

Form #3 ☐

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE



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West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

August 31, 2000

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 45CSR1 - "NO_x Budget Trading Program as a Means of Control and
Reduction of Nitrogen Oxides"

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as "Notice of Agency Approval of a Proposed Rule."

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my Office at 759-0515.

Sincerely,

Michael C. Castle
Commissioner

MCC:cc

cc: Karen Watson
Carrie Chambers

Questionnaire

DATE: September 1, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (AGENCY NAME, ADDRESS & PHONE NUMBER) Division of Environmental Protection
Office of Air Quality
7012 MacCorkle Avenue, SE
Charleston, WV 25304
Phone: (304) 926-3647

LEGISLATIVE RULE TITLE: 45CSR1 - "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides"

1. Authorizing statute (s) citation: W. Va. Code §§ 22-5-1 et seq.
2.
 - a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 12, 2000 and August 9, 2000
 - b. What other notice, including advertising, did you give of the hearing?
 - I. Class I legal advertisement, *Charleston Daily Mail & Charleston Gazette*
 - II. Sent a copy of the Public Notice to our agency mailing list.
 - III. Public Notice placed on agency's Web site:
<http://www.dep.state.wv.us/oaq/>
 - IV. Press Releases
 - c. Date of Public Hearing (s) or Public Comment Period ended:
Public Hearing -- August 14, 2000
Public Comment Period ended -- August 21, 2000

- 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)

September 1, 2000

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

<u>Edward L. Kropp, Chief</u>	<u>Carrie Chambers, Executive Assistant</u>
<u>7012 MacCorkle Ave., SE</u>	<u>10 McJunkin Road</u>
<u>Charleston, WV 25304</u>	<u>Nitro, WV 25143-2506</u>
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<u>E-Mail: skropp@mail.dep.state.wv.us</u>	<u>Cchambers@mail.dep.state.wv.us</u>

- 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

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

Rule Title: 45CSR1 "NO_x Budget Trading Program as a Means of Control and
Reduction of Nitrogen Oxides"

A. AUTHORITY: W.Va. Code §§22-5-1 et seq.

B. SUMMARY OF RULE:

This rule partially fulfills the State's obligations in responding to U.S. EPA's final rule, *Findings of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone* (27 Oct 1998, 63 FR 207 at 57356, herein referred to as the *NO_x SIP Call*). Essentially, the federal rule requires that large emitters of Nitrogen Oxides (NO_x) significantly reduce emissions and constrain them to set budgets, starting in 2003 and maintaining them thereafter. Flexibility is built in through "trading" provisions which allow sources to buy/trade emission allocations from other participants. Thus, a source which has an excess of allocations may sell or trade them to a source which, for whatever reason, has been unable to achieve the required amount of reductions cost effectively. This State rule applies to large stationary sources which are not Electric Generating Units (EGUs) as defined in the rule. DEP plans to address EGUs in a separate rulemaking, 45CSR26.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

U.S. EPA has identified 23 jurisdictions, including West Virginia, which allegedly contribute to ground-level ozone nonattainment in downwind states. U.S. EPA accordingly promulgated federal rules requiring these jurisdictions to submit revisions to their State Implementation Plans (SIPs), including state rules, to reduce NO_x emissions pursuant to §110(a)(2)(D) of the 1990 Clean Air Act Amendments. Originally, States were to submit control plans as revisions to the applicable SIP by September 1999. However, several States, including West Virginia, filed legal challenges to U.S. EPA's rulemaking. A federal court subsequently stayed indefinitely the submittal requirement. In June 2000, the U.S. Court of Appeals for the D.C. Circuit made a final ruling that largely upheld U.S. EPA's action. Consequently, 19 jurisdictions, including West Virginia are now required to submit SIP revisions by October 2000. However, litigation continues through an appeal to the U.S. Supreme Court. The Division of Environmental Protection, Office of Air Quality is going forward with the promulgation of this proposed rule which adopts the federal requirements, pending the outcome of the legal challenge. If the Court agrees to hear the case and rules in the State's favor, the proposed State rule may be withdrawn or modified accordingly.

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

Federal counterparts to this proposed rule exist. Two related, parallel federal rulemakings may impose similar requirements on affected facilities. These include the Federal Implementation Plan (FIP) associated with the NOx SIP Call and the separate but related rulemaking by U.S. EPA on Petitions filed pursuant to Section 126 of the 1990 Clean Air Act Amendments. The latter became effective on February 17, 2000 and imposes similar requirements regardless of any State action. To the extent practicable, and with limited exception, e.g. non-applicability to EGUs, the State rule emulates the model rule contained in the NOx SIP Call with revisions contained in the Section 126 action, as updated by U.S. EPA rulemaking and modified according to judicial actions.

Because the proposed rule follows the modified presumptive federal rules for the source categories to which it applies, the Director has determined that the proposed rule is no more or less stringent than the applicable federal counterpart regulations.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c,) the Director has determined that 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 their July 6, 2000 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. See attached minutes of that meeting.

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 6, 2000, Director's Conference Room, Nitro

The twenty-first meeting of the DEP Advisory Council was held Thursday, July 6, 2000, in the Director's Second Floor Conference Room located in Nitro. Chairman Mike Castle called the meeting to order at 10:00 a.m.

ATTENDING:

Advisory Council Members:

Mike Castle, Chairman
Lisa Dooley
Jacqueline Hallinan
Bill Raney
Rick Roberts
Bill Samples

Environmental Protection:

Greg Adolfson	Ava King
John Ailes	Brian Long
John Benedict	Pam Nixon
Al Blankenship	Rocky Parsons
Carrie Chambers	Jennifer Pauer
Dick Cooke	Cap Smith
Mike Dorsey	Randy Sovic
Andy Gallagher	Charlie Sturey
Randy Huffman	Darcy White
John Johnston	

1) Review and Approval of April 6, 2000 Minutes.

The April 6 Minutes were approved with note of two minor revisions.

2) Discussion of Proposed Rule Amendments - 2001 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's rule-making procedure policy that was implemented in 1998, and included involving DEP's Advisory Council in DEP's rule-making process as early as possible to enable the Council to

review, comment, and make recommendations to the Director on the proposed Legislative rules before they are filed for public hearing, the following proposed rules were brought to the Council's attention.

John Benedict, Deputy Chief of the Office of Air Quality (OAQ), reviewed the following OAQ rules:

- 45CSR1 - "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides"
- 45CSR6 - "To Prevent and Control Air Pollution From Combustion of Refuse"
- 45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61"
- 45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR part 60"
- 45CSR23 - "To Prevent and Control Emissions From Municipal Solid Waste Authorities"
- 45CSR25 - "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"
- 45CSR30 - "Requirements for Operating Permits"
- 45CSR34 - "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63"

In discussion of 45CSR1, John explained to the Council that they did not have the companion rule (which is 45CSR26) to this proposed rule amendment, but Council will be provided a copy of the proposed rule when the draft is complete. Both rules have been drafted as a response to EPA's NO_x SIP Call. Failure of states to respond to the SIP Call will result in a NO_x federal implementation plan or federal program to reduce NO_x emissions under Section 126 of the CAA. John explained that OAQ is late in drafting both rules because they were waiting until several issues were settled in federal court. EPA is now requiring, and the federal courts concurred, that states develop rules and meet the conditions of the SIP Call by October 28, 2000. EPA's SIP Call affects major utility sources, cement kilns, and large

industrial-type boilers (those exceeding 250 lbs/mmBtu). The SIP Call originally included internal combustion engines.

45CSR1 establishes standards specifically for non-utility boilers, and follows EPA's model rule that states are to use in developing their SIPs. The model rule incorporates standards to allow sources to trade emissions between states. Therefore, states do not have a lot of flexibility to adjust their state-specific rules, if they want their sources to participate in a national NO_x budget-trading program.

John informed the Council that **45CSR15** adopts by reference the new federal provisions for emission standards for hazardous air pollutants (NESHAPS), and other regulatory requirements as outlined in 40 CFR Part 61, as of June 1, 2000. This also applies to **45CSR16**, which specifically includes associated reference methods, performance specifications, other test methods, and a minor correction to the reporting requirements for industrial-commercial-institutional steam generating units.

45CSR6 prevents and controls particulate matter air pollution from the combustion of refuse by the prohibition of open burning. This proposed rule also establishes weight and visible emission standards for incinerators and incineration, and is part of the West Virginia State Implementation Plan (SIP) approved by EPA. The rule does not prohibit bonfires, campfires, or other forms of open burning for the purposes of personal enjoyment and comfort, but establishes standards for open burning. The proposed revisions are intended to exempt certain flares and flare stacks from the requirement to obtain a permit under **45CSR13**.

45CSR23 - This rule was first promulgated approximately three years ago, and for the most part adopts new federal standards by reference. There is a specific plan that each state puts together for "existing sources" that OAQ has done for previous rule versions, and the plan for West Virginia has been approved by EPA.

45CSR25 - This rule establishes a program of air quality regulation over the treatment, storage, and disposal of hazardous wastes. John informed Council that this proposed rule amendment is incorporating additional federal requirements promulgated by EPA, as of June 1, 2000. There is a shift from the Resource Conservation and Recovery Act (RCRA) requirements into the Clean Air Act (CAA) programs that OAQ operates. Many of the RCRA provisions previously contained in this rule are now being

shifted to 45CSR34 (which will be discussed later in the meeting). John said this proposed rule amendment is also necessary to maintain consistency with the Office of Waste Management's current rule - 33CSR20.

45CSR26 (copy not provided for Council at this time) specifically addresses NO_x reduction requirements for electric generating units. This rule deviates somewhat from EPA's model rule, but follows the Governor's Coalition proposal. EPA's model rule requires electric generating units .15 lb/mmBtu NO_x limits, which is roughly an 85% reduction in NO_x emissions. Whereas, the Governor's coalition proposal requires .25 lb/mmBtu NO_x limits, or 65% reduction from their 1999 emissions.

45CSR30 establishes a comprehensive air quality operating permits program consistent with the requirements of Title V of the federal Clean Air Act and 40 CFR Part 70. These proposed amendments will incorporate various corrections and revisions associated with the November 1995 Federal Register Notice. John said OAQ has deferred making these changes until now in anticipation of additional changes they believe EPA will make in Part 70. There also has not been a great deal of concern since OAQ has received interim approval of the program since 1994; however, EPA was recently sued for issuing these interim approvals. This put OAQ in the position of amending the rule to comply with the November 1995 requirements, so that OAQ can receive final approval from EPA. John said the rule may need to be modified again in the near future when (and if) EPA modifies the Part 70 requirements.

45CSR34 - This rule provides authority for the Director to determine and enforce case-by-case maximum achievable control technology (MACT) standards for major hazardous air pollutant sources, in the absence of a federal standard under certain circumstances, as required for permit program approval under Title V of the CAA. John said this proposed amendment does delete the requirement that OAQ do a case-by-case MACT analysis for sources that modify. He said this is a fairly significant change in the rule. Previously, and even under OAQ's Title V program, sources that do even slight modifications and were to eventually receive a MACT standard from EPA, were required to make some kind of guess as to what that standard was under such modification, and then do a case-by-case analysis to make that source comply with what everybody thought would be the ultimate MACT standard for that source. EPA was sued over this particular requirement, and has since removed the requirement from the Title V program. As mentioned earlier in the meeting, OAQ is also

proposing incorporating the provisions in 45CSR25, pertaining to hazardous waste combustors, into this rule.

After discussions and questions concerning OAQ's proposed rules, Council recommended the following to Chairman Castle:

Bill Raney deferred to Ray Joseph, representing the natural gas industry, for questions concerning Section 6 of 45CSR6 (To Prevent and Control Air Pollution From Combustion on Refuse) requirements for Permits before the installation and use of emergency flares. The concern from Mr. Joseph was that in certain situations emergency flares would exceed permitting trigger levels requiring a permit pursuant to 45CSR13. John Benedict concurred that permits would be required under those circumstances. However, that should not be that much of a burden since the emissions from a majority (90% +) of emergency flares used in the natural gas industry would be below permit trigger levels. It was noted that Section 6 was specifically revised to allow the use of emergency flares for the natural gas industry, and that others in OAQ were more directly involved in drafting the specific language in Section 6. Mr. Benedict recommended that proposed rule 45CSR6 go to public notice as drafted, and that the OAQ would meet with representatives of the natural gas industry to further discuss their concerns, and possibly consider revisions in Section 6.

Bill Raney asked if the Administrative Procedures Act requires Fiscal Notes to be completed as to the implications of the rule on the regulated community. Carrie Chambers advised Mr. Raney that fiscal notes are prepared for each rule before they are filed for public hearing, but the fiscal note requires information on the cost to the state in implementing the proposed rules, not on the regulated community. The Fiscal Notes are a work-in-progress, and will be submitted to Council after they are completed. Mr. Raney expressed his concern by stating that he has a problem in approving the proposed rules without the Council reviewing these documents beforehand. He said agencies have typically been known to crank out the standard responses to the fiscal notes, which leads to problems during the Legislative Rule-Making process. Bill Samples said he wasn't sure if the Council has a right to approve or disapprove the proposed rules, but only that the Director is to consult with Council on the proposed amendments, and then consider their comments. Mr. Raney stated that he would still like his concerns noted and included in the minutes that will be filed with the proposed rules.

Mr. Raney said he would also like to ask why there is nothing on the agenda concerning the Environmental Quality Board's (EQB) Water Quality Standards rule. Carrie Chambers explained that she has included a copy of EQB's rule (and also three of the Solid Waste Management Board's proposed rules), for Council's review, in the notebooks containing DEP's rules. She went on to explain that since the Boards have their own rule-making authority under §22B-3-4, they are not required to go before the Advisory Council during the rule-making process.

Mr. Raney said that DEP has a huge obligation in regards to water quality standards, regardless of who has the rule-making authority. He also said that the rules as proposed are huge, and the implications to the regulated community are immense.

Chairman Castle said he would try to find someone from OWR or EQB to discuss EQB's rule later in the meeting.

□ 60CSR4 - "Awarding of West Virginia Stream Partners' Program Grant Rule."

Jennifer Pauer, Program Coordinator for the Stream Partners' Program, briefed Council members on the proposed amendments to 60CSR4. Jennifer said this rule was filed as an emergency rule in March. After one year of implementing the rule, it was discovered that the rigid spending caps contained in the original rule made it difficult to implement as intended by §20-13-4. The proposed amendments will loosen these spending caps, and therefore make it easier for grant recipients to complete their watershed improvement projects. The rule also contains minor technical cleanup.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 60CSR4.

□ 199CSR1 - "Surface Mining Blasting Rule"

Darcy White, Office of Explosives and Blasting (OEB), briefed Council on 199CSR1. Darcy explained that many of the proposed amendments to the Surface Mining Blasting rule are technical cleanup in nature and also involve changing the order of some provisions to improve clarity. Sections covering inspections and enforcement and appeals were extracted from portions of existing 38CSR2, the Surface Mining and Reclamation rule. These sections are being amended into the current rule to

ensure OEB has authority to enforce a program that will satisfy OSM requirements. Another section extracted from 38CSR2 deals with pre-blast survey requirements, and is necessary if OEB is to gain OSM approval of the proposed rules. Darcy said that subsection 3.11 also contains a proposed revision that allows the Director to further restrict blasting on a case-by-case basis as an alternative to prohibiting blasting altogether. To correspond with the blaster's certification rules approved by OSM, and to help improve certified blaster's professionalism and knowledge, the requirements for blaster's certification is also being proposed as an amendment to this rule.

Larry Harris, Advisory Council member, was unable to attend the meeting; however, he expressed the following comments on 199CSR1 by e-mail. He asked whether these blasting rules will also apply to the quarry bill and rules. He said that in the Surface Mining Blasting rule there seems to be some consideration of the premining groundwater/wells. This presumes that any taking of this water right from nearby landowners is cause for a claim. Is this also true for limestone quarries?

