3. Hg allowance accounting methods:~~

~~—54.3.a. Identification of Hg Allowances by serial number. -- The Hg authorized account representative for a source's compliance account may request that specific Hg allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with subsection 54.2 or 54.4. Such request must be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the Hg Budget source and the appropriate serial numbers.~~

~~—54.3.b. First-in, first-out. --- The Administrator will deduct Hg allowances under subsection 54.2 or 54.4 from the source's compliance account, in the absence of an identification or in the case of a partial identification of Hg allowances by serial number under subdivision 54.3.a, on a first-in, first-out accounting basis in the following order:~~

~~—54.3.b.1. Any Hg allowances that were allocated to the units at the source, in the order of recordation, and then~~

~~—54.3.b.2. Any Hg allowances that were allocated to any unit and transferred and recorded in the compliance account pursuant to sections 60 through 62, in the order of recordation.~~

~~—54.4. Deductions for excess emissions:~~

~~—54.4.a. After making the deductions for compliance under subsection 54.2 for a control period in a calendar year in which the Hg Budget source has excess emissions, the Administrator will deduct from the source's compliance account an amount of Hg allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of ounces of the source's excess emissions.~~

~~—54.4.b. Any allowance deduction required under subdivision 54.4.a will not affect the liability of the owners and operators of the Hg Budget source or the Hg Budget units at the source for any fine, penalty or assessment or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act or W. Va. Code §22-5-1, et seq.~~

~~—54.5. Recordation of deductions. -- The Administrator will record in the appropriate compliance account all deductions from such an account under subsection 54.2 or 54.4.~~

~~—54.6. Administrator's action on submissions:~~

~~—54.6.a. The Administrator may review and conduct independent audits concerning any submission under the Hg Budget Trading Program and make appropriate adjustments of the information in the submissions.~~

~~—54.6.b. The Administrator may deduct Hg allowances from or transfer Hg allowances to a source's compliance account based on the information in the submissions, as adjusted under subdivision 54.6.a.~~

~~§45-37-55. Banking:~~

~~—55.1. Hg allowances may be banked for future use or transfer in a compliance account or a general account in accordance with subsection 55.2:~~

~~—55.2. Any Hg allowance that is held in a compliance account or a general account will remain in such account unless and until the Hg allowance is deducted or transferred under sections 54, 56, or 60 through 62.~~

~~§45-37-56. Account Error:~~

~~—56.1. The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any Hg Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the Hg authorized account representative for the account.~~

~~§45-37-57. Closing of General Accounts:~~

~~—57.1. The Hg authorized account representative of a general account may submit to the Administrator a request to close the account, which must include a correctly submitted allowance transfer under sections 60 through 62 for any Hg allowances in the account to one or more other Hg Allowance Tracking System accounts.~~

~~—57.2. If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any Hg allowances, the Administrator may notify the Hg authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of Hg allowances into the account under sections 60 through 62 or a statement submitted by the Hg authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.~~

~~§45-37-60. Submission of Hg Allowance Transfers:~~

~~—60.1. An Hg authorized account representative seeking recordation of a Hg allowance transfer must submit the transfer to the Administrator. To be considered correctly submitted, the Hg allowance transfer must include the following elements, in a format specified by the Administrator:~~

~~—60.1.a. The account numbers for both the transferor and transferee accounts;~~

~~—60.1.b. The serial number of each Hg allowance that is in the transferor account and is to be transferred; and~~

~~—60.1.c. The name and signature of the Hg authorized account representative of the transferor account and the date signed.~~

~~§45-37-61. Recordation:~~

~~—61.1. Within 5 business days (except as~~

~~provided in subsection 61.2) of receiving a Hg allowance transfer, the Administrator will record a Hg allowance transfer by moving each Hg allowance from the transferor account to the transferee account as specified by the request, provided that:~~

~~—61.1.a. The transfer is correctly submitted under section 60; and~~

~~—61.1.b. The transferor account includes each Hg allowance identified by serial number in the transfer.~~

~~—61.2. A Hg allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any Hg allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under section 54 for the control period immediately before such allowance transfer deadline.~~

~~—61.3. Where a Hg allowance transfer submitted for recordation fails to meet the requirements of subsection 61.1, the Administrator will not record such transfer.~~

~~§45-37-62. Notification:~~

~~—62.1. Notification of recordation. -- Within 5 business days of recordation of a Hg allowance transfer under section 61, the Administrator will notify the Hg authorized account representatives of both the transferor and transferee accounts:~~