Darcy responded by saying that no, 199CSR1 applies only to coal mining. Blasting requirements for quarries are addressed in S22-4 (revised during the past legislative session, and effective this July). Rocky Parsons is currently working on a rules package as required by this legislation. Until those are promulgated, there is no change in blasting requirements for quarries.

After discussion and questions from the Council, there were no recommendations made to the Director concerning the proposed amendments to 199CSR1.

John Johnston, Chief of the Office of Oil and Gas, discussed the following proposed rules.

- 35CSR4 - "Oil and Gas Wells and Other Wells"
- 35CSR7 - "Certification of Gas Wells"

John told Council that there are three proposed amendments to 35CSR4 and one to 35CSR7 that are both fairly straightforward. He said the proposed amendments in 35CSR4 will: 1) allow the plats to be submitted electronically. This is the first step in relation to authorizing permitting electronically for oil and gas wells; 2) will apply to the procedure for well transfer. These proposed amendments will eliminate the pre-circular, and cut the

paperwork and mailing in half that the Office of Oil and Gas must perform in the transfer process. This will also allow the transfer of well responsibility to occur in a more timely manner; and 3) will waive the new certification for the reuse of plats when applying for plugging permits.

35CSR7 - The Federal Energy Regulatory Commission is proposing to reinstate certain regulations regarding well category determination under the Natural Gas Policy Act of 1978, Section 503. This section allows natural gas producers to obtain tax credits under Section 29 of the Internal Revenue Code. Section 503 first requires a determination by the local regulatory agency that a well is producing one of the types of gas eligible for the Section 29 tax credit. The promulgation of these proposed rules will enable the Office of Oil and Gas to review and conduct the first determination.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 35CSR4 and 35CSR7.

The following Office of Waste Management rules were discussed:

- **33CSR3** - "Yard Waste Management Rule"
- **33CSR5** - "Waste Tire Management Rule"
- **33CSR20** - "Hazardous Waste Management Rule"
- **33CSR32** - "Underground Storage Tank Insurance Fund"

Dick Cooke, Assistant Chief, Office Waste Management (OWM), briefed Council on **33CSR3**. He said OWM has taken a policy statement, that with a change in the yard waste laws approximately two years ago, provided for the Director to provide for reasonable and necessary exceptions to the prohibition of yard waste in landfills. This provision was not incorporated into the rule as the Legislature intended at that time. This proposed amendment incorporates that exception into the rule, and will allow West Virginia residents to dispose of small quantities of domestic yard waste in solid waste landfills, where there is no other option available.

Dick Cooke explained to Council that SB 427 (the Tire Bill) mandated that emergency rules be promulgated under **33CSR5**. The

proposed emergency rule, among other amendments, will allow the disposal of waste tires in solid waste landfills, but only when the state agency authorizing the remediation or cleanup program has determined there is no reasonable alternative available. The proposed amendments also adds permitting or other requirements for salvage yards, waste tire dealers, waste tire transporters, and commercial landfill facilities.

Mike Dorsey, Assistant Chief, OWM, next discussed 33CSR20. He explained the rule is being amended to adopt by federal reference the 1999 changes made to 40 CFR Parts 260 through 279. Those amendments include Hazardous Waste Management System: Modification of the Hazardous Waste Program, Hazardous Waste Lamps, and 180-day Accumulation Time Under RCRA for Waste Water Treatment Sludges from the Metal Finishing Industry. These amendments are less stringent than federal regulations and are intended to assist the regulated community, and encourage recycling and waste minimization.

Mike said OWM has two rule amendments this year that deal with underground storage tanks. The first, 33CSR30, applies to a very small segment of the population. This rule, as well as federal EPA requirements, requires that all underground storage tanks (UST) have corrosion protection by December 22, 1998. Many UST systems were upgraded to meet the standards rather than new USTs being installed; however, the UST inspectors are finding that many of the systems were not installed correctly. Since the current rules do not specifically require certification of persons who install corrosion protection, the burden falls solely on the UST owners and/or operators to correct the system. This proposed amendment should prevent this from continuing in the future.

33CSR32, OWM's final proposed rule, deals with the Underground Storage Tank Insurance Fund. This rule requires that accrued interest on the UST Insurance Trust Fund Capitalization Fund remain in that fund. The UST Administrative Fund has been depleted, and the annual registration fee assessment no longer generates enough revenue to support the UST program. The expenditures from the UST Administrative Fund are used as the required match for the federal grant. Unless more revenue is deposited in the UST Administrative Fund, there will be insufficient funds to pay personnel and other operating costs. The proposed amendments to this rule will allow the transfer of the interest money and alleviate the need to increase the annual registration fees. Mike said this amendment has the full support of the UST Advisory Committee.

After discussion of OWM's proposed rules, the following amendment to 33CSR5 (the Waste Tire Disposal rule) was offered by Counsel:

Bill Samples said that section 3.1.a indicates that a permit is required for persons who generate waste tires, but he couldn't find a definition of "generator," and this could be confusing when trying to interpret the rule. Cap Smith, Chief of OWM, said that is a very good point, and it will certainly be taken into consideration during the public hearing/comment period timeframe.

The following Office of Mining and Reclamation rules were discussed:

- 38CSR2 - "WV Surface Mining Reclamation Rule"
- 38CSR3 - "Rules for Quarrying and Reclamation"

John Ailes, Assistant Chief, OMR, briefly described the proposed amendments to 38CSR2, and noted that most of the amendments deal with Office of Surface Mining program amendments.

After discussion/questions concerning 38CSR2, the following comments were made by Council:

In Section 14.15.f, OMR is proposing to tie contemporaneous reclamation to reclamation liability. The proposed amendment stated that the reclamation liability cannot exceed the bond posted for the site. Bill Raney stated his concern with limiting the area to be disturbed based upon liability. He questioned who would be determining reclamation liability, and how. He said that he understands the reasoning, but would like to go on record as being "cautiously reserved," and additional comments would be forthcoming during the public hearing/comment period.

The proposed amendment to strike Section 23, which deals with coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use, was questioned by Council. John explained to Council that this provision was amended into the rule a few years ago, but never approved by OSM, and therefore deleted from the rule mainly as a cleanup. Bill Raney said that he is hesitant to see the Section deleted from the rule since it is still in DEP's statute, and has been beneficial to businesses several times throughout the state. After further discussion, Chairman Castle agreed to reinstate Section 23 and will work with OSM to seek program approval.

Rocky Parsons, OMR Assistant Chief, discussed the newly-proposed Quarry mining rules, 38CSR3, authorized in HB 4055, effective June 8. He said that the Statue was developed through the stakeholders' process, and the rules have been drafted the same way. DEP intends to file the rules as "Emergency," and at the same time file the rules to go through the normal legislative rule-making process. He said it is still a working document, but any changes made will be as a result of the stakeholders' process.

After discussion/questions on 38CSR3, the following comments are noted by Council members:

Mr. Larry Harris commented by e-mail on 38CSR3. He stated that his concerns for quarries are "related to degradation of nearby streams and water tables. Where limestone is located the quality of streams is generally high, often being trout streams. Quarries can alter the quality of the stream through siltation, and the quantity through alterations of the water table due to blasting. Hence, we want to make sure that the rules adequately address these two issues. I think that the water quality baseline studies should include a bottom fines analysis of receiving streams. Duffield of the Forest Service has established a direct relationship between the % of fines in stream sediment and the biological productivity of the stream. Having a baseline value for the receiving stream, and requiring monitoring to assure that this figure is not increased to the point where productivity is altered, would be a suitable protection for the stream - Part of 3.5 of the proposed rules."

Mr. Harris also noted his objection to calling streams "Natural Drainways" in subsection 2.17 of the definitions - He stated that "this nomenclature lowers the status of streams to drains, which are essentially industrial conduits or pipes. Very often these streams are manipulated in a way that destroys habitat and degrades the productivity of that stream."

Rocky responded that he will take these comments to the next stakeholders' meeting for their consideration, including a possible rewrite of 2.17.

Mr. Harris also asked if there are any preblast assessments or surveys of the groundwater level. Rocky responded by saying that preblast surveys do require a sampling of the water wells. With, quarries, operations in existence now have a year to do a preblast survey to the nearest protected structure within 1,000

feet of the blasting area. A new permit has to do a preblast survey for any structure within 1,500 feet of the blasting area, as opposed to 1/2 mile with coal.

Bill Samples pointed out section 7.4.b., that deals with sediment control, seems to be awkwardly worded. As it is worded, the Director has to make a very definitive determination on something that the applicant only has to have a reasonable likelihood of. Chairman Castle agreed with this comment, and the rule will be amended accordingly.

Mr. Samples also noted in 7.4.c., that normally in an environmental regulation when something has to be removed, you say it has to be disposed of in an appropriate manner. Chairman Castle agreed with this comment and amendment to this section.

3. Open Discussion.

Chairman Castle introduced Libby Chatfield, Technical Advisor for the Environmental Quality Board. Chairman Castle thanked Libby for taking the time to appear before Council to discuss 46CSR1, EQB's Water Quality Standard Rule. Randy Sovic, DEP's Office Water Resources, also participated in the discussion.

After discussions/questions concerning the proposed EQB rule, the following comments are noted from Council members:

Bill Raney said that even though the Boards (the Environmental Quality Board and Solid Waste Management Board) are not required to come before the Council with their proposed Legislative rules, he would like to go on record as being "absolutely in opposition" to the proposed Groundwater Quality Standards' rule amendments until a full-blown, socio-economic impact statement is done. He said he does take exception to the fact that the Board can autonomously go forward with the rules without coming to the Advisory Council, and that he believes the obligations and costs will be enormous, both to the state and to industry.

Lisa Dooley stated that she is in complete agreement with Mr. Raney, and would also like to go on record as being opposed to EQB's proposed rule. She said that the proposed rule amendments, especially as they relate to the economic development part, very much concern her. She believes any economic development in West Virginia will be subject to the state's anti-degradation policy. And that policy should be reviewed and compared to surrounding states so that it is not detrimental for businesses and municipalities.

Bill Samples said that there is a multitude of concerns with this rule amendment, and that industry certainly has a major concern with it. He said that other states with anti-degradation rules may not have brought things to a stop, but certainly delayed them. He said that he would also like to go on record as being opposed to this rule amendment.

Rick Roberts asked to be included, for the record, his opposition to the proposed rule.

Director Castle said that the connection and link to DEP with regard to implementing the proposed EQB rules will definitely be taken into consideration.

Before adjournment of the meeting Bill Raney said he would like to go on record to thank Carrie Chambers for putting together the rules package and e-mailing them to Counsel in a timely fashion. Chairman Castle adjourned the meeting at 4:00 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR1 - "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides"

Type of Rule: X Legislative Interpretive Procedural

Agency: Office of Air Quality

Address: 7012 MacCorkle Avenue, SE
Charleston, WV 25304

1. Effect of Proposed Rule	Annual		Fiscal Year		
Estimated Total Cost	Increase	Decrease	Current	Next	There-after
	\$ 13,550-35,500	\$	\$ 13,550	\$ 33,800	\$ 35,500
Personal Services	12,000-31,500		12,000	30,000	31,500
Current Expense	1,350-3,500		1,350	3,300	3,500
Repairs and Alterations					
Equipment	200-500		200	500	500
Other					

2. Explanation of above estimates: Approximately 20% of 1 FTE personnel cost plus associated operating and equipment costs are estimated for rule implementation activities in the current fiscal year increasing to 50% of 1 FTE personnel costs and associated office and equipment costs per year thereafter.
3. Objectives of these rules: To satisfy U.S. EPA's current requirements for reduction of nitrogen oxides emissions from non-utility emission units ("non-EGU's") for the mitigation of interstate ozone transport.

Rule Title: "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen - Oxides"

4. Explanation of Overall Economic Impact of Proposed Rule.
A. Economic Impact on State Government.

See the table above for estimated rule implementation costs for the West Virginia Division of Environmental Protection.

- B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

Minimal economic impacts estimated for specific citizen groups or political subdivisions. Based upon U.S. EPA cost estimates the seven industrial facilities subject to this rule may collectively incur annualized compliance costs of 6 - 8 million dollars. Estimates from the affected companies indicate costs may be twice the U.S. EPA estimate.

- C. Economic Impact on Citizens/Public at Large.

There should be minimal economic impacts on citizens at large resulting from this proposed rule.

Date: July 12, 2000

Signature of Agency Head or Authorized Representative

Parri J. Chambers

SEP 1 1 38 PM '00

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 1
NO_x BUDGET TRADING PROGRAM AS A MEANS OF CONTROL
AND REDUCTION OF NITROGEN OXIDES

§45-1-1. General.

1.1. Scope. -- This rule establishes:

1.1.a. General provisions and the definitions, applicability, permitting, allowance, excess emissions, monitoring and opt-in provisions for a state NO_x Budget Trading Program as a means of control and reduction of nitrogen oxides (NO_x), an ozone precursor. The Director of the Division of Environmental Protection authorizes the Administrator of the U.S. Environmental Protection Agency to assist the Director in implementing the state NO_x Budget Trading Program as a participant in the federal NO_x Budget Trading Program by carrying out the functions set forth for the Administrator in the requirements of sections 4. through 88. of this rule and 40 CFR Part 51. This rule follows the intent of 40 CFR Part 96 for applicable source categories.

1.1.b. Reserved.

1.1.c. General provisions and the definitions, applicability, standard requirements, reporting, monitoring, recordkeeping and exemption requirements for emissions of NO_x from cement manufacturing kilns set forth in section 100. Such cement manufacturing kilns are not eligible for the NO_x Budget Trading Program as provided in sections 4. through 88.

1.2. The owner or operator of a fossil fuel-fired stationary boiler, combustion turbine, combined cycle system or cement manufacturing kiln shall comply with applicable requirements of this rule.

1.3. Authority. -- W.Va. Code §§22-5-1 et seq.

1.4. Filing Date. --

1.5. Effective Date. --

§45-1-2. Definitions.

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

2.2. "Acid Rain emissions limitation" means, as defined in 40 CFR 72.2 a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the CAA.

2.3. "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

2.4. "Allocate or allocation" means the determination by the Director or the Administrator of the number of NO_x allowances to be initially credited to a NO_x Budget unit or an allocation set-aside.

2.5. "Automated data acquisition and handling system" or "DAHS" means that component of the 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 by sections 70. through 76.

2.6. "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.

2.7. "CAA" means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended by Pub. L. No. 101-549 (November 15, 1990).

2.8. "Clinker" means the product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

2.9. "Combined cycle system" means a system comprised of one or more combustion turbines, heat recovery steam generators and steam turbines configured to improve overall efficiency of electricity generation or steam production.

2.10. "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of 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.

2.11. "Commence commercial operation" means, with regard to a unit that serves a generator, 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 subsection 4.1., section 5. or sections 80. through 88. for a unit that is a NO_x Budget unit under subsection 4.1. on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed or repowered. Except as provided in subsection 4.1., section 5. or sections 80. through 88., for a unit that is not a NO_x Budget unit under subsection 4.1. on the date the unit commences commercial operation, the date the unit becomes a NO_x Budget unit under subsection 4.1. shall be the unit's date of commencement of commercial operation.

2.12. "Commence operation" means to have begun any mechanical, chemical or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in subsection 4.1., section 5. or sections 80. through 88., for a unit that is a NO_x Budget unit under subsection 4.1. on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed or repowered. Except as provided in subsection 4.1., section 5. or sections 80. through 88., for a unit that is not a NO_x Budget unit under subsection 4.1. on the date of commencement of operation, the date the unit becomes a NO_x Budget unit under subsection 4.1. shall be the unit's date of commencement of operation.

2.13. "Common stack" means a single flue through which emissions from two or more units are exhausted.