~~—62.2. Notification of non-recordation. -- Within 10 business days of receipt of a Hg allowance transfer that fails to meet the requirements of subsection 61.1, the Administrator will notify the Hg authorized account representatives of both accounts subject to the transfer of:~~

~~—62.2.a. A decision not to record the transfer; and~~

~~—62.2.b. The reasons for such non-recordation:~~

~~—62.3. Nothing in this section will preclude the submission of a Hg allowance transfer for~~

~~recordation following notification of non-recordation.~~

~~§45-37-70. General Requirements.~~

~~70.1. The owners and operators, and to the extent applicable, the Hg designated representative, of a Hg Budget unit, must comply with the monitoring, recordkeeping, and reporting requirements as provided in this section, sections 71 through 76, and Subpart I of 40 CFR Part 75. For purposes of complying with such requirements, the definitions in section 2 and in 40 CFR §72.2 will apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in 40 CFR Part 75 will be deemed to refer to the terms "Hg Budget unit," "Hg designated representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined in section 2. The owner or operator of a unit that is not a Hg Budget unit but that is monitored under 40 CFR §75.82(b)(2)(i) must comply with the same monitoring, recordkeeping, and reporting requirements as a Hg Budget unit.~~

~~70.2. Requirements for installation, certification, and data accounting. -- The owner or operator of each Hg Budget unit must:~~

~~70.2.a. Install all monitoring systems required under this section and sections 71 through 76 for monitoring Hg mass emissions and individual unit heat input (including all systems required to monitor Hg concentration, stack gas moisture content, stack gas flow rate, and CO₂ or O₂ concentration, as applicable, in accordance with 40 CFR §§75.81 and 75.82);~~

~~70.2.b. Successfully complete all certification tests required under section 71 and meet all other requirements of this section, sections 71 through 76, and Subpart I of 40 CFR Part 75 applicable to the monitoring systems under subdivision 70.2.a; and~~

~~70.2.c. Record, report, and quality-assure the data from the monitoring systems under subdivision 70.2.a.~~

~~70.3. Compliance deadlines. -- The owner or operator must meet the monitoring system certification and other requirements of subdivisions 70.2.a and 70.2.b on or before the following dates. The owner or operator must record, report, and quality-assure the data from the monitoring systems under subdivision 70.2.a on and after the following dates:~~

~~70.3.a. For the owner or operator of a Hg Budget unit that commences commercial operation before July 1, 2008, by January 1, 2009;~~

~~70.3.b. For the owner or operator of a Hg Budget unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:~~

~~70.3.b.1. January 1, 2009; or~~

~~70.3.b.2. 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation;~~

~~70.3.c. For the owner or operator of a Hg Budget unit for which construction of a new stack or flue or installation of add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system or a compact hybrid particulate collector system is completed after the applicable deadline under subdivision 70.3.a or 70.3.b, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue, add-on Hg emissions controls, flue gas desulfurization system, selective catalytic reduction system or compact hybrid particulate collector system.~~

~~70.4. Reporting data.~~

~~70.4.a. Except as provided in subdivision 70.4.b, the owner or operator of a Hg Budget unit that does not meet the applicable compliance date set forth in subdivision 70.3 for any monitoring system under subdivision 70.2 must, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for Hg concentration, stack gas flow rate, stack gas moisture content, and any~~

other parameters required to determine Hg mass emissions and heat input in accordance with 40 CFR §75.80(g).

~~—70.4.b. The owner or operator of a Hg Budget unit that does not meet the applicable compliance date set forth in subdivision 70.3.c for any monitoring system under subdivision 70.2.a must, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in Subpart D of 40 CFR Part 75, in lieu of the maximum potential (or, as appropriate, minimum potential) values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under subdivision 70.3.c.~~

~~—70.5. Prohibitions:~~

~~—70.5.a. No owner or operator of a Hg Budget unit will use any alternative monitoring system, alternative reference method or any other alternative to any requirement of this section and sections 71 through 76 without having obtained prior written approval in accordance with section 75.~~

~~—70.5.b. No owner or operator of a Hg Budget unit will operate the unit so as to discharge or allow to be discharged, Hg emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this section, sections 71 through 76, and Subpart I of 40 CFR Part 75.~~

~~—70.5.c. No owner or operator of a Hg Budget unit will disrupt the continuous emission monitoring system, any portion thereof or any other approved emission monitoring method, and thereby avoid monitoring and recording Hg mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing or maintenance is performed in accordance with the applicable provisions of this section, sections 71 through 76, and Subpart I of 40 CFR Part 75.~~

~~—70.5.d. No owner or operator of a Hg Budget unit will retire or permanently discontinue use of~~

~~the continuous emission monitoring system, any component thereof or any other approved monitoring system under sections 70 through 76, and Subpart I of 40 CFR Part 75, except under any one of the following circumstances:~~

~~—70.5.d.1. During the period that the unit is covered by an exemption under section 5 that is in effect;~~

~~—70.5.d.2. The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this section, sections 71 through 76, and Subpart I of 40 CFR Part 75, by the Secretary for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or~~

~~—70.5.d.3. The Hg designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with paragraph 71.3.e.1.~~

~~§45-37-71. Initial Certification and Recertification Procedures:~~

~~—71.1. The owner or operator of a Hg Budget unit will be exempt from the initial certification requirements of this section for a monitoring system under subdivision 70.1.a if the following conditions are met:~~

~~—71.1.a. The monitoring system has been previously certified in accordance with 40 CFR Part 75, and~~

~~—71.1.b. The applicable quality-assurance and quality control requirements of 40 CFR §75.21 and Appendix B to 40 CFR Part 75 are fully met for the certified monitoring system described in subdivision 71.1.a.~~

~~—71.2. The recertification provisions of this section will apply to a monitoring system under subdivision 70.1.a exempt from initial certification requirements under subsection 71.1.~~

~~—71.3. Except as provided in subsection 71.1, the~~

owner or operator of a Hg Budget unit must comply with the following initial certification and recertification procedures for a continuous monitoring system (e.g., a continuous emission monitoring system and an excepted monitoring system (sorbent trap monitoring system) under 40 CFR §75.15) under subdivision 70.2.a. The owner or operator of a unit that qualifies to use the Hg low mass emissions excepted monitoring methodology under 40 CFR §75.81(b) or that qualifies to use an alternative monitoring system under Subpart E of 40 CFR Part 75 must comply with the procedures in subsection 71.4 or 71.5 respectively.

— 71.3.a. Requirements for initial certification. — The owner or operator must ensure that each monitoring system under subdivision 70.2.a (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR §75.20 by the applicable deadline in subsection 70.3. In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this rule in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR §75.20 is required.

— 71.3.b. Requirements for recertification. — Whenever the owner or operator makes a replacement, modification or change in any certified continuous emission monitoring system or an excepted monitoring system (sorbent trap monitoring system) 40 CFR §75.15, under subdivision 70.2.a that may significantly affect the ability of the system to accurately measure or record Hg mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of 40 CFR §75.21 or Appendix B to 40 CFR Part 75, the owner or operator must recertify the monitoring system in accordance with 40 CFR §75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator must recertify each continuous emission monitoring system, and each excepted monitoring system (sorbent trap monitoring system) under 40 CFR

§75.15, whose accuracy is potentially affected by the change, in accordance with 40 CFR §75.20(b). Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system or change in location or orientation of the sampling probe or site.

— 71.3.c. Approval process for initial certification and recertification. — Paragraphs 71.3.c.1 through 71.3.c.4 apply to both initial certification and recertification of a continuous monitoring system under subdivision 70.1.a. For recertifications, replace the words "certification" and "initial certification" with the word "recertification," replace the word "certified" with the word "recertified," and follow the procedures in 40 CFR §75.20(b)(5) in lieu of the procedures in paragraph 71.3.c.5.

— 71.3.c.1. Notification of certification. — The Hg designated representative must submit to the Secretary, U.S. EPA Region III Office, and the Administrator written notice of the dates of certification testing, in accordance with section 73.

— 71.3.c.2. Certification application. — The Hg designated representative must submit to the Secretary a certification application for each monitoring system. A complete certification application must include the information specified in 40 CFR §75.63.

— 71.3.c.3. Provisional certification date. — The provisional certification date for a monitoring system will be determined in accordance with 40 CFR §75.20(a)(3). A provisionally certified monitoring system may be used under the Hg Budget Trading Program for a period not to exceed 120 days after receipt by the Secretary of the complete certification application for the monitoring system under paragraph 71.3.c.2. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of 40 CFR Part 75, will be considered valid quality assured data (retroactive to the date and time of provisional certification), provided that the Secretary does not invalidate the provisional certification by issuing a notice of

disapproval within 120 days of the date of receipt of the complete certification application by the Secretary.