2.14. "Compliance account" means a NO_x Allowance Tracking System account, established by the Administrator for a NO_x Budget unit under sections 50. through 57., in which the NO_x allowance allocations for the unit are initially recorded and in which are held NO_x allowances available for use by the unit for an ozone season for the purpose of meeting the unit's NO_x Budget emissions limitation.

2.15. "Continuous emission monitoring system" or "CEMS" means the equipment required under sections 70. through 76. to sample, analyze, measure and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, to the extent consistent with sections 70. through 76. and 40 CFR Part 75, in a continuous emission monitoring system:

2.15.a. Flow monitor;

2.15.b. NO_x pollutant concentration monitors;

2.15.c. Diluent gas monitor (oxygen or carbon dioxide);

2.15.d. A continuous moisture monitor; and

2.15.e. An automated data acquisition and handling system.

2.16. Reserved.

2.17. "Director" means the director of the division of environmental protection or such other person to whom the Director has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or §§22-1-8.

2.18. Reserved.

2.19. "Electricity for sale under firm contract to the grid" means electricity for sale where the capacity involved is intended to be available at all times during the period covered by a guaranteed commitment to deliver, even under adverse conditions.

2.20. Reserved.

2.21. "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded and reported to the Director or Administrator by the NO_x authorized account representative and as

determined by the Administrator in accordance with sections 70. through 76.

2.22. Reserved.

2.23. "Energy Information Administration" means the Energy Information Administration of the United States Department of Energy.

2.24. "Excess emissions" means any tonnage of nitrogen oxides emitted by a NO_x Budget unit during an ozone season that exceeds the NO_x Budget emissions limitation for the unit.

2.25. "Fossil fuel" means natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material.

2.26. "Fossil fuel-fired" means, with regard to a unit:

2.26.a. For units that commenced operation before January 1, 1996, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during 1995, or, if a unit had no heat input in 1995, during the last year of operation of the unit prior to 1995;

2.26.b. For units that commenced operation on or after January 1, 1996 and before January 1, 1997, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during 1996; or

2.26.c. For units that commence operation on or after January 1, 1997:

2.26.c.1. The combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year; or

2.26.c.2. The combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year, provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

2.27. "General account" means a NO_x Allowance

Tracking System account, established under sections 50. through 57., that is not a compliance account or an overdraft account.

2.28. "Generator" means a device that produces electricity.

2.29. "Heat input" means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded and reported to the Administrator by the NO_x authorized account representative and as determined by the Administrator in accordance with sections 70. through 76. and does not include the heat derived from preheated combustion air, recirculated flue gases or exhaust from other sources.

2.30. "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.

2.31. "Higher heating value (HHV)" means the total heat liberated per mass of fuel burned (Btu per pound), when fuel and dry air at standard conditions undergo complete combustion and all resultant products are brought to their standard states at standard conditions. If certification of the HHV is not provided by the third party fuel supplier, it shall be determined by one of the following test methods: ASTM D2015-85 for solid fuels; ASTM D240-87 or ASTM D2382-88 for liquid hydrocarbon fuels; or ASTM D1826-88 or ASTM D1945-81 in conjunction with ASTM D3588-89 for gaseous fuels.

2.32. Reserved.

2.33. "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 from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

2.33.a. For the life of the unit;

2.33.b. For a cumulative term of no less than 30 years, including contracts that permit an election for

early termination; or

2.33.c. For a period equal to or greater 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.

2.34. "Long dry kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is dry.

2.35. "Long wet kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is a slurry.

2.36. "Low-NO_x burners" means combustion equipment designed to reduce flame turbulence, delay fuel/air mixing and establish fuel-rich zones for initial combustion.

2.37. "Maintenance operation" means the use of an emergency standby engine and fuel system during testing, repair and routine maintenance to verify its readiness for emergency standby use.

2.38. "Malfunction" means any sudden, infrequent and not reasonably preventable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

2.39. "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

2.40. "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR Part 75 to report heat input, this value shall be calculated in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported

in accordance with 40 CFR Part 75, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO₂) or the minimum oxygen concentration (in percent O₂).

2.41. "Maximum potential NO_x emission rate" means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of Appendix F of 40 CFR Part 75, using the maximum potential concentration of NO_x under section 2 of Appendix A of 40 CFR Part 75 and either the maximum oxygen concentration (in percent O₂) or the minimum carbon dioxide concentration (in percent CO₂), under all operating conditions of the unit except for unit startup, shutdown and upsets.

2.42. "Maximum rated hourly heat input" means a unit-specific maximum hourly heat input (mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

2.43. "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NO_x emissions through:

2.43.a. Burning part of the fuel at a lower temperature; and

2.43.b. Reducing conditions at the solid waste injection point that may destroy some of the NO_x formed upstream in the kiln burning zone.

2.44. "Monitoring system" means any monitoring system that meets the requirements of sections 70. through 76., including a continuous emissions monitoring system, an excepted monitoring system or an alternative monitoring system.

2.45. "Most stringent state or federal NO_x emissions limitation" means the lowest NO_x emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under state or federal law, regardless of the averaging period to which the emissions limitation applies.

2.46. "Nameplate capacity" means the maximum electrical generating output (in MW_e) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of

Energy standards.

2.47. "Non-title V permit" means a federally enforceable permit administered by the Director pursuant to the CAA and regulatory authority under the CAA, other than title V of the CAA and 40 CFR Part 70 or 40 CFR Part 71.

2.48. "NO_x allowance" means a limited authorization under the NO_x Budget Trading Program to emit up to one ton of nitrogen oxides during the ozone season of the specified year or of any year thereafter, except as provided under subsection 54.6. No provision of the NO_x Budget Trading Program, the NO_x Budget permit application, the NO_x Budget permit, or an exemption under subdivision 4.2.a. or section 5. and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization, which does not constitute a property right. For purposes of all sections of this rule, except sections 40., 41., 42., 43. or 88., "NO_x allowance" also includes an authorization to emit up to one ton of nitrogen oxides during the ozone season of the specified year or of any year thereafter in accordance with a Federal NO_x Budget Trading Program established by the Administrator under 40 CFR Part 97.

2.49. "NO_x allowance deduction" or "deduct NO_x allowances" means the permanent withdrawal of NO_x allowances by the Administrator from a NO_x Allowance Tracking System compliance account or overdraft account to account for the number of tons of NO_x emissions from a NO_x Budget unit for an ozone season, determined in accordance with sections 70. through 76. and sections 50. through 57. or for any other NO_x allowance withdrawal requirement under this rule.

2.50. "NO_x allowances held" or "hold NO_x allowances" means the NO_x allowances recorded by the Administrator or submitted to the Administrator for recordation, in accordance with sections 50. through 57. and sections 60. through 62., in a NO_x Allowance Tracking System account.

2.51. "NO_x Allowance Tracking System" means the system by which the Administrator records allocations, deductions and transfers of NO_x allowances under the NO_x Budget Trading Program.

2.52. "NO_x Allowance Tracking System account" means an account in the NO_x Allowance Tracking

System established by the Administrator for purposes of recording the allocation, holding, transferring or deducting of NO_x allowances.

2.53. "NO_x allowance transfer deadline" means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recordation in a NO_x Budget unit's compliance account or the overdraft account of the source where the unit is located, in order to meet the unit's NO_x Budget emissions limitation for the ozone season immediately preceding such deadline.

2.54. "NO_x authorized account representative" means, for a NO_x Budget source or NO_x Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x Budget 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 NO_x Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with sections 50. through 57., to transfer or otherwise dispose of NO_x allowances held in the general account.

2.55. "NO_x Budget emissions limitation" means, for a NO_x Budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit under subsections 54.1., 54.2., 54.5. and 54.6. in an ozone season adjusted by any deductions of such NO_x allowances to account for actual heat input under subsection 42.5. for the ozone season or to account for excess emissions for a prior ozone season under subsection 54.4. or to account for withdrawal from the NO_x Budget Program or for a change in regulatory status for a NO_x Budget opt-in source under sections 86. or 87.

2.56. "NO_x Budget opt-in permit" means a NO_x Budget permit covering a NO_x Budget opt-in source.

2.57. "NO_x Budget opt-in unit" means a unit that has been elected to become a NO_x Budget unit under the NO_x Budget Trading Program and whose NO_x Budget opt-in permit has been issued and is in effect under sections 80. through 88.

2.58. "NO_x Budget permit" means the legally binding and federally enforceable written document or portion of such document, issued by the Director, including any permit revisions, specifying the NO_x Budget Trading Program requirements applicable to a

NO_x Budget source, to each NO_x Budget unit at the NO_x Budget source and to the owners and operators and the NO_x authorized account representative of the NO_x Budget source and each NO_x Budget unit.

2.59. "NO_x Budget source" means a source that includes one or more NO_x Budget units.

2.60. "NO_x Budget Trading Program" means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator pursuant to 40 CFR 51.121, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

2.61. "NO_x Budget unit" means a unit that is subject to the NO_x Budget emissions limitation under sections 4. or 80.

2.62. "Operating" means, with regard to a unit under paragraph 22.1.d.2. and section 80., having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NO_x Budget permit under subsection 83.1. The unit's documented heat input will be determined in accordance with 40 CFR Part 75 if the unit was otherwise subject to the requirements of 40 CFR Part 75 during that 6-month period or will be based on the best available data reported to the Administrator for the unit if the unit was not otherwise subject to the requirements of part 40 CFR Part 75 during that 6-month period.

2.63. "Operator" means any person who operates, controls or supervises a NO_x Budget unit, a NO_x Budget source or unit for which an application for a NO_x Budget opt-in permit under section 83. is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system or plant manager of such a unit or source.

2.64. "Opt-in" means to be elected to become a NO_x Budget unit under the NO_x Budget Trading Program through a final, effective NO_x Budget opt-in permit under sections 80. through 88.

2.65. Reserved.

2.66. "Overdraft account" means the NO_x Allowance Tracking System account, established by the Administrator under sections 50. through 57. for each NO_x Budget source where there are two or more NO_x

Budget units.

2.67. "Owner" means any of the following persons:

2.67.a. Any holder of any portion of the legal or equitable title in a NO_x Budget unit or in a unit for which an application for a NO_x Budget opt-in permit under section 83. is submitted and not denied or withdrawn; or

2.67.b. Any holder of a leasehold interest in a NO_x Budget unit or in a unit for which an application for a NO_x Budget opt-in permit under section 83. is submitted and not denied or withdrawn; or

2.67.c. Any purchaser of power from a NO_x Budget unit or from a unit for which an application for a NO_x Budget opt-in permit under section 83. is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall 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, upon the revenues or income from the NO_x Budget unit or the unit for which an application for a NO_x Budget opt-in permit under section 83. is submitted and not denied or withdrawn; or

2.67.d. With respect to any general account, any person who has an ownership interest with respect to the NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to NO_x allowances.

2.68. "Ozone season" means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.

2.69. "Peak load" means the maximum instantaneous operating load.

2.70. "Percent monitor data availability" means, for purposes of subdivision 43.1.a., total unit operating hours for which quality-assured data were recorded under sections 70. through 76. in an ozone season, divided by the total unit operating hours in the ozone season and multiplied by 100 percent.

2.71. "Permitted capacity factor" means the annual

permitted fuel use divided by the manufacturers specified maximum fuel consumption times 8,760 hours per year.

2.72. "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.

2.73. "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.

2.74. "Portland cement kiln" means a system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

2.75. "Potential electrical output capacity" means 33 percent of a unit's maximum design heat input.

2.76. "Precalciner kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers and utilize a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.

2.77. "Preheater kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.

2.78. "Receive or receipt of" means, when referring to the Director or the Administrator, to come into possession of a document, information or correspondence (whether sent in writing 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 Director or the Administrator in the regular course of business.

2.79. "Recordation, record or recorded" means, with regard to NO_x allowances, the movement of NO_x allowances by the Administrator from one NO_x Allowance Tracking System account to another, for purposes of allocation, transfer or deduction.

2.80. "Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in Appendix A of 40 CFR Part 60.

2.81. Reserved.

2.82. "Serial number" means, when referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the Administrator under subsection 53.3.

2.83. "Shutdown" means:

2.83.a. The period of time a unit is cooled from its normal operating temperature to cold or ambient temperature; or

2.83.b. The cessation of operation of a Portland cement kiln for any purpose.

2.84. "Source" means any governmental, institutional, commercial or industrial structure, installation, plant, building or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of section 502(c) of the CAA, a "source," including a "source" with multiple units, shall be considered a single "facility."

2.85. "Startup" means:

2.85.a. The period of time a unit is heated from cold or ambient temperature to its normal operating temperature as specified by the manufacturer; or

2.85.b. The setting in operation of a Portland cement kiln for any purpose.

2.86. "State" means one of the 48 contiguous states or a portion thereof or the District of Columbia that is specified in 40 CFR §52.34 and in which are located units for which the Administrator makes an effective finding under 40 CFR §52.34.

2.87. "State NO_x Budget Trading Program" means a nitrogen oxides air pollution control and emission reduction program established in accordance with this rule and pursuant to 40 CFR 51.121 as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

2.88. Reserved.

2.89. "Stoichiometric air/fuel ratio" means the

air/fuel ratio where all fuel and all oxygen in the air/fuel mixture will be consumed.

2.90. "Submit or serve" means to send or transmit a document, information or correspondence to the person specified:

2.90.a. In person;

2.90.b. By United States Postal Service; or

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

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

2.92. "Title V operating permit regulations" means the regulations that the Director has issued and the Administrator has approved as meeting the requirements of 45CSR30.

2.93. "Ton" or "tonnage" means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the NO_x Budget emissions limitation, total tons for an ozone season shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with sections 70. through 76., with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

2.94. "Unit" means a fossil fuel-fired stationary boiler, combustion turbine or combined cycle system.

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

2.96. "Unit operating hour" or "hour of unit operation" means any hour (or fraction of an hour) during which a unit combusts any fuel.

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

§45-1-3. Measurements, Abbreviations and

Acronyms.

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

Btu - British thermal unit

hr - hour

kW - kilowatt electrical

kWh - kilowatt hour

lb - pounds

mmBtu - million Btu

MW_e - megawatt electrical

ton - 2000 pounds

TPH - tons per hour

CO₂ - carbon dioxide

NO_x - nitrogen oxides

O₂ - oxygen.

§45-1-4. NO_x Budget Trading Program Applicability.

4.1. The following units in West Virginia (as defined in section 2.) shall be designated NO_x Budget units, and any source that includes one or more such units shall be a NO_x Budget source, subject to the requirements of this rule:

4.1.a.1. Reserved.

4.1.a.2. Reserved.

4.1.a.3. Reserved.

4.1.b.1. For units that commenced operation before January 1, 1997, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

4.1.b.2. For units that commenced operation

on or after January 1, 1997 and before January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

4.1.b.3. For units that commence operation on or after January 1, 1999, a unit with a maximum design heat input greater than 250 mmBtu/hr that:

4.1.b.3.A. At no time serves a generator producing electricity for sale; or

4.1.b.3.B. At any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of 25MW_e or less and has the potential to use no more than 50 percent of the potential electrical output capacity of the unit.

4.2.a. Notwithstanding subsection 4.1., a unit under paragraphs 4.1.b.1., 4.1.b.2. or 4.1.b.3. that has a federally enforceable permit which includes a NO_x emission limitation restricting NO_x emissions during an ozone season to 25 tons or less and includes the special provisions in subdivision 4.2.d. shall be exempt from the requirements of the NO_x Budget Trading Program, except for the provisions of this subdivision, sections 2. and 3.; subsection 4.1.; section 7., sections 40. through 42., sections 50. through 57. and sections 60. through 62. The NO_x emission limitation under this subdivision shall restrict NO_x emissions during the ozone season by limiting unit operating hours. The restriction on unit operating hours shall be calculated by dividing 25 tons by the unit's maximum potential hourly NO_x mass emissions, which shall equal the unit's maximum rated hourly heat input multiplied by the highest default NO_x emission rate otherwise applicable to the unit under 40 CFR 75.19.