~~71.3.c.4. Certification application approval process. -- The Secretary will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph 71.3.c.2. In the event the Secretary does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the Hg Budget Trading Program.~~

~~71.3.c.4.A. Approval notice. -- If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the Secretary will issue a written notice of approval of the certification application within 120 days of receipt.~~

~~71.3.c.4.B. Incomplete application notice. -- If the certification application is not complete, then the Secretary will issue a written notice of incompleteness that sets a reasonable date by which the Hg designated representative must submit the additional information required to complete the certification application. If the Hg designated representative does not comply with the notice of incompleteness by the specified date, then the Secretary may issue a notice of disapproval under subparagraph 71.3.c.4.C. The 120-day review period will not begin before receipt of a complete certification application.~~

~~71.3.c.4.C. Disapproval notice. -- If the certification application shows that any monitoring system does not meet the performance requirements of 40 CFR Part 75 or if the certification application is incomplete and the requirement for disapproval under subparagraph 71.3.c.4.B is met, then the Secretary will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Secretary and the data~~

~~measured and recorded by each uncertified monitoring system will not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under 40 CFR §75.20(a)(3)). The owner or operator must follow the procedures for loss of certification in paragraph 71.3.c.5 for each monitoring system that is disapproved for initial certification.~~

~~71.3.c.4.D. Audit decertification. -- The Secretary may issue a notice of disapproval of the certification status of a monitor in accordance with subsection 72.2.~~

~~71.3.c.5. Procedures for loss of certification. -- If the Secretary issues a notice of disapproval of a certification application under subparagraph 71.3.c.4.C or a notice of disapproval of certification status under subparagraph 71.3.c.4.D, then:~~

~~71.3.c.5.A. The owner or operator must substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under 40 CFR §75.20(a)(4)(iii), or §75.21(e) and continuing until the applicable date and hour specified under 40 CFR §75.20(a)(5)(i):~~

~~71.3.c.5.A.1. For a disapproved Hg pollutant concentration monitors and disapproved flow monitor, respectively, the maximum potential concentration of Hg and the maximum potential flow rate, as defined in sections 2.1.7.1 and 2.1.4.1 of Appendix A to 40 CFR Part 75; and~~

~~71.3.c.5.A.2. For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ concentration (as applicable), as defined in sections 2.1.3.1, and 2.1.3.2, and 2.1.5 of Appendix A to 40 CFR Part 75.~~

~~71.3.c.5.A.3. For a disapproved excepted monitoring system (sorbent trap monitoring system) under 40 CFR §75.15 and disapproved flow monitor, respectively, the~~

maximum potential concentration of Hg and maximum potential flow rate, as defined in sections 2.1.7.1 and 2.1.4.1 of Appendix A to 40 CFR Part 75.

~~71.3.c.5.B. The Hg designated representative must submit a notification of certification retest dates and a new certification application in accordance with paragraphs 71.3.c.1 and 71.3.c.2.~~

~~71.3.c.5.C. The owner or operator must repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Secretary's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.~~

~~71.4. Initial certification and recertification procedures for units using the Hg low mass emission excepted methodology under 40 CFR §75.81(b). -- The owner or operator of a unit qualified to use the Hg low mass emissions (HgLMH) excepted methodology under 40 CFR §75.81(b) must meet the applicable certification and recertification requirements in 40 CFR §75.81(c) through (f).~~

~~71.5. Certification and recertification procedures for alternative monitoring systems. -- The Hg designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the Secretary under Subpart E of 40 CFR Part 75 must comply with the applicable notification and application procedures of 40 CFR §75.20(f).~~

§45-37-72. Out of Control Periods.

~~72.1. Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of 40 CFR Part 75, data must be substituted using the applicable missing data procedures in Subpart D of 40 CFR Part 75.~~

~~72.2. Audit decertification. -- Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have~~

~~been certified or recertified because it did not meet a particular performance specification or other requirement under section 71 or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the Secretary will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this subsection, an audit will be either a field audit or an audit of any information submitted to the Secretary or the Administrator. By issuing the notice of disapproval, the Secretary revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system will not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator must follow the applicable initial certification or recertification procedures in section 71 for each disapproved monitoring system.~~

§45-37-73. Notifications.