4.2.b. The exemption under subdivision 4.2.a. shall become effective as follows:

4.2.b.1. The exemption shall become effective on the date on which the NO_x emission limitation and the special provisions in the permit under subdivision 4.2.a. become final; or

4.2.b.2. If the NO_x emission limitation and the special provisions in the permit under subdivision 4.2.a. become final during an ozone season and after the first date on which the unit operates during such ozone season, then the exemption shall become effective on May 1 of such ozone season, provided that

such NO_x emission limitation and the special provisions apply to the unit as of such first date of operation. If such NO_x emission limitation and the special provisions do not apply to the unit as of such first date of operation, then the exemption under subdivision 4.2.a. shall become effective on October 1 of the year during which such NO_x emission limitation and the special provisions become final.

4.2.c. The Director will provide the Administrator written notice of the issuance of a federally enforceable permit under subdivision 4.2.a. for a unit under paragraphs 4.1.b.1., 4.1.b.2. or 4.1.b.3. and, upon request by the Administrator, a copy of the permit.

4.2.d. Special provisions.

4.2.d.1. A unit exempt under subdivision 4.2.a. shall comply with the restriction on unit operating hours described in subdivision 4.2.a. during the ozone season in each year.

4.2.d.2. The Director will allocate NO_x allowances to the unit under subsections 41.1., 41.2., 41.3., 42.3. and subdivision 42.1.a. For each ozone season for which the unit is allocated NO_x allowances under subsections 41.1., 41.2., 41.3., 42.3. and subdivision 42.1.a.:

4.2.d.2.A. The owners and operators of the unit must specify a general account, in which the Director will record the NO_x allowances; and

4.2.d.2.B. After the Director records a NO_x allowance allocation under subsections 41.1., 41.2., 41.3., 42.3. and subdivision 42.1.a., the Director will deduct, from the general account under subparagraph 4.2.d.2.A., NO_x allowances that are allocated for the same or a prior ozone season as the NO_x allowances allocated to the unit under subsections 41.1., 41.2., 41.3., 42.3. and subdivision 42.1.a. and that equal the NO_x emission limitation (in tons of NO_x) on which the unit's exemption under subdivision 4.2.a. is based. The NO_x authorized account representative shall ensure that such general account contains the NO_x allowances necessary for completion of such deduction.

4.2.d.3. A unit exempt under subdivisions 4.2.a. and 4.2.b. shall report hours of unit operation during the ozone season in each year to the Director by November 1 of that year.

4.2.d.4. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under subdivision 4.2.a. shall retain, at the source that includes the unit, records demonstrating that the conditions of the federally enforceable permit under subdivision 4.2.a. were met, including the restriction on unit operating hours. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Director or the Administrator. The owners and operators bear the burden of proof that the unit met the restriction on unit operating hours.

4.2.d.5. The owners and operators, and to the extent applicable, the NO_x authorized account representative of a unit exempt under subdivision 4.2.a. shall comply with the requirements of the NO_x 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.

4.2.d.6. On the earlier of the following dates, a unit exempt under subdivision 4.2.a. shall lose its exemption:

4.2.d.6.A. The date on which the restriction on unit operating hours described in subdivision 4.2.a. is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable to any ozone season starting in 2004; or

4.2.d.6.B. The first date on which the unit fails to comply, or with regard to which the owners and operators fail to meet their burden of proving that the unit is complying, with the restriction on unit operating hours described in subdivision 4.2.a. during any ozone season starting in 2004.

4.2.d.7. A unit that loses its exemption in accordance with paragraph 4.2.d.6. shall be subject to the requirements of this rule. For the purpose of applying permitting requirements under sections 20. through 24., allocating allowances under sections 40. through 42., and applying monitoring requirements under sections 70. through 76., the unit shall be treated as commencing operation.

4.2.d.8. A unit that is exempt under subdivision 4.2.a. is not eligible to be a NO_x Budget opt-in unit under sections 80. through 88.

§45-1-5. Retired Unit Exemption.

5.1. This section applies to any NO_x Budget unit, other than a NO_x Budget opt-in unit, that is permanently retired.

5.2.a. Any NO_x Budget unit, other than a NO_x Budget opt-in unit, that is permanently retired shall be exempt from the NO_x Budget Trading Program, except for the provisions of this section, sections 2., 3., 4. and 7.; sections 40. through 42., sections 50. through 57. and sections 60. through 62.

5.2.b. The exemption under subsection 5.2.a. shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NO_x authorized account representative (authorized in accordance with sections 10. through 14.) shall submit a statement to the Director (and a copy of the statement to the Administrator) which states, in a format prescribed by the Director, that the unit is permanently retired and will comply with the special provisions of subsection 5.3.

5.2.c. After receipt of the notice under subdivision 5.2.b., the Director will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under subdivision 5.2.a. and subsection 5.3.

5.3. Retired units exempted under this section shall be subject to the following special provisions:

5.3.a. A unit exempt under this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect;

5.3.b. The Director will allocate NO_x allowances in accordance with sections 40. through 42. to a unit exempt under this section. For each ozone season for which the unit is allocated one or more NO_x allowances, the owners and operators of the unit shall specify a general account, in which the Director will record such NO_x allowances;

5.3.c. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall 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 prior to the end of the period, in writing by the Director or the Administrator. The owners and operators bear the

burden of proof that the unit is permanently retired; and

5.3.d. The owners and operators and, to the extent applicable, the NO_x authorized account representative of a unit exempt under this section shall comply with the requirements of the NO_x 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;

5.3.e.1. A unit exempt under this section and located at a source that is required or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x Budget permit application under section 22. for the unit not less than 18 months (or such lesser time provided by the Director) before the later of May 1, 2004 or the date on which the unit is to first resume operation; and

5.3.e.2. A unit exempt under this section and located at a source that is required or but for this exemption would be required, to have a non-title V permit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x Budget permit application under section 22. for the unit not less than 18 months (or such lesser time provided by the Director) before the later of May 1, 2004 or the date on which the unit is to first resume operation;

5.3.f. Loss of exemption. -- On the earlier of the following dates, a unit exempt under subsection 5.2. shall lose its exemption:

5.3.f.1. The date on which the NO_x authorized account representative submits a NO_x Budget permit application under paragraphs 5.3.e.1. and 5.3.e.2.; or

5.3.f.2. The date on which the NO_x authorized account representative is required under paragraphs 5.3.e.1. and 5.3.e.2. to submit a NO_x Budget permit application; or

5.3.f.3. The date on which the unit resumes operation, if the authorized account representative is not required to submit a NO_x Budget permit application.

5.3.g. For the purpose of applying monitoring

requirements under sections 70. through 76., a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation; and

5.3.h. A unit that is exempt under this section is not eligible to be a NO_x Budget opt-in source under sections 80. through 88.

§45-1-6. NO_x Budget Trading Program Standard Requirements.

6.1. Permit Requirements.

6.1.a. The NO_x authorized account representative of each NO_x Budget source required to have a federally enforceable permit and each NO_x Budget unit required to have a federally enforceable permit at the source shall:

6.1.a.1. Submit to the Director a complete NO_x Budget permit application under section 22. in accordance with the deadlines specified in subsections 21.2. and 21.3.; and

6.1.a.2. Submit in a timely manner any supplemental information that the Director determines is necessary in order to review a NO_x Budget permit application and issue or deny a NO_x Budget permit.

6.1.b. The owners and operators of each NO_x Budget source required to have a federally enforceable permit and each NO_x Budget unit required to have a federally enforceable permit at the source shall have a NO_x Budget permit issued by the Director and operate the unit in compliance with such NO_x Budget permit.

6.1.c. The owners and operators of a NO_x Budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NO_x Budget permit application and to have a NO_x Budget permit, under sections 20. through 24. for such NO_x Budget source.

6.2. Monitoring requirements.

6.2.a. The owners and operators, and to the extent applicable, the NO_x authorized account representative of each NO_x Budget source and each NO_x Budget unit at the source shall comply with the monitoring requirements of sections 70. through 76.

6.2.b. The emissions measurements recorded and reported in accordance with sections 70. through 76. shall be used to determine compliance by the unit with the NO_x Budget emissions limitation under subsection 6.3.

6.3. Nitrogen oxides requirements.

6.3.a. The owners and operators of each NO_x Budget source and each NO_x Budget unit at the source shall hold NO_x allowances available for compliance deductions under section 54., as of the NO_x allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO_x emissions for the ozone season from the unit, as determined in accordance with sections 70. through 76., plus any amount necessary to account for actual heat input under subsection 42.5. for the ozone season or to account for excess emission for a prior ozone season under subsection 54.4., or to account for the withdrawal from the NO_x Budget Trading Program, or a change in regulatory status of a NO_x Budget opt-in unit under section 86. or section 87.

6.3.b. Each ton of nitrogen oxides emitted in excess of the NO_x Budget emissions limitation shall constitute a separate violation of this rule, the CAA and W.Va. Code §§22-5-1 et seq.

6.3.c. A NO_x Budget unit shall be subject to the requirements under subdivision 6.3.a. starting on the later of May 1, 2004 or the date on which the unit commences operation.

6.3.d. NO_x allowances shall be held in, deducted from or transferred among NO_x Allowance Tracking System accounts in accordance with sections 40. through 42., sections 50. through 57., sections 60. through 62. and sections 80. through 88.

6.3.e. A NO_x allowance shall not be deducted, in order to comply with the requirements under subdivision 6.3.a., for an ozone season in a year prior to the year for which the NO_x allowance was allocated.

6.3.f. A NO_x allowance allocated by the Director or the Administrator under the NO_x Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NO_x Budget Trading Program. No provision of the NO_x Budget Trading Program, the NO_x Budget permit application, the NO_x Budget permit or an exemption under section 5. and no provision of law shall be

construed to limit the authority of the Administrator or the Director to terminate or limit such authorization.

6.3.g. A NO_x allowance allocated by the Director or the Administrator under the NO_x Budget Trading Program does not constitute a property right.

6.3.h. Upon recordation by the Administrator under sections 50. through 57., sections 60. through 62. or sections 80. through 88., every allocation, transfer or deduction of a NO_x allowance to or from a NO_x Budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically and become a part of, any NO_x Budget permit of the NO_x Budget unit by operation of law without any further review.

6.4. Excess emissions requirements.

6.4.a. The owners and operators of a NO_x Budget unit that has excess emissions in any ozone season shall:

6.4.a.1. Surrender the NO_x allowances required for deduction under subdivision 54.4.a.; and

6.4.a.2. Pay any fine, penalty or assessment or comply with any other remedy imposed under subdivision 54.4.c.

6.5. Recordkeeping and reporting requirements.

6.5.a. Unless otherwise provided, the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source shall 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 prior to the end of 5 years, in writing by the Director or the Administrator.

6.5.a.1. The account certificate of representation for the NO_x authorized account representative for the source and each NO_x Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with section 13.; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO_x authorized account 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 shall apply.

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

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

6.5.b. The NO_x authorized account representative of a NO_x Budget source and each NO_x Budget unit at the source shall submit the reports and compliance certifications required under the NO_x Budget Trading Program, including those under sections 30. and 31., sections 70. through 76. or sections 80. through 88.

6.6. Liability.

6.6.a. Any person who knowingly violates any requirement or prohibition of the NO_x Budget Trading Program, a NO_x Budget permit or an exemption under subdivision 4.2.a. or section 5. shall be subject to enforcement pursuant to §§22-5-1 et seq. or the CAA.

6.6.b. Any person who knowingly makes a false material statement in any record, submission or report under the NO_x Budget Trading Program shall be subject to enforcement pursuant to §§22-5-1 et seq. or the CAA.

6.6.c. No permit revision shall excuse any violation of the requirements of the NO_x Budget Trading Program that occurs prior to the date that the revision takes effect.

6.6.d. Each NO_x Budget source and each NO_x Budget unit shall meet the requirements of the NO_x Budget Trading Program.

6.6.e. Any provision of the NO_x Budget Trading Program that applies to a NO_x Budget source (including a provision applicable to the NO_x authorized account representative of a NO_x Budget source) shall also apply to the owners and operators of such source

and of the NO_x Budget units at the source.

6.6.f. Any provision of the NO_x Budget Trading Program that applies to a NO_x Budget unit (including a provision applicable to the NO_x authorized account representative of a NO_x budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under sections 70. through 76., the owners and operators and the NO_x authorized account representative of one NO_x Budget unit shall not be liable for any violation by any other NO_x Budget unit of which they are not owners or operators or the NO_x authorized account representative and that is located at a source of which they are not owners or operators or the NO_x authorized account representative.

6.7. Effect on other authorities. -- No provision of the NO_x Budget Trading Program, a NO_x Budget permit application, a NO_x Budget permit or an exemption under subdivision 4.2.a. or section 5. shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO_x authorized account representative of a NO_x Budget source or NO_x Budget unit from compliance with any other provision of §§22-5-1 et seq., the approved West Virginia state implementation plan, a federally enforceable permit or the CAA.

§45-1-7. Computation of Time.

7.1. Unless otherwise stated, any time period scheduled, under the NO_x Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

7.2. Unless otherwise stated, any time period scheduled, under the NO_x Budget Trading Program, to begin before the occurrence of an act or event shall 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 NO_x Budget Trading Program, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day.

§45-1-10. Authorization and Responsibilities of the NO_x Authorized Account Representative.

10.1. Except as provided under section 11., each NO_x Budget source, including all NO_x Budget units at the source, shall have one and only one NO_x authorized account representative, with regard to all matters under the NO_x Budget Trading Program concerning the source or any NO_x Budget unit at the source.

10.2. The NO_x authorized account representative of the NO_x Budget source shall be selected by an agreement binding on the owners and operators of the source and all NO_x Budget units at the source.

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

10.4. No NO_x Budget permit shall be issued and no NO_x Allowance Tracking System account shall be established for a NO_x Budget unit at a source until the Administrator has received a complete account certificate of representation under section 13. for a NO_x authorized account representative of the source and the NO_x Budget units at the source.

10.5.a. Each submission under the NO_x Budget Trading Program shall be submitted, signed and certified by the NO_x authorized account representative for each NO_x Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NO_x authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NO_x Budget sources or NO_x Budget 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 Director and the Administrator will accept or act on a submission made on behalf of owner or operators of a NO_x Budget source or a NO_x Budget unit only if the submission has been made, signed and certified in accordance with subsection 10.5.a.

§45-1-11. Alternate NO_x Authorized Account Representative.

11.1. An account certificate of representation may designate one and only one alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

11.2. Upon receipt by the Administrator of a complete account certificate of representation under section 13., any representation, action, inaction or submission by the alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction or submission by the NO_x authorized account representative.

11.3. Except in this section and subsection 10.1., sections 12., 13. and 51., whenever the term "NO_x authorized account representative" is used in this rule, the term shall be construed to include the alternate NO_x authorized account representative.

§45-1-12. Changing the NO_x Authorized Account Representative and the Alternate NO_x Authorized Account Representative; Changes in Owners and Operators.

12.1. Changing the NO_x authorized account representative. -- The NO_x authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under section 13. Notwithstanding any such change, all representations, actions, inactions and submissions by the previous NO_x

authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new NO_x authorized account representative and the owners and operators of the NO_x Budget source and the NO_x Budget units at the source.

12.2. Changing the alternate NO_x authorized account representative. -- The alternate NO_x authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under section 13. Notwithstanding any such change, all representations, actions, inactions and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new alternate NO_x authorized account representative and the owners and operators of the NO_x Budget source and the NO_x 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 NO_x Budget source or a NO_x Budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit and the decisions orders, actions and inactions of the Director or the Administrator, 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 NO_x Budget source or a NO_x Budget unit, including the addition of a new owner or operator, the NO_x authorized account representative or alternate NO_x authorized account representative shall submit to the Administrator a revision to the account certificate of representation amending the list of owners and operators to include the change.