~~73.1. The Hg designated representative for a Hg Budget unit must submit written notice to the Secretary and the Administrator in accordance with 40 CFR §75.61, except that if the unit is not subject to an Acid-Rain emissions limitation, the notification is only required to be sent to the Secretary.~~

§45-37-74. Recordkeeping and Reporting.

~~74.1. General provisions:~~

~~74.1.a. The Hg designated representative must comply with all recordkeeping and reporting requirements in this section and the requirements of subdivision 10.5.a.~~

~~74.1.b. If a Hg Budget unit is subject to an Acid-Rain emission limitation or the CAIR NO_x Annual Trading Program, CAIR SO₂ Trading Program or CAIR NO_x Ozone Season Trading Program, and the Hg designated representative~~

who signed and certified any submission that is made under Subpart F or G of 40 CFR Part 75 and that includes data and information required under this section, sections 70 through 73, section 75, section 76 or Subpart I of 40 CFR Part 75 is not the same person as the designated representative or alternative designated representative or the CAIR designated representative or alternate CAIR designated representative, for the unit under 40 CFR Part 72 and the CAIR NO_x Annual Trading Program, CAIR SO₂ Trading Program or CAIR NO_x Ozone Season Trading Program, then the submission must also be signed by the designated representative or alternative designated representative or the CAIR designated representative or alternate CAIR designated representative, as applicable.

~~74.2. Monitoring plans. -- The owner or operator of a Hg Budget unit must comply with the requirements of 40 CFR §75.84(e).~~

~~74.3. Certification applications. -- The Hg designated representative must submit an application to the Secretary within 45 days after completing all initial certification or recertification tests required under section 71, including the information required under 40 CFR §75.63.~~

~~74.4. Quarterly reports. -- The Hg designated representative must submit quarterly reports, as follows:~~

~~74.4.a. The Hg designated representative must report the Hg mass emissions data and heat input data for the Hg Budget unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:~~

~~74.4.a.1. For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009; or~~

~~74.4.a.2. For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under~~

~~subsection 70.3, unless that quarter is the third or fourth quarter of 2008, in which case reporting will commence in the quarter covering January 1, 2009 through March 31, 2009.~~

~~74.4.b. The Hg designated representative must submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports must be submitted in the manner specified in 40 CFR §75.84(f).~~

~~74.4.c. For Hg Budget units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Annual Trading Program, CAIR SO₂ Trading Program or CAIR NO_x Ozone Season Trading Program, quarterly reports must include the applicable data and information required by Subparts F through H of 40 CFR Part 75 as applicable, in addition to the Hg mass emission data, heat input data, and other information required by this section, sections 70 through 73, section 75 and section 76.~~

~~74.5. Compliance certification. -- The Hg designated representative must submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification must state that:~~

~~74.5.a. The monitoring data submitted were recorded in accordance with the applicable requirements of this section, sections 70 through 73, section 75, and section 76, and 40 CFR Part 75, including the quality assurance procedures and specifications; and~~

~~74.5.b. For a unit with add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system or a compact hybrid particulate collector system and for all hours where Hg data are substituted in accordance with 40 CFR §75.34(a)(1), the Hg add-on emission controls, flue gas desulfurization system, selective catalytic reduction system or compact hybrid particulate collector system were operating within the range of parameters listed in the quality~~

~~assurance/quality control program under Appendix B to 40 CFR Part 75 or quality-assured SO₂ emission data recorded in accordance with 40 CFR Part 75 document that the flue gas desulfurization system or quality-assured NO_x emission data recorded in accordance with 40 CFR Part 75 document that the selective catalytic reduction system, was operating properly, as applicable, and the substitute data values do not systematically underestimate Hg emissions.~~

~~§45-37-75. Petitions:~~

~~75.1 The Hg designated representative of a Hg unit may submit a petition under 40 CFR §75.66 to the Administrator requesting approval to apply an alternative to any requirement of sections 70 through 74, and section 76. Application of an alternative to any requirement of sections 70 through 74, and section 76 is in accordance with this section and sections 70 through 74, and section 76 only to the extent that the petition is approved in writing by the Administrator, in consultation with the Secretary.~~

~~§45-37-76. Additional Requirements to Provide Heat Input Data:~~

~~76.1 The owner or operator of a Hg Budget unit that monitors and reports Hg mass emissions using a Hg concentration monitoring system and a flow monitoring system must also monitor and report heat input rate at the unit level using the procedures set forth in 40 CFR Part 75.~~

~~§45-37-80. Inconsistency Between Rules:~~

~~80.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, such inconsistency will be resolved by the determination of the Secretary and such determination will be based upon the application of the more stringent provision, term, condition, method or rule.~~



west virginia department of environmental protection

Public Hearing on the Division of Air Quality Rules:

45CSR1, 45CSR8, 45CSR13, 45CSR14, 45CSR16, 45CSR25, 45CSR26, 45CSR34 and 45CSR37

August 11, 2008, 6:00 p.m.