§45-1-13. Account Certificate of Representation.

13.1. A complete account certificate of representation for a NO_x authorized account representative or an alternate NO_x authorized account

representative shall include the following elements in a format prescribed by the Administrator:

13.1.a. Identification of the NO_x Budget source and each NO_x Budget unit at the source for which the account 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 NO_x authorized account representative and any alternate NO_x authorized account representative;

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

13.1.d. The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions or submissions and by any decision or order issued to me by the Director, the Administrator or a court regarding the source or unit"; and

13.1.e. The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.

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

§45-1-14. Objections Concerning the NO_x Authorized Account Representative.

14.1. Once a complete account certificate of

representation under section 13. has been submitted and received, the Director and the Administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under section 13. is received by the Administrator.

14.2. Except as provided in subsections 12.1. or 12.2., no objection or other communication submitted to the Director or the Administrator concerning the authorization or any representation, action, inaction or submission of the NO_x authorized account representative shall affect any representation, action, inaction or submission of the NO_x authorized account representative or the finality of any decision or order by the Director or the Administrator under the NO_x Budget Trading Program.

14.3. Neither the Director nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction or submission of any NO_x authorized account representative, including private legal disputes concerning the proceeds of NO_x allowance transfers.

§45-1-20. General NO_x Budget Trading Program Permit Requirements.

20.1. For each NO_x Budget source required to have a federally enforceable permit, such permit shall include a NO_x Budget permit administered by the Director.

20.1.a. For NO_x Budget sources required to have a title V operating permit, the NO_x Budget portion of the title V permit shall be administered in accordance with 45CSR30, except as provided otherwise by section 20. or sections 80. through 88. The applicable provisions of 45CSR30 shall include, but are not limited to, those provisions addressing operating permit applications, operating permit application shield, operating permit duration, operating permit shield, operating permit issuance, operating permit revision and reopening, public participation and review by the Director and Administrator.

20.1.b. For NO_x Budget sources required to have a non-title V permit, the NO_x Budget portion of the non-title V permit shall be administered in accordance with 45CSR13, except as provided otherwise by sections 20. through 24. or sections 80. through 88. The applicable provisions of 45CSR13

may include, but are not limited to, provisions addressing permit applications, permit duration, permit issuance, permit revision and reopening, public participation and review by the Director.

20.2. Each NO_x Budget permit (including a draft or proposed NO_x Budget permit, if applicable) shall include all applicable NO_x Budget Trading Program requirements and shall be a complete and segregable portion of the permit under subsection 20.1.

§45-1-21. NO_x Budget Permit Applications.

21.1. Duty to apply. -- The NO_x authorized account representative of any NO_x Budget source required to have a federally enforceable permit shall submit to the Director a complete NO_x Budget permit application under section 22. by the applicable deadline in subsection 21.2.

21.2. Deadlines for NO_x Budget permit applications.

21.2.a. For NO_x Budget sources required to have a title V operating permit:

21.2.a.1. For any source, with one or more NO_x Budget units under subsection 4.1. that commenced operation before January 1, 2000, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under section 22. covering such NO_x Budget units to the Director at least 18 months before May 1, 2004; and

21.2.a.2. For any source, with any NO_x Budget unit under subsection 4.1. that commences operation on or after January 1, 2000, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under section 22. covering such NO_x Budget unit to the Director at least 6 months before the later of May 1, 2004 or the date on which the NO_x Budget unit commences operation.

21.2.b. For NO_x Budget sources required to have a non-title V permit:

21.2.b.1. For any source, with one or more NO_x Budget units under subsection 4.1. that commenced operation before January 1, 2000, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under section

22. covering such NO_x Budget units to the Director at least 6 months before May 1, 2004; and

21.2.b.2. For any source, with any NO_x Budget unit under subsection 4.1. that commences operation on or after January 1, 2000, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under section 22. covering such NO_x Budget unit to the Director at least 6 months before the later of May 1, 2004 or the date on which the NO_x Budget unit commences operation.

21.3. Duty to reapply.

21.3.a. For a NO_x Budget source required to have a title V operating permit, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under section 22. for the NO_x Budget source covering the NO_x Budget units at the source in accordance with the operating permit renewal requirements set forth in 45CSR30.

21.3.b. For a NO_x Budget source required to have a non-title V permit, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under section 22. for the NO_x Budget source covering the NO_x Budget units at the source in accordance with 45CSR13.

§45-1-22. Information Requirements for NO_x Budget Permit Applications.

22.1. A complete NO_x Budget permit application shall include the following elements concerning the NO_x Budget source for which the application is submitted, in a format prescribed by the Director:

22.1.a. Identification of the NO_x Budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;

22.1.b. Identification of each NO_x Budget unit at the NO_x Budget source and whether it is a NO_x Budget unit under subsection 4.1. or under sections 80. through 88.;

22.1.c. The standard requirements under section 6.; and

22.1.d. For each NO_x Budget opt-in unit at the NO_x Budget source, the following certification statements by the NO_x authorized account representative:

22.1.d.1. "I certify that each unit for which this permit application is submitted under sections 80. through 88. is not a NO_x Budget unit under subsection 4.1. and is not covered by an exemption under subdivision 4.2.a. or section 5. that is in effect"; and

22.1.d.2. If the application is for an initial NO_x Budget opt-in permit, "I certify that each unit for which this permit application is submitted under sections 80. through 88. is currently operating, as that term is defined under subsection 2.62."

§45-1-23. NO_x Budget Permit Contents.

23.1. Each NO_x Budget permit (including any draft or proposed NO_x Budget permit) will contain, in a format prescribed by the Director, all elements required for a complete NO_x Budget permit application under section 22.

23.2. Each NO_x Budget permit is deemed to incorporate automatically the definitions of terms under section 2. and, upon recordation by the Administrator under sections 50. through 57., sections 60. through 62. or sections 80. through 88., every allocation, transfer or deduction of a NO_x allowance to or from the compliance accounts of the NO_x Budget units covered by the permit or the overdraft account of the NO_x Budget source covered by the permit.

§45-1-24. NO_x Budget Permit Revisions.

24.1. For a NO_x Budget source with a title V operating permit, except as provided in subsection 23.2., the Director will revise the NO_x Budget permit, as necessary, in accordance with the operating permit revision requirements set forth in 45CSR30.

24.2. For a NO_x Budget source with a non-title V permit, except as provided in subsection 23.2., the Director will reissue the NO_x Budget permit as necessary, in accordance with 45CSR13.

§45-1-30. Compliance Certification Report.

30.1. Applicability and deadline. -- For each ozone season in which one or more NO_x Budget units at a source are subject to the NO_x Budget emissions limitation, the NO_x authorized account representative of the source shall submit to the Director and the Administrator by November 30 of that year, a compliance certification report for each source covering all such units.

30.2. Contents of report. -- The NO_x authorized account representative shall include in the compliance certification report under subsection 30.1. the following elements, in a format prescribed by the Administrator, concerning each unit at the source and subject to the NO_x Budget emissions limitation for the ozone season covered by the report:

30.2.a. Identification of each NO_x Budget unit;

30.2.b. At the NO_x authorized account representative's option, the serial numbers of the NO_x allowances that are to be deducted from each unit's compliance account under section 54. for the ozone season;

30.2.c. At the NO_x authorized account representative's option, for units sharing a common stack and having NO_x emissions that are not monitored separately or apportioned in accordance with sections 70. through 76., the percentage of allowances that is to be deducted from each unit's compliance account under subsection 54.5.; and

30.2.d. The compliance certification under subsection 30.3.

30.3. Compliance certification. -- In the compliance certification report under subsection 30.1., the NO_x authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO_x Budget units at the source in compliance with the NO_x Budget Trading Program, whether each NO_x Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NO_x Budget Trading Program applicable to the unit, including:

30.3.a. Whether the unit was operated in compliance with the NO_x Budget emissions limitation;

30.3.b. Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit and contains all information necessary to attribute NO_x emissions to the unit, in accordance with sections 70. through 76.;

30.3.c. Whether all the NO_x emissions from the unit or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with sections 70. through 76. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;

30.3.d. Whether the facts that form the basis for certification under sections 70. through 76. of each monitor at the unit or a group of units (including the unit) using a common stack or for using an excepted monitoring method or alternative monitoring method approved under sections 70. through 76., if any, have changed; and

30.3.e. If a change is required to be reported under subdivision 30.3.d., specify the nature of the change, the reason for the change, when the change occurred and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

§45-1-31. Director's and Administrator's Action on Compliance Certifications.

31.1. The Director or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO_x Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

31.2. The Administrator may deduct NO_x allowances from or transfer NO_x allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under subsection 31.1.

§45-1-40. State NO_x Trading Program Budget.

In accordance with sections 41. and 42., the Director will allocate to the NO_x Budget units under subsection 4.1. for each ozone season specified in section 41., a total number of allowances equal to 2184 tons, less the sum of the NO_x emission limitations (in tons) for each unit exempt under subdivision 4.2.a. that is not allocated any NO_x allowances under subsection 42.3. for the ozone season and whose NO_x emission limitation (in tons of NO_x) is not included in the amount calculated under section 42.4.e.2.B. for the ozone season.

§45-1-41. Timing Requirements for State NO_x Allowance Allocations.

41.1. By April 1, 2001, the Director will determine by order and submit to the Administrator the state NO_x allowance allocations, in accordance with subdivision 42.1.a. and subsection 42.3., for the ozone seasons in 2004 through 2007.

41.2. By April 1, 2005, the Director will determine by order and submit to the Administrator the NO_x allowance allocations, in accordance with subdivision 42.1.a. and subsection 42.3. for the ozone seasons in 2008 through 2012.

41.3. By April 1, 2010, by April 1 of 2015 and thereafter by April 1 of the year that is 5 years after the last year for which NO_x allowance allocations are determined, the Director will determine by order and submit to the Administrator the NO_x allowance allocations, in accordance with subdivision 42.1.a. and subsection 42.3. for the ozone seasons in the years that are 3, 4, 5, 6 and 7 years after the applicable deadline under this subsection.

41.4. By April 1, 2004 and April 1 of each year thereafter, the Director will determine by order and submit to the Administrator the NO_x allowance allocations, in accordance with subsection 42.4., for the ozone season in the year of the applicable deadline under this subsection.

41.5. The Director will make available to the public and the Administrator the draft order determining the NO_x allowance allocations under subsections 41.2., 41.3. or 41.4. by February 1 of the applicable year by filing the draft order with the Secretary of State for publication in the State Register

and submittal to the Administrator. The draft order shall be accompanied with a notice providing for a 30 day comment period during which the submission of written objections to the determinations in the draft order will be accepted. Objections shall be limited to addressing whether the determinations are in accordance with section 42. Based on any such objections, the Director will adjust each determination to the extent necessary to ensure that it is in accordance with section 42. If error in any such order is discovered after the April 1 issuance of the final orders, the Director may issue a revised order making correction to such orders. Any such revised final order shall then be submitted to the Administrator, filed with the Secretary of State and published in the State Register.

§45-1-42. State NO_x Allowance Allocations.

42.1.a. The heat input (in mmBtu) used for calculating state NO_x allowance allocations for each NO_x Budget unit under subsection 4.1. will be:

42.1.a.1. For a state NO_x allowance allocation under subsection 41.1.:

42.1.a.1.A. Reserved.

42.1.a.1.B. For a unit under paragraphs 4.1.b.1., 4.1.b.2. or 4.1.b.3., the ozone season in 1995 or the average of the two highest amounts of the unit's heat input for the ozone seasons 1995 through 1998.

42.1.a.2. For a NO_x allowance allocation under subsection 41.2., the unit's average heat input for the ozone seasons in 2002 through 2004.

42.1.a.3. For a NO_x allowance allocation under subsection 41.3., the unit's average heat input for the ozone season in the years that are 4, 5, 6, 7 and 8 years before the first ozone season for which the allocation is being calculated.

42.1.b. The unit's total heat input for the ozone season in each year specified under subdivision 42.1.a. will be determined in accordance with 40 CFR Part 75. Notwithstanding the first sentence of this subdivision:

42.1.b.1. For a NO_x allowance allocation under subsection 41.1., such heat input will be determined using the best available data reported to the

Director for the unit if the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the ozone season; and

42.1.b.2. For a NO_x allowance allocation under subsections 41.2. or 41.3., for a unit exempt under subdivision 4.2.a., such heat input shall be treated as zero if the unit is exempt under subdivision 4.2.a. during the ozone season.

42.2. Reserved.

42.2.a. Reserved.

42.2.b. Reserved.

42.3. For each group of ozone seasons specified in subsections 41.1., 41.2. and 41.3., the Director will allocate to all NO_x Budget units under paragraphs 4.1.b.1., 4.1.b.2. or 4.1.b.3. that commenced operation before May 1, 1997 for allocations under subsection 41.1., May 1, 2004 for allocations under subsection 41.2. and May 1 of the year 5 years before the first ozone season for which the allocation under subsection 41.3. is being calculated, a total number of NO_x allowances equal to 95 percent of the portion of the state NO_x trading program budget under section 40. covering such units. The Director will allocate NO_x allowances in accordance with the following procedures:

42.3.a. The Director will allocate NO_x allowances to each NO_x Budget unit under paragraphs 4.1.b.1., 4.1.b.2. or 4.1.b.3. in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under subdivision 42.1.a., divided by 2000 lb/ton and rounded to the nearest whole number of NO_x allowances as appropriate; and

42.3.b. If the initial total number of NO_x allowances allocated to all NO_x Budget units under paragraphs 4.1.b.1., 4.1.b.2. or 4.1.b.3. for an ozone season under subdivision 42.3.a. does not equal 95 percent of the portion of the state NO_x Trading Program Budget under section 40., covering such units, the Director will adjust the total number of NO_x allowances allocated to all such NO_x Budget units for the ozone season under subdivision 42.1.a. so that the total number of NO_x allowances allocated equals 95 percent of the portion of the state NO_x Trading Program Budget under section 40., covering such units. This adjustment will be made by multiplying each unit's allocation by 95 percent of the portion of the

state NO_x Trading Program Budget under section 40., covering such units; dividing by the total number of NO_x allowances allocated under subdivision 42.3.a. for the ozone season, and rounding to the nearest whole number of NO_x allowances as appropriate.

42.4. For each ozone season under subsection 41.4., the Director will allocate NO_x allowances to NO_x Budget units under subsection 4.1. (except for units exempt under subdivision 4.2.a.) that commence operation or are projected to commence operation, on or after: May 1, 1997 (for ozone seasons under subsection 41.1.); May 1, 2004 (for ozone seasons under subsection 41.2.); and May 1 of the year 5 years before the beginning of the group of 5 years that includes the ozone season (for ozone seasons under subsection 41.3.). The Director will make the allocations under this subsection in accordance with the following procedures:

42.4.a. The Director will establish one allocation set-aside for each ozone season. Each allocation set-aside will be allocated NO_x allowances equal to 5 percent of the tons of NO_x emission in the state NO_x Trading Program Budget under section 40., rounded to the nearest whole number of NO_x allowances as appropriate;

42.4.b. The NO_x authorized account representative of a NO_x Budget unit under subsection 42.4. may submit to the Director a request, in writing or in a format specified by the Director, to be allocated NO_x allowances for the ozone season. The NO_x allowance allocation request must be received by the Director on or after the date on which the Director issues a permit to construct the unit and by January 1 before the ozone season for which NO_x allowances are requested;

42.4.c. Reserved.

42.4.c.1. Reserved.

42.4.c.2. Reserved.

42.4.d. In a NO_x allowance allocation request under subdivision 42.4.b., the NO_x authorized account representative for NO_x Budget units under paragraphs 4.1.b.1., 4.1.b.2. or 4.1.b.3. may request for an ozone season NO_x allowances in an amount that does not exceed the lesser of:

42.4.d.1. 0.17 lb/mmBtu multiplied by the

NO_x Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the lesser of 3672 hours or the number of hours remaining in the ozone season starting with the day in the ozone season on which the unit commences operation or is projected to commence operation, divided by 2000 lb/ton and rounded to the nearest whole number of NO_x allowances as appropriate; or

42.4.d.2. The unit's most stringent state or federal NO_x emission limitation multiplied by the unit's maximum design heat input multiplied by the lesser of 3672 hours or the number of hours remaining in the ozone season starting with the day in the ozone season on which the unit commences operation or is projected to commence operation, divided by 2000 lb/ton and rounded to the nearest whole number of NO_x allowances as appropriate;

42.4.e. The Director will review each NO_x allowance allocation request submitted in accordance with subdivision 42.4.b. and will allocate NO_x allowances pursuant to such request as follows:

42.4.e.1. Upon receipt of the NO_x allowance allocation request, the Director will make any necessary adjustments to the request to ensure the requirements of subsection 42.4. and subdivisions 42.4.b. and 42.4.d. are met;

42.4.e.2. The Director will determine the following amounts:

42.4.e.2.A. The sum of the NO_x allowances requested (as adjusted under paragraph 42.4.e.1.) in all NO_x allowance allocation requests under subdivision 42.4.b. for the ozone season; and

42.4.e.2.B. For units exempt under subdivision 4.2.a. that commenced operation, or are projected to commence operation, on or after May 1, 1997 (for ozone seasons under subsection 41.1.); May 1, 2004, (for ozone seasons under subsection 41.2.); and May 1 of the year 5 years before the beginning of the group of 5 years that includes the ozone season (for ozone seasons under subsection 41.3.), the sum of the NO_x emission limitations (in tons of NO_x) on which each unit's exemption under subdivision 4.2.a. is based;

42.4.e.3. If the number of NO_x allowances in the allocation set-aside for the ozone season less the amount under subparagraph 42.4.e.2.B. is not less than the amount determined under subparagraph 42.4.e.2.A.,

the Director will allocate the amount of the NO_x allowances requested (as adjusted under paragraph 42.4.e.1.) to the NO_x Budget unit for which the allocation request was submitted; and

42.4.e.4. If the number of NO_x allowances in the allocation set-aside for the ozone season less the amount under subparagraph 42.4.e.2.B. is less than the amount determined under subparagraph 42.4.e.2.A., the Director will allocate, to the NO_x Budget unit for which the allocation request was submitted, the amount of NO_x allowances requested (as adjusted under paragraph 42.4.e.1.) multiplied by the number of NO_x allowances in the allocation set-aside for the ozone season less the amount determined under subparagraph 42.4.e.2.B., divided by the amount determined under subparagraph 42.4.e.2.A. and rounded to the nearest whole number of NO_x allowances as appropriate.

42.5.a. For a NO_x Budget unit that is allocated NO_x allowances under subsection 42.4. for an ozone season, the Administrator will deduct NO_x allowances under subsections 54.2., 54.5. or 54.6. to account for the actual heat input of the unit during the ozone season. The Administrator will calculate the number of NO_x allowances to be deducted to account for the unit's actual heat input using the following formulas and rounding to the nearest whole number of NO_x allowances as appropriate, provided that the number of NO_x allowances to be deducted shall be zero if the number calculated is less than zero:

NO_x allowances deducted for actual heat input for units under paragraphs 4.1.b.1., 4.1.b.2. and 4.1.b.3. = (unit's NO_x allowances allocated for ozone season) - [(unit's actual ozone season heat input X the lessor of 0.17 lb/mmBtu or the unit's most stringent state or federal NO_x emission limitation) ÷ 2000 lb/ton].

where:

"Unit's NO_x allowances allocated for ozone season" is the number of NO_x allowances allocated to the unit for the ozone season under subsection 42.4.; and

"Unit's actual ozone season heat input" is the heat input (in mmBtu) of the unit during the ozone season.

42.5.b. The Director will transfer any NO_x allowances deducted under subdivision 42.3.a. to the

allocation set-aside for the ozone season for which they were allocated.

42.6. After making the deductions for compliance under subsections 54.2., 54.5. or 54.6. for an ozone season, the Administrator will determine whether any NO_x allowances remain in the allocation set-aside for the ozone season. The Director will allocate any such NO_x allowances to the NO_x Budget units using the following formula and rounding to the nearest whole number of NO_x allowances as appropriate:

Unit's share of NO_x allowances remaining in allocation set-aside = (Total NO_x allowances remaining in allocation set-aside) X (Unit's NO_x allowance allocation) ÷ (state NO_x Trading Program Budget excluding allocation set-aside)

where:

"Total NO_x allowances remaining in allocation set-aside" is the total number of NO_x allowances remaining in the allocation set-aside for the ozone season;

"Unit's NO_x allowance allocation" is the number of NO_x allowances allocated under subsection 42.3. to the unit for the ozone season to which the allocation set-aside applies; and

"State NO_x Trading Program Budget excluding allocation set-aside" is the state NO_x Trading Program Budget under section 40. for the ozone season to which the allocation set-aside applies multiplied by 95 percent, rounded to the nearest whole number of NO_x allowances as appropriate.

42.7. If the Administrator determines that NO_x allowances were allocated under subsections 42.3. or 42.4. for an ozone season and the recipient of the allocation is not actually a NO_x Budget unit under subsection 4.1., the Administrator will notify the NO_x authorized account representative and then will act in accordance with the following procedures:

42.7.a.1. The Administrator will not record such NO_x allowances for the ozone season in an account under section 53.;

42.7.a.2. If the Administrator already recorded such NO_x allowances for the ozone season in an account under section 53. and if the Administrator makes such determination before making all deductions

pursuant to section 54. (except deductions pursuant to subdivision 54.4.b.) for the ozone season, then the Administrator will deduct from the account NO_x allowances equal in number to and allocated for the same or a prior ozone season as the NO_x allowances allocated to such recipient for the ozone season. The NO_x authorized account representative shall ensure the account contains the NO_x allowances necessary for completion of such deduction. If the account does not contain the necessary NO_x allowances, the Administrator will deduct the required number of NO_x allowances, regardless of the ozone season for which they were allocated, whenever NO_x allowances are recorded in the account or:

42.7.a.3. If the Administrator already recorded such NO_x allowances for the ozone season in an account under section 53. and if the Administrator makes such determination after making all deductions pursuant to section 54. (except deductions pursuant to subdivision 54.4.b.) for the ozone season, then the Administrator will apply paragraph 42.7.a.2. to any subsequent ozone season for which NO_x allowances were allocated to such recipient.

42.7.b. The Administrator will transfer the NO_x allowances that are not recorded, or that are deducted, pursuant to paragraphs 42.7.a.1., 42.7.a.2. and 42.7.a.3. to the state allocation set-aside.

§45-1-43. Compliance Supplement Pool.

43.1. For any NO_x Budget unit that reduces its NO_x emission rate in the 2002 or 2003 ozone season, the owners and operators may request early reduction credits in accordance with the following requirements:

43.1.a. Each NO_x Budget unit for which the owners and operators intend to request, or request, any early reduction credits in accordance with subdivision 43.1.d. shall monitor and report NO_x emissions in accordance with sections 70. through 76. starting in the 2001 ozone season and for each ozone season for which such early reduction credits are requested. The unit's percent monitor data availability shall not be less than 90 percent during the 2001 ozone season and the unit must be in full compliance with any applicable state or federal NO_x emission control requirements during 2001 through 2003;

43.1.b. NO_x emission rate and heat input under subdivisions 43.1.c. and 43.1.d. shall be

determined in accordance with sections 70. through 76.;

43.1.c. Each NO_x Budget unit for which the owners and operators intend to request, or request, any early reduction credits under subdivision 43.1.d. shall reduce its NO_x emission rate, for each ozone season for which early reduction credits are requested, to less than both 0.25 lb/mmBtu and 80 percent of the unit's NO_x emission rate in the 2001 ozone season; and

43.1.d. The NO_x authorized account representative of a NO_x Budget unit that meets the requirements of subdivisions 43.1.a. and 43.1.c. may submit to the Director a request for early reduction credits for the unit based on NO_x emission rate reductions made by the unit in the ozone season for 2002 or 2003.

43.1.d.1. In the early reduction credit request, the NO_x authorized account may request early reduction credits for such ozone season in an amount equal to the unit's heat input for such ozone season multiplied by the difference between 0.25 lb/mmBtu and the unit's NO_x emission rate for such ozone season, divided by 2000 lb/ton and rounded to the nearest whole number of tons.

43.1.d.2. The early reduction credit request must be submitted, in a format specified by the Director, by February 1, 2004.

43.2. Reserved.

43.2.a. Reserved.

43.2.b. Reserved.

43.2.c. Reserved.

43.3. The Director will review each early reduction credit request submitted in accordance with subsections 43.1. or 43.2. and will allocate NO_x allowances to NO_x Budget units covered by such request as follows:

43.3.a. Upon receipt of each early reduction credit request, the Director will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirements of subsections 43.1. or 43.2.;

43.3.b. After February 1, 2004, the Director will make available to the public a statement of the total number of early reduction credits requested by

NO_x Budget units;

43.3.c. If the compliance supplement pool has a number of NO_x allowances not less than the amount of early reduction credits in all early reduction credit requests under subsections 43.1. or 43.2. for 2002 and 2003 (as adjusted under subdivision 43.3.a.) submitted by February 1, 2004, the Director will allocate to each NO_x Budget unit covered by such requests one allowance for each early reduction credit requested (as adjusted under subdivision 43.3.a.);

43.3.d. If the compliance supplement pool has a smaller number of NO_x allowances than the amount of early reduction credits in all early reduction credit requests under subsections 43.1. or 43.2. for 2002 and 2003 (as adjusted under subdivision 43.3.a.) submitted by February 1, 2004, the Director will allocate NO_x allowances to each NO_x Budget unit covered by such requests according to the following formula and rounding to the nearest whole number of NO_x allowances as appropriate:

Unit's allocation for early reduction credits = Unit's adjusted early reduction credits X (state's compliance supplement pool ÷ total adjusted early reduction credits for all units)

Where:

"Unit's allocation for early reduction credits" is the number of NO_x allowances allocated to the unit for early reduction credits;

"Unit's adjusted early reduction credits" is the amount of early reduction credits requested for the unit for 2002 and 2003 in early reduction credit requests under subsections 43.1. or 43.2., as adjusted under subdivision 43.3.a.;

"Compliance supplement pool" is the number of NO_x allowances in the state compliance supplement pool;

"Total adjusted early reduction credits for all units" is the amount of early reduction credits requested for all units for 2002 and 2003 in early reduction credit requests under subsections 43.1. or 43.2., as adjusted under subdivision 43.3.a.;

43.3.e. By April 1, 2004, the Director will determine by order the allocations under subdivisions 43.3.c. or 43.3.d. The Director will make available to

the public each determination of NO_x allowance allocations and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with subdivisions 43.3.a., 43.3.c. or 43.3.d. Based on any such objections, the Director will adjust each determination to the extent necessary to ensure that it is in accordance with subdivisions 43.3.a., 43.3.c. or 43.3.d.;

43.3.f. By May 1, 2004, the Director will record the allocations under subdivisions 43.3.c. or 43.3.d.;

43.3.g. NO_x allowances recorded under subdivision 43.3.f. may be deducted for compliance under section 54. for the ozone season in 2004 or 2005. Notwithstanding subsection 55.1., the Director will deduct as retired any NO_x allowance that is recorded under subdivision 43.3.f. and that is not deducted for compliance under section 54. for the ozone season in 2004 or 2005; and

43.3.h. NO_x allowances recorded under subdivision 43.3.f. are treated as banked allowances in 2005 for the purposes of subsections 54.6. and 55.2.

§45-1-50. NO_x Allowance Tracking System Accounts.

50.1. Nature and function of compliance accounts and overdraft accounts. -- Consistent with subsection 51.1., the Administrator will establish one compliance account for each NO_x Budget unit and one overdraft account for each source with one or more NO_x Budget units. Allocations of NO_x allowances pursuant to sections 40. through 42. or section 88. and deductions or transfers of NO_x allowances pursuant to sections 31., 54. and 56., sections 60. through 62. or sections 80. through 88. will be recorded in the compliance accounts or overdraft accounts in accordance with sections 50. through 57.

50.2. Nature and function of general accounts. -- Consistent with subsection 51.2., the Administrator will establish, upon request, a general account for any person. Allocations of NO_x allowances pursuant to paragraph 4.2.d.2. or subdivision 5.3.b. and transfers of allowances pursuant to sections 60. through 62. will be recorded in the general accounts in accordance with sections 50. through 57.

§45-1-51. Establishment of Accounts.

51.1. Compliance accounts and overdraft accounts. -- Upon receipt of a complete account certificate of representation under section 13., the Administrator will establish:

51.1.a. A compliance account for each NO_x Budget unit for which the account certificate of representation was submitted; and

51.1.b. An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NO_x Budget units.

51.2. General accounts.

51.2.a. Any person may apply to open a general account for the purpose of holding and transferring allowances. A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

51.2.a.1. Name, mailing address, e-mail address (if any), telephone number and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative;

51.2.a.2. At the option of the NO_x authorized account representative organization name and type of organization;

51.2.a.3. A list of all persons subject to a binding agreement for the NO_x authorized account representative or any alternate NO_x authorized account representative to represent their ownership interest with respect to the allowances held in the general account;

51.2.a.4. The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or the NO_x alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to NO_x allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of such persons and that each such person shall 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”;

51.2.a.5. The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed; and

51.2.a.6. Unless otherwise required by the Director or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the Director or the Administrator. Neither the Director nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

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

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

51.2.b.2. The NO_x authorized account representative and any alternate NO_x authorized account representative for the general account shall represent and, by his or her representations, actions, inactions or submissions, legally bind each person who has an ownership interest with respect to NO_x allowances held in the general account in all matters pertaining to the NO_x Budget Trading Program, notwithstanding any agreement between the NO_x authorized account representative or any alternate NO_x authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO_x authorized account representative or any alternate NO_x authorized account representative by the Administrator or a court regarding the general account;

51.2.b.3. Each submission concerning the general account shall be submitted, signed and certified by the NO_x authorized account representative or any alternate NO_x authorized account representative for the persons having an ownership interest with respect to NO_x allowances held in the general account. Each such submission shall include the following certification statement by the NO_x authorized account representative or any alternate NO_x authorized account representative any: “I am authorized to make this submission on

behalf of the persons having an ownership interest with respect to the NO_x 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”; and

51.2.b.4. 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.3.

51.2.c.1. An application for a general account may designate one and only one NO_x authorized account representative and one and only one alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

51.2.c.2. Upon receipt by the Administrator of a complete application for a general account under subdivision 51.2.a., any representation, action, inaction or submission by any alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction or submission by the NO_x authorized account representative.

51.2.d.1. The NO_x 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 NO_x authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

51.2.d.2. The alternate NO_x 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 NO_x authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

51.2.d.3.A. In the event a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit and the decisions orders, actions and inactions of the Administrator, as if the new person were included in such list.

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

51.2.e.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.e.2. Except as provided in subdivision 51.2.d., no objection or other communication submitted to the Administrator concerning the authorization or any representation, action, inaction or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account shall affect any representation, action, inaction

or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative or the finality of any decision or order by the Administrator under the NO_x Budget Trading Program.

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

51.3. Account identification. -- The Administrator will assign a unique identifying number to each account established under subsections 51.1. or 51.2.