[illegible]

Promoting a healthy environment.

ORIGINAL

BEFORE THE DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

IN THE MATTER OF:

PROPOSED REPEAL OF 45CSR37,
MERCURY BUDGET TRADING PROGRAM
TO REDUCE MERCURY EMISSIONS

TRANSCRIPT OF PROCEEDINGS had or testimony adduced pursuant to the West Virginia Rules of Civil Procedure in the above-entitled action, on the 11th day of August, 2008, commencing at 6:27 p.m. and concluding at 6:31 p.m., at the West Virginia Department of Environmental Protection, 601 57th Street S.E., Charleston, Kanawha County, West Virginia, taken by Jo Ann Wilson, Certified Court Reporter, duly certified by the West Virginia Supreme Court of Appeals and Notary of West Virginia, pursuant to notice to all interested parties.

BEFORE: JAMES MASON, Moderator

NANCY MCNEALY
CERTIFIED COURT REPORTER
Post Office Box 13415
Charleston, West Virginia 25360-0415
(304) 988-2873 FAX (304) 988-1419

I N D E X

Reporter's Certificate.....Page 5

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1 Proceedings resumed as follows.)

2 MR. MASON: There being nothing further,
3 this public hearing for the Proposed Repeal of 45CSR37 is
4 concluded.

5 (WHEREUPON, the public hearing was concluded.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

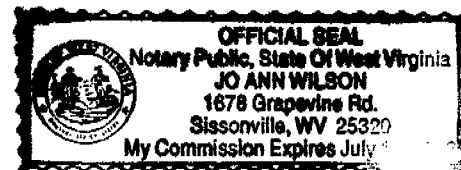
I, **JO ANN WILSON**, Certified Court Reporter, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption hereof.

Given under my hand this 20th day of August,
2008.

My commission expires July 10, 2016.

Jo Ann Wilson, C.C.R.

Certified Court Reporter



SIERRA CLUB

WEST VIRGINIA CHAPTER

P. O. Box 4142
Morgantown, WV 26504

Aug. 10, 2008

West Virginia Division of Air Quality
Department of Environmental Protection,
601 57th Street S.E.,
Charleston, WV 25304.

Re: Comments on Air Rules.

Please accept the following comments on behalf of the West Virginia Chapter of Sierra Club.

1. 45-CSR-1. No comments.
2. 45-CSR-13 (Construction permits) incorporates new provisions pursuant to HB 4438 from the 2008 Legislature. This bill allows applicants to begin construction prior to obtaining a final construction permit.

2.A. 45-CSR-13. Section 4.1.b. requires that the secretary issue administrative updates within 60 days after receipt of a complete application. While this is reasonable for Class I administrative updates, Class II administrative updates are those that allow emissions increases, changes in operating parameters, changes in emissions points, or changes in control equipment. These also require public notice and comment, and agency staff need time to respond to such comment and incorporate those comments into their decisions. Therefore, we recommend that the 60-day time limit apply only to Class I administrative updates.

2.B. 45-CSR-13 Section 5.7.a requires the Secretary to issue a permit within 90 days of certifying that an application is complete. The original language of the rule specified that the Secretary had 180 days to reach a decision. We continue to object to this 90-day limit as it does not provide agency staff with adequate time to review complex permits, and it does not provide adequate time for the public to review a permit and provide meaningful input. The change is clearly an attempt to limit public participation and is contrary to the intent of the Clean Air Act. In many cases, permits must also be reviewed by other agencies, including federal land managers, and environmental agencies in adjoining states. It is simply not possible to get meaningful input and resolve outstanding complex technical issues in only 90 days.