§45-1-52. NO_x Allowance Tracking System Responsibilities of NO_x Authorized Account Representative.

52.1. Following the establishment of a NO_x 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 NO_x allowances in the account, shall be made only by the NO_x authorized account representative for the account.

52.2. Authorized account representative identification. -- The Administrator will assign a unique identifying number to each NO_x authorized account representative.

§45-1-53. Recordation of NO_x Allowance Allocations.

53.1. The Administrator will record the NO_x allowances for 2004 for a NO_x Budget unit allocated under sections 40. through 42. in the unit's compliance account, except for NO_x allowances under paragraph 4.2.d.2. or subdivision 5.3.b. which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NO_x allowances for 2004 for a NO_x Budget opt-in unit in the unit's compliance account as allocated under subsection 88.1.

53.2. By May 1, 2002, the Administrator will

record the NO_x allowances for 2005 for a NO_x Budget unit allocated under sections 40. through 42. in the unit's compliance account, except for NO_x allowances under paragraph 4.2.d.2. or subdivision 5.3.b., which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NO_x allowances for 2005 for a NO_x Budget opt-in unit in the unit's compliance account as allocated under subsection 88.1.

53.3. By May 1, 2003, the Administrator will record the NO_x allowances for 2006 for a NO_x Budget unit allocated under sections 40. through 42. in the unit's compliance account, except for NO_x allowances under paragraph 4.2.d.2. or subdivision 5.3.b., which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NO_x allowances for 2006 for a NO_x Budget opt-in unit in the unit's compliance account as allocated under subsection 88.1.

53.4. By May 1, 2004, the Administrator will record the NO_x allowances for 2007 for a NO_x Budget unit allocated under sections 40. through 42. in the unit's compliance account, except for NO_x allowances under paragraph 4.2.d.2. or subdivision 5.3.b., which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NO_x allowances for 2007 for a NO_x Budget opt-in unit in the unit's compliance account as allocated under subsection 88.1.

53.5. Each year starting with 2005, after the Administrator has made all deductions from a NO_x Budget unit's compliance account and the overdraft account pursuant to section 54. (except deductions pursuant to subdivision 54.4.b.), the Administrator will record:

53.5.a. NO_x allowances, in the compliance account, as allocated to the unit under sections 40. through 42. for the third year after the year of the ozone season for which such deductions were or could have been made;

53.5.b. NO_x allowances, in the general account specified by the owners and operators of the unit, as allocated under paragraph 4.2.d.2. or subdivision 5.3.b. for the third year after the year of the ozone season for which such deductions are or could have been made; and

53.5.c. NO_x allowances, in the compliance

account, as allocated to the unit under subsection 88.1.

53.6. Serial numbers for allocated NO_x allowances. -- When allocating NO_x allowances to a NO_x Budget unit and recording them in an account, the Administrator will assign each NO_x allowance a unique identification number that will include digits identifying the year for which the NO_x allowance is allocated.

§45-1-54. Compliance.

54.1. NO_x allowance transfer deadline. -- The NO_x allowances are available to be deducted for compliance with a unit's NO_x Budget emissions limitation for an ozone season in a given year only if the NO_x allowances:

54.1.a. Were allocated for an ozone season in a prior year or the same year; and

54.1.b. Are held in the unit's compliance account or the overdraft account of the source where the unit is located, as of the NO_x allowance transfer deadline for that ozone season or are transferred into the compliance account or overdraft account by a NO_x allowance transfer correctly submitted for recordation under section 60. by the NO_x allowance transfer deadline for that ozone season.

54.2. Deductions for compliance.

54.2.a. Following recordation in accordance with section 61. of NO_x allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_x allowance transfer deadline for an ozone season, the Administrator will deduct NO_x allowances available under subsection 54.1. to cover the unit's NO_x emissions (as determined in accordance with sections 70. through 76.) or to account for actual heat input under subsection 42.5. for the ozone season:

54.2.a.1. From the compliance account; and

54.2.a.2. Only if no more NO_x allowances available under subsection 54.1. remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the Administrator will begin with the unit having the compliance account with the lowest NO_x Allowance Tracking System account number and end with the unit having the compliance account with

the highest NO_x Allowance Tracking System account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

54.2.b. The Administrator will deduct NO_x allowances first under paragraph 54.2.a.1. and then under paragraph 54.2.a.2.:

54.2.b.1. Until the number of NO_x allowances deducted for the ozone season equals the number of tons of NO_x emissions, determined in accordance with sections 70. through 76. from the unit for the ozone season for which compliance is being determined, plus the number of NO_x allowances required for deduction to account for actual heat input under subsection 42.5. for the ozone season; or

54.2.b.2. Until no more NO_x allowances available under subsection 54.1. remain in the respective account.

54.3.a. Identification of NO_x allowances by serial number. -- The NO_x authorized account representative for each compliance account may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under subsections 54.2., 54.4. or 54.5. Such identification shall be made in the compliance certification report submitted in accordance with section 30.

54.3.b. First-in, first-out. -- The Administrator will deduct NO_x allowances for an ozone season from the compliance account, in the absence of an identification or in the case of a partial identification of NO_x allowances by serial number under subdivision 54.3.a. or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

54.3.b.1. Those NO_x allowances that were allocated for the ozone season to the unit under sections 40. through 42. or sections 80. through 88.;

54.3.b.2. Those NO_x allowances that were allocated for the ozone season to any unit and transferred and recorded in the account pursuant to sections 60. through 62., in order of their date of recordation;

54.3.b.3. Those NO_x allowances that were allocated for a prior ozone season to the unit under sections 40. through 42. or sections 80. through 88.;

and

54.3.b.4. Those NO_x allowances that were allocated for a prior ozone season to any unit and transferred and recorded in the account pursuant to sections 60. through 62., in order of their date of recordation.

54.4. Deductions for excess emissions.

54.4.a. After making the deductions for compliance under subsection 54.2., the Administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_x allowances, allocated for an ozone season after the ozone season in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.

54.4.b. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the Administrator will deduct the required number of NO_x allowances, regardless of the ozone season for which they were allocated, whenever NO_x allowances are recorded in either account.

54.4.c. Any allowance deduction required under subsection 54.4. shall not affect the liability of the owners and operators of the NO_x Budget unit for any fine, penalty or assessment or their obligation to comply with any other remedy, for the same violation, as ordered under §§22-5-1 et seq. or the CAA. The following guidelines will be followed in assessing fines, penalties or other obligations:

54.4.c.1. For purposes of determining the number of days of violation, if a NO_x Budget unit has excess emissions for an ozone season, each day in the ozone season (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered; and

54.4.c.2. Each ton of excess emissions is a separate violation.

54.5. Deductions for units sharing a common stack. -- In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with sections 70. through 76.:

54.5.a. The NO_x authorized account representative of the units may identify the percentage

of NO_x allowances to be deducted from each such unit's compliance account to cover the unit's share of NO_x emissions from the common stack for an ozone season. Such identification shall be made in the compliance certification report submitted in accordance with section 30.; and

54.5.b. Notwithstanding paragraph 54.2.b.1., the Administrator will deduct NO_x allowances for each such unit until the number of NO_x allowances deducted equals the unit's identified percentage (under subdivision 54.5.a.) of the number of tons of NO_x emissions, as determined in accordance with sections 70. through 76., from the common stack for the ozone season for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit plus the number of allowances required for deduction to account for actual heat input under subsection 42.5. for the ozone season.

54.6. Deduction of banked allowances. -- Each year starting in 2005, after the Administrator has completed the designation of banked NO_x allowances under subdivision 55.1.b. and before May 1 of the year, the Administrator will determine the extent to which banked NO_x allowances otherwise available under subsection 54.1. are available for compliance in the ozone season for the current year, as follows. The terms "compliance account", "overdraft account", "general account", "states" and "trading program budgets" in subdivision 54.6.a. through paragraph 54.6.c.2. shall be read to include respectively a compliance account, an overdraft account, a general account, each state or portion of a state, and the trading program budget of each state or portion of a state under the NO_x Budget Trading Program established by the Administrator pursuant to 40 CFR Part 97.

54.6.a. The Administrator will determine the total number of banked NO_x allowances held in compliance accounts, overdraft accounts, or general accounts;

54.6.b. If the total number of banked NO_x allowances determined under subdivision 54.6.a. to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10 percent of the sum of the trading program budgets for all states for the ozone season, any banked NO_x allowance may be deducted for compliance in accordance with subsections 54.1. through 54.5.

54.6.c. If the total number of banked NO_x

allowances determined under subdivision 54.6.a. to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10 percent of the sum of the trading program budgets for all states for the ozone season, any banked allowance may be deducted for compliance in accordance with subsections 54.1. through 54.5., except as follows:

54.6.c.1. The Administrator will determine the following ratio: 0.10 multiplied by the sum of the trading program budgets for all states for the ozone season and divided by the total number of banked NO_x allowances determined under subdivision 54.6.a. to be held in compliance accounts, overdraft accounts, or general accounts; and

54.6.c.2. The Administrator will multiply the number of banked NO_x allowances in each compliance account or overdraft account by the ratio determined under paragraph 54.6.c.1. The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with subsections 54.1. through 54.5. Any banked NO_x allowances in excess of the resulting product may be deducted for compliance in accordance with subsections 54.1. through 54.5., except that, if such NO_x allowances are used to make a deduction under subsections 54.2. or 54.5., two (rather than one) such NO_x allowances shall authorize up to one ton of NO_x emissions during the ozone season and must be deducted for each deduction of one NO_x allowance required under subsections 54.2. or 54.5.

54.7. Recordation of deductions. -- The Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to subsections 54.2., 54.4., 54.5. or 54.6.

§45-1-55. NO_x Allowance Banking.

55.1. NO_x allowances may be banked for future use or transfer in a compliance account, an overdraft account or a general account, as follows:

55.1.a. Any NO_x allowance that is held in a compliance account, an overdraft account or a general account will remain in such account unless and until the NO_x allowance is deducted or transferred under sections 31., 54., 56., sections 60. through 62. or sections 80. through 88.; and

55.1.b. The Administrator will designate, as a "banked" NO_x allowance, any NO_x allowance that remains in a compliance account, an overdraft account or a general account after the Administrator has made all deductions for a given ozone season from the compliance account or overdraft account pursuant to section 54. (except deductions pursuant to subdivision 54.4.b.) and that was allocated for that ozone season or an ozone season in a prior year.

§45-1-56. Account Error.

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

§45-1-57. Closing of General Accounts.

57.1. The NO_x authorized account representative of a general account may instruct the Administrator to close the account by submitting a statement requesting deletion of the account from the NO_x Allowance Tracking System and by correctly submitting for recordation under section 60. an allowance transfer of all NO_x allowances in the account to one or more other NO_x Allowance Tracking System accounts.

57.2. If a general account shows no activity for a period of a year or more and does not contain any NO_x allowances, the Administrator may notify the NO_x authorized account representative for the account that the account will be closed and deleted from the NO_x Allowance Tracking System 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 NO_x allowances into the account under section 60. or a statement submitted by the NO_x authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

§45-1-60. Submission of NO_x Allowance Transfers.

60.1. The NO_x authorized account representatives seeking recordation of a NO_x allowance transfer shall

submit the transfer to the Administrator. To be considered correctly submitted, the NO_x allowance transfer shall include the following elements in a format specified by the Administrator:

60.1.a. The numbers identifying both the transferor and transferee accounts;

60.1.b. A specification by serial number of each NO_x allowance to be transferred; and

60.1.c. The printed name and signature of the NO_x authorized account representative of the transferor account and the date signed.

§45-1-61. Allowance Transfer Recordation.

61.1. Within 5 business days of receiving a NO_x allowance transfer, except as provided in subsection 61.2., the Administrator will record a NO_x allowance transfer by moving each NO_x 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 NO_x allowance identified by serial number in the transfer.

61.2. A NO_x allowance transfer that is submitted for recordation following the NO_x allowance transfer deadline and that includes any NO_x allowances allocated for an ozone season prior to or the same as the ozone season to which the NO_x allowance transfer deadline applies will not be recorded until after the Administrator completes the recordation of NO_x allowances under section 53., for the ozone season in the third year after the NO_x allowance transfer deadline.

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

§45-1-62. Notification.

62.1. Notification of recordation. -- Within 5 business days of recordation of a NO_x allowance

transfer under section 61., the Administrator will notify each party to the transfer. Notice will be given to the NO_x authorized account representatives of both the transferor and transferee accounts.

62.2. Notification of non-recording. -- Within 10 business days of receipt of a NO_x allowance transfer that fails to meet the requirements of subsection 61.1., the Administrator will notify the NO_x 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-recording.

62.3. Nothing in this section shall preclude the submission of a NO_x allowance transfer for recording following notification of non-recording.

§45-1-70. General Monitoring Requirements. --

The owners and operators and to the extent applicable, the NO_x authorized account representative of a NO_x Budget unit, shall comply with the monitoring, recordkeeping and reporting requirements as provided in sections 70. through 76. and subpart H of 40 CFR Part 75. For purposes of complying with such requirements, the definitions in section 2. and in 40 CFR 72.2 shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in 40 CFR Part 75 shall be replaced by the terms "NO_x Budget unit," "NO_x authorized account representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined section 2. The owner or operator of a unit that is not a NO_x Budget unit but that is monitored under 40 CFR 75.72(b)(2)(ii) shall comply with the monitoring, recordkeeping and reporting requirements for a NO_x Budget unit.

70.1. Requirements for installation, certification and data accounting. -- The owner or operator of each NO_x Budget unit shall meet the following requirements. These provisions shall also apply to a unit for which an application for a NO_x Budget opt-in permit is submitted and not denied or withdrawn, as provided in sections 80. through 88.:

70.1.a. Install all monitoring systems required under this subpart for monitoring NO_x mass emissions.

This includes all systems required to monitor NO_x emission rate, NO_x concentration, heat input rate and stack flow rate, in accordance with 40 CFR 75.72 and 40 CFR 75.76.;

70.1.b. Install all monitoring systems for monitoring heat input rate.

70.1.c. Successfully complete all certification tests required under section 71. and meet all other requirements of sections 70. through 76. and 40 CFR Part 75 applicable to the monitoring systems under subdivisions 70.1.a. and 70.1.b.; and

70.1.d. Record, report and quality-assure the data from the monitoring systems under subdivisions 70.1.a. and 70.1.b.

70.2. Compliance deadlines. -- The owner or operator shall meet the certification and other requirements of subdivisions 70.1.a. through 70.1.c. on or before the following dates. The owner or operator shall record, report and quality-assure the data from the monitoring systems under subdivisions 70.1.a. and 70.1.b. on and after the following dates:

70.2.a. For the owner or operator of a NO_x Budget unit for which the owner or operator intends to apply for early reduction credits under section 43., by May 1, 2001. If the owner or operator of a NO_x Budget unit fails to meet this deadline, he or she is not eligible to apply for early reduction credits and is subject to the deadline under subdivision 70.2.b.;

70.2.b. For the owner or operator of a NO_x Budget unit under subsection 4.1. that commences operation before January 1, 2003 and that is not subject to or does not meet the deadline under subdivision 70.2.a., by May 1, 2003;

70.2.c. Reserved.

70.2.c.1. Reserved.

70.2.c.2. Reserved.

70.2.d. Reserved.