Of even greater concern is the time needed to provide technical review of permits by the public. During the recent debate over the Longview Power permit, citizens retained outside air pollution experts, filed substantive comments, and ultimately negotiated more protective air pollution limits and monitoring requirements than were originally proposed by the applicant or by DEP. These changes were agreed to by the applicant and DEP, and significantly reduced

Not Blind Opposition To Progress, But Opposition To Blind Progress

pollution emissions from the proposed facility. Citizens simply can not be expected to get the necessary technical expertise, allow adequate review by such experts, and file meaningful comments within a period as short as 90 days. Thus the effect of this change, as illustrated by the Longview permit, would be to allow greater pollution emissions, a clear violation of the requirement for Best Available Control Technology limits in air permits.

We recommend that the proposed language be revised to allow 120 days for permit review, with an additional 60 days when the Secretary receives a request for additional time for public comment or when the source constitutes a major source. Alternatively, the rule should be revised to require that all public and agency comment has been received before the permit is determined to be "administratively complete."

2.C. 45-CSR-13. Section 16.3. Application Requirements for permission to commence construction in advance of permit issuance. The requirements for such an applicant should be expanded to assist the agency with its permit review and to assure the applicant that its proposed emissions limits and control technologies will comply with the Clean Air Act. At a minimum, the applicant should be required to submit information documenting that the emissions limits and pollution control technologies will comply with the Best Available Control Technology requirements of the Clean Air Act. This should include a listing of the best performing comparable facilities, the emissions levels that have been permitted and have been achieved, and a review of permit limits issued recently for comparable facilities elsewhere.

This approach will help DEP achieve an adequate review within reasonable time limits. More importantly, it would help the applicant by assuring that their proposed technologies will be achieved, and that significant changes will not be required after construction has begun. A similar BACT process is already required for major sources in West Virginia, and for non-major sources in some other states. While this would not make such a BACT process mandatory for all minor sources, those that wish the extra privilege of permission for early construction should be willing to take the extra steps of assuring that their pollution controls really are among the best available.

We recommend language such as the following:

"16.3.k. A listing of alternative pollution control technologies or methods which results in the most stringent emission limitation or control technology which has been achieved in practice for such category or class of source; or which is contained in any state implementation plan (SIP) approved by the United States Environmental Protection Agency (EPA) for such category or class of source."

2.D. 45-CSR-13. Section 16.2 describes eligibility requirements for applicants for a permit to commence construction in advance of permit issuance. An additional limitation is needed for ineligible facilities: "16.6.2.d. Sources located in areas designated as nonattainment areas under the "Federal Clean Air Act".

The rule already requires that the Secretary find that the permission to construct would not jeopardize attainment areas, this amendment simply clarifies that no permits would therefore be allowed in nonattainment areas. "Nonattainment areas" are those parts of the state where air quality does not meet federal air quality standards. Adding more pollution in these areas would make an already unhealthy situation worse. Persons living in areas that already have unhealthy levels of air pollutants should not be subject to further additional pollution unless those sources can contribute to further progress toward attainment. It is already difficult enough to bring an area back into attainment, and allowing expedited approval of new sources in these areas will undermine existing attainment plans. This will impose significant federal penalties that are certainly more detrimental to economic development than the current regulatory process. Limiting the preconstruction approvals to areas that are already in attainment will help focus

economic development in areas that need it the most, while protecting the air quality of the people who are among the most threatened.

2.E. 45-CSR-13. Section 16.6.a. This section requires that the Secretary determine that an applicant for permission to construct be "in substantial compliance" with all other active permits for the last three years. Unfortunately, the term "substantial" is not defined, and leaves excessive discretion for the secretary to overlook or disregard significant non-compliances with existing active permits. There have been numerous examples in recent years where both the permittee and the DEP have claimed that a facility is in compliance, only to find that it is emitting significantly more pollutants than was authorized by permit. The Fib-Air facility in Preston County claimed to be in compliance with all of its permit conditions, but stack monitoring demonstrated that it was emitting 5 times the permitted level of formaldehyde. DEP's response was to issue a Notice of Violation, but then settle by entering into a Consent decree by which the permit limits were raised to legalize the previously illegal pollution emissions. More recently, the John Amos plant has been implicated as the source of the "Blue Haze" events in the Kanawha Valley. They claimed to be in compliance, but monitoring showed excessive emissions of sulfur oxides identified as precursors of the problems.

The Clean Air Act does not distinguish "substantial" and "insubstantial" violations. Even routine reporting problems are considered substantial because these are crucial to the monitoring and enforcement of air permit conditions.

For these reasons we recommend deleting the word "substantial" from this section.

2.F. 45-CSR-13. Section 16.6.b-f. These sections identify conditions for issuance of a permit to begin construction. Unfortunately, the wording appears to be overly broad, and would allow construction to begin on facilities that do not meet BACT requirements of the Clean Air Act. For example, an applicant could claim that a new unit is not a major modification of a major source, and further claim that this new unit would reduce emissions compared to an older unit being retired. However, the failure to conduct a complete BACT analysis may lead to selection of pollution control technologies that are less effective than the Best Available Control Technologies. If the old existing unit has emissions of 10 pounds per hour of pollutant X, the proposed new unit would only emit nine pound per hour, but the BACT would be 1 pound per hour, then the applicant would be proposing to use a technology that emits nine times more of Pollutant X than would be allowed under BACT. The language of these sections would allow construction to start, even though later analysis or public comment would demonstrate that an alternative technology is required. Hence these sections should be re-written to require that the applicant document the current Best Available Technology at comparable facilities elsewhere. Although it could be argued that section 16.6.b. already implies such application requirements, the rule should state this explicitly.

3. 45-CSR-8 Air Pollution Standards. Section 4.2.b. leaves the annual PM_{2.5} standard at 15.0 ug/m³. It is well-established that this standard does not meet the Clean Air Act requirement of protecting human health with an adequate margin of safety. EPA's Clean Air Science Advisory Committee recommends that the limit be set no greater than 14.0 ug/m³, and we urge DEP to adopt this standard. We recognize that this is more stringent than the current federal standard, but DEP should begin phasing in this standard now, at least in their permit determinations for new sources.

4. 45-CSR-14. We applaud the proposed deletions of the so-called "Clean Unit" exemptions and the exemptions for so-called "Pollution Control Projects". You will recall that we urged these changes in our comments on the 2005 rule amendments. We urge you to go one step further and adopt the following provisions.

4.A. 45-CSR-14. Section 2.40.d. We urge that this exemption for use of fuel derived from municipal solid waste be deleted. I am unaware that this type of fuel constitutes a major use of current coal-fired power plants, and inclusion of such fuels is, in fact, a major change in the fuel source and fuel characteristics. Use of municipal solid waste has the potential to significantly alter emissions of Hazardous Air Pollutants and increase emissions of heavy metals, chlorinated hydrocarbons, and various other pollutants. Deletion of this section would not prohibit the use of Municipal solid waste, but it would allow better review of any environmentally damaging emissions before their use in power plants that were not designed for their use.

4.B. 45-CSR-14. Section 2.50, et seq. We again urge that this definition of a "Plant-wide Applicability Limit" be deleted, along with any other references to it. This change in New Source Review rules allows polluters to shift emission points and engage in a variety of other modifications that make enforcement of emissions limits exceedingly difficult for the agency. The Monitoring requirements associated with these provisions are cumbersome for the agency, and almost impossible for citizens to track and verify. Deletion of exemptions for a PAL would improve enforcement, and largely return the rule to its pre-2005 condition.

5. 45-CSR-16. No comments.

6. 45-CSR-25. No comments.

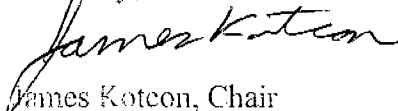
7. 45-CSR-26. No comments.

8. 45-CSR-34. It is not clear why the identified sections are being excluded from these emissions standards for Hazardous Air Pollutants. An emission standard is not an "unfounded mandate" per se, and a more appropriate location for any needed exclusions should be identified in other relevant rules.

9. 45-CSR-37. We support the deletion of this rule. This would be consistent with our comments opposing the rule when it was first adopted in 2005-06.

Thank you for the opportunity to comment. Please feel free to contact me if I can provide further information to clarify these comments.

Sincerely,



James Kotecon, Chair
State Government Programs Committee

45CSR37

MERCURY BUDGET TRADING PROGRAM TO REDUCE MERCURY EMISSIONS

RESPONSE TO COMMENTS

On July 11, 2008, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on August 11, 2008 to accept oral comments on the proposed repeal of legislative rule 45CSR37. Written comments were also accepted through 6:00 PM on Monday, August 11, 2008. One commenter submitted a written comment regarding the proposed repeal of rule 45CSR37, and no commenter provided verbal comments. DAQ addresses the written comment below.

I. COMMENTER: Sierra Club

COMMENT A. The commenter states, "*We support the deletion of this rule.*"

RESPONSE A. No response required.