70.2.e. For the owner or operator of a NO_x Budget unit under subdivision 4.1.b. that commences operation on or after January 1, 2003 and that reports on an annual basis under subsection 74.4., by the later of the following dates:

70.2.e.1. May 1, 2003; or

70.2.e.2. 180 days after the date on which the unit commences operation;

70.2.f. For the owner or operator of a NO_x Budget unit under subdivision 4.1.b. that commences operation on or after January 1, 2003 and that report on an ozone season basis under paragraph 74.4.b.2., by 180 days after the date on which the unit commences operation, provided that this date is during an ozone season. If this date does not occur during an ozone season, the applicable deadline is May 1 immediately following this date;

70.2.g. For the owner or operator of a NO_x Budget unit that has a new stack or flue for which construction is completed after the applicable deadline under subdivisions 70.2.a., 70.2.b., 70.2.e. or 70.2.f. or under sections 80. through 88. and that reports on an annual basis under subsection 74.4., by 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue;

70.2.h. For the owner or operator of a NO_x Budget unit that has a new stack or flue for which construction is completed after the applicable deadline under subdivisions 70.2.a., 70.2.b., 70.2.e. or 70.2.f. or under sections 80. through 88. and that reports on an ozone season basis under paragraph 74.4.b.2., by 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue, provided that this date is during an ozone season. If this date does not occur during the ozone season, the applicable deadline is May 1 immediately following this date; and

70.2.i. For the owner or operator of a unit for which an application for a NO_x Budget opt-in permit is submitted and not denied or withdrawn, by the date specified under sections 80. through 88.

70.3. Reporting data prior to initial certification. -- The owner or operator of a NO_x Budget unit under subdivisions 70.2.e. or 70.2.f. shall determine, record and report NO_x mass emissions, heat input rate and any other values required to determine NO_x mass emissions (e.g., NO_x emission rate and heat input rate, or NO_x concentration and stack flow rate) in accordance with 40 CFR 75.70(g), from the date and hour that the unit starts operating until the date and hour on which the continuous emission monitoring system, excepted monitoring system under appendix D or E of 40 CFR Part 75, or excepted monitoring methodology under 40

CFR 75.19 is provisionally certified.

70.4. Prohibitions.

70.4.a. No owner or operator of a NO_x Budget unit shall use any alternative monitoring system, alternative reference method or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with section 75.

70.4.b. No owner or operator of a NO_x Budget unit shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of sections 70. through 76. and 40 CFR Part 75, except as provided in 40 CFR 75.74.

70.4.c. No owner or operator of a NO_x Budget unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method and thereby avoid monitoring and recording NO_x 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 sections 70. through 76. and 40 CFR Part 75 or except as provided in 40 CFR 75.74.

70.4.d. No owner or operator of a NO_x Budget unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under sections 70. through 76., except under any one of the following circumstances:

70.4.d.1. During the period that the unit is covered by an exemption under subdivision 4.2.a. or section 5. that is in effect;

70.4.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 sections 70. through 76. and 40 CFR Part 75, by the Director for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

70.4.d.3. The NO_x authorized account representative submits notification of the date of

certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with subdivision 71.2.b.

§45-1-71. Initial Certification and Recertification Procedures.

71.1. The owner or operator of a NO_x Budget unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR Part 75, except that:

71.1.a. If, prior to January 1, 1998, the Administrator approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NO_x emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.17, the NO_x authorized account representative shall resubmit the petition to the Administrator under subsection 75.1. to determine if the approval applies under the NO_x Budget Trading Program; and

71.1.b. For any additional CEMS required under the common stack provisions in 40 CFR 75.72 or for any NO_x concentration CEMS used under the provisions of 40 CFR 75.71(a)(2), the owner or operator shall meet the requirements of subsection 71.2.

71.2. The owner or operator of a NO_x Budget unit that is not subject to an Acid Rain emissions limitation shall comply with the following initial certification and recertification procedures. The owner or operator of such a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 or that qualifies to use an alternative monitoring system under subpart E of 40 CFR Part 75 shall comply with the following procedures, as modified by subsections 71.3. or 71.4. The owner or operator of a NO_x Budget unit that is subject to an Acid Rain emissions limitation and that requires additional CEMS under the common stack provisions in 40 CFR 75.72 or uses a NO_x concentration CEMS under 40 CFR 75.71(a)(2) shall comply with the following procedures:

71.2.a. Requirements for initial certification. -- The owner or operator shall ensure that each monitoring system required by subpart H of 40 CFR Part 75 (which includes 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 70.2. In

addition, whenever the owner or operator installs a monitoring system in order 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;

71.2.b. Requirements for recertification. -- Whenever the owner or operator makes a replacement, modification or change in a certified monitoring system that may significantly affect the ability of the system to accurately measure or record NO_x mass emissions or heat input rate or to meet the requirements of 40 CFR 75.21 or appendix B to 40 CFR Part 75, the owner or operator shall 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 shall recertify the continuous emissions monitoring system in accordance with 40 CFR 75.20(b). Examples of changes 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; and

71.2.c. Certification approval process for initial certification and recertification.

71.2.c.1. Notification of certification. -- The NO_x authorized account representative shall submit to the Administrator, the appropriate EPA Regional Office and the Director written notice of the dates of certification in accordance with section 73.

71.2.c.2. Certification application. -- The NO_x authorized account representative shall submit to the Administrator, the appropriate EPA Regional Office and the Director a certification application for each monitoring system required under subpart H of 40 CFR Part 75. A complete certification application shall include the information specified in subpart H of 40 CFR Part 75.

71.2.c.3. Except for units using the low mass emission excepted methodology under 40 CFR 75.19, the provisional certification date for a monitor shall be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the NO_x Budget Trading Program for a period not to exceed 120 days after receipt by the Director of the complete certification application for the monitoring

system or component thereof under paragraph 71.2.c.2. Data measured and recorded by the provisionally certified monitoring system or component thereof, 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 Director does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the Director.

71.2.c.4. Certification application formal approval process. -- The Director 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 71.2.c.2. In the event the Director 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 NO_x Budget Trading Program.

71.2.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 Director will issue a written notice of approval of the certification application within 120 days of receipt.

71.2.c.4.B. Incomplete application notice. -- A certification application will be considered complete when all of the applicable information required to be submitted under paragraph 71.2.c.2. has been received by the Director. If the certification application is not complete, then the Director will issue a written notice of incompleteness that sets a reasonable date by which the NO_x authorized account representative must submit the additional information required to complete the certification application. If the NO_x authorized account representative does not comply with the notice of incompleteness by the specified date, then the Director may issue a notice of disapproval under subparagraph 71.2.c.4.C. The 120-day review period shall not begin prior to receipt of a complete certification application.

71.2.c.4.C. Disapproval notice. -- If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of sections 70. through 76., or if the certification application is incomplete and the

requirement for disapproval under subparagraph 71.2.c.4.B. has been met, then the Director 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 Director and the data measured and recorded by each uncertified monitoring system or component thereof shall 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 shall follow the procedures for loss of certification in paragraph 71.2.c.5. for each monitoring system or component thereof that is disapproved for initial certification.

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

71.2.c.5. Procedures for loss of certification. -- If the Director issues a notice of disapproval of a certification application under subparagraph 71.2.c.4.C. or a notice of disapproval of certification status under subparagraph 71.2.c.4.D., then:

71.2.c.5.A. The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii), 40 CFR 75.20(h)(4) or 40 CFR 75.21(e) and continuing until the date and hour specified under 40 CFR 75.20(a)(5)(i):

71.2.c.5.A.1. For units that the owner or operator intends to monitor or monitors for NO_x emission rate and heat input rate or intends to determine or determines NO_x mass emissions using the low mass emission excepted methodology under 40 CFR 75.19, the maximum potential NO_x emission rate and the maximum potential hourly heat input of the unit; and

71.2.c.5.A.2. For units that the owner or operator intends to monitor or monitors for NO_x mass emissions using a NO_x pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO_x and the maximum potential flow rate of the unit under section 2 of appendix A of 40 CFR Part 75.

71.2.c.5.B. The NO_x authorized account representative shall submit a notification of certification retest dates and a new certification application in

accordance with paragraphs 71.2.c.1. and 71.2.c.2.; and

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

71.3. Initial certification and recertification procedures for low mass emission units using the excepted methodologies under 40 CFR 75.19. -- The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR 75.19 and not subject to an Acid Rain emissions limitation shall meet the applicable general operating requirements of 40 CFR 75.10 and the applicable requirements of 40 CFR 75.19. The owner or operator of such a unit shall also meet the applicable certification and recertification procedures of subsection 71.2., except that the excepted methodology shall be deemed provisionally certified for use under the NO_x Budget Trading Program as of the following dates:

71.3.a. For a unit that does not have monitoring equipment initially certified or recertified for the NO_x Budget Trading Program as of the date on which the NO_x authorized account representative submits the certification application under 40 CFR 75.19 for the unit, starting on the date of such submission until the completion of the period for the Director's review;

71.3.b. For a unit that has monitoring equipment initially certified or recertified for the NO_x Budget Trading Program as of the date on which the NO_x authorized account representative submits the certification application under 40 CFR 75.19 for the unit and that reports data on an annual basis under subsection 74.4., starting January 1 of the year after the year of such submission until the completion of the period for the Director's review; and

71.3.c. For a unit that has monitoring equipment initially certified or recertified for the NO_x Budget Trading Program as of the date on which the NO_x Authorized Account Representative submits the certification application under 40 CFR 75.19 for the unit and that reports on a control season basis under subsection 74.4., starting May 1 of the ozone season after the year of such submission until the completion

of the period for the Director's review.

71.4. Certification/recertification procedures for alternative monitoring systems. -- The NO_x authorized account representative of each unit not subject to an Acid Rain emissions limitation for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of 40 CFR Part 75 shall comply with the applicable certification procedures of subsection 71.2. before using the system under the NO_x Budget Trading Program. The NO_x authorized account representative shall also comply with the applicable recertification procedures of subsection 71.2. and 40 CFR 75.20(f).

§45-1-72. Out of Control Periods.

72.1. Whenever any monitoring system fails to meet the quality assurance or data validation requirements of 40 CFR Part 75, data shall be substituted using the applicable procedures in subpart D, appendix D, or appendix E 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 system or component 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 Director will issue a notice of disapproval of the certification status of such system or component. For the purposes of this subsection, an audit shall be either a field audit or an audit of any information submitted to the Director or the Administrator. By issuing the notice of disapproval, the Director revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall 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 system or component.

§45-1-73. Notifications.

73.1. The NO_x authorized account representative for a NO_x Budget unit shall submit written notice to the

Administrator, the appropriate EPA Regional Office and the Director in accordance with 40 CFR 75.61.

73.2. For any unit that does not have an Acid Rain emissions limitation, the Director may waive the requirement to notify the Director in subsection 73.1.

§45-1-74. Recordkeeping and Reporting.

74.1. General provisions.

74.1.a. The NO_x authorized account representative shall comply with all recordkeeping and reporting requirements in this section and with the requirements of subdivision 10.5.a.

74.1.b. If the NO_x authorized account representative for a NO_x Budget unit subject to an Acid Rain emission limitation 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 sections 70. through 76. or subpart H of 40 CFR Part 75 is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR Part 72, then the submission must also be signed by the designated representative or the alternative designated representative.

74.2. Monitoring Plans.

74.2.a. The owner or operator of a unit subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan shall also include all of the information required by subpart H of 40 CFR Part 75.

74.2.b. The owner or operator of a unit that is not subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan is only required to include the information required by subpart H of 40 CFR Part 75.

74.3. Certification applications. -- The NO_x authorized account representative shall submit an application to the Administrator, the appropriate EPA Regional Office and the Director within 45 days after completing all initial certification or recertification tests required under section 71. including the information required under subpart H of 40 CFR Part 75.

74.4. Quarterly reports. -- The NO_x authorized

account representative shall submit quarterly reports, as follows:

74.4.a. If a unit is subject to an Acid Rain emission limitation or if the owner or operator of the NO_x budget unit chooses to meet the annual reporting requirements of sections 70. through 76., the NO_x authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

74.4.a.1. For a unit for which the owner or operator intends to apply or applies for the early reduction credits under section 43., the calendar quarter that includes the date of initial provisional certification under paragraph 71.2.c.3. or subsection 71.3. Data shall be recorded and reported from the date and hour corresponding to the date and hour of provisional certification; or

74.4.a.2. For a unit that commences operation on or before May 1, 2003 and is not subject to paragraph 74.4.a.1., the earlier of the calendar quarter that includes the date of initial provisional certification under paragraph 71.2.c.3. or subsection 71.3. or, if the certification tests are not completed by May 1, 2003, the calendar quarter covering May 1, 2003 through June 30, 2003. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2003; or

74.4.a.3. For a unit that commences operation after May 1, 2003, the calendar quarter in which the unit commences operation. Data shall be recorded and reported from the date and hour corresponding to when the unit commences operation;

74.4.b. If a NO_x budget unit is not subject to an Acid Rain emission limitation, then the NO_x authorized account representative shall either:

74.4.b.1. Meet all of the requirements of 40 CFR Part 75 related to monitoring and reporting NO_x mass emissions during the entire year and meet the deadlines specified in subdivision 74.4.a.; or

74.4.b.2. Submit quarterly reports covering the period May 1 through September 30 of each year and including the data described in 40 CFR 75.74(c)(6). The NO_x authorized account representative shall submit such quarterly reports, beginning with:

74.4.b.2.A. For a unit for which the owner or operator intends to apply or applies for early reduction credits under section 43., the calendar quarter that includes the date of initial provisional certification under paragraph 71.2.c.3. or subsection 71.3. Data shall be recorded and reported from the date and hour corresponding to the date and hour of provisional certification; or

74.4.b.2.B. For a unit that commences operation on or before May 1, 2003 and that is not subject to paragraph 74.4.b.1., the calendar quarter covering May 1 through June 30, 2003. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of initial provisional certification under paragraph 71.2.c.3. or subsection 71.3. or the first hour of May 1, 2003; or

74.4.b.2.C. For a unit that commences operation after May 1, 2003 and during an ozone season, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commences operation; or

74.4.b.2.D. For a unit that commences operation after May 1, 2003 and not during an ozone season, the calendar quarter covering the first ozone season after the unit commences operation. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of initial provisional certification under paragraph 71.2.c.3. or subsection 71.3. or the first hour of May 1 of the first ozone season after the unit commences operation;

74.4.c. The NO_x authorized account representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in subpart H of 40 CFR Part 75 and 40 CFR 75.64.

74.4.c.1. For units subject to an Acid Rain emissions limitation, quarterly reports shall include all of the data and information required in subpart H of 40 CFR Part 75 for each NO_x Budget unit (or group of units using a common stack) and the data and information required in subpart G of 40 CFR Part 75.

74.4.c.2. For units not subject to an Acid Rain emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of 40 CFR Part 75 for each NO_x

Budget unit (or group of units using a common stack); and

74.4.d. Compliance certification. -- The NO_x authorized account representative shall submit to the Director a compliance certification 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 shall state that:

74.4.d.1. The monitoring data submitted were recorded in accordance with the applicable requirements of sections 70. through 76. and 40 CFR Part 75, including the quality assurance procedures and specifications;

74.4.d.2. For a unit with add-on NO_x emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B of part 75 and the substitute values do not systematically underestimate NO_x emissions; and

74.4.d.3. For a unit that is reporting on an ozone season basis under paragraph 74.4.b.2., the NO_x emission rate and NO_x concentration values substituted for missing data under subpart D of 40 CFR Part 75 are calculated using only values from an ozone season and do not systematically underestimate NO_x emissions.

§45-1-75. Petitions.

75.1. The NO_x authorized account representative of a NO_x Budget unit that is subject to an Acid Rain emissions limitation 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 76.

75.1.a. Application of an alternative to any requirement of sections 70. through 76. is in accordance with sections 70. through 76. only to the extent that the petition is approved by the Administrator, in consultation with the Director.

75.1.b. Notwithstanding subdivision 75.1.a. of this section, if the petition requests approval to apply an alternative to a requirement concerning any

additional CEMS required under the common stack provisions of 40 CFR §75.72, the petition is governed by subsection 75.2.

75.2. The NO_x authorized account representative of a NO_x Budget unit that is not subject to an Acid Rain emissions limitation may submit a petition under 40 CFR §75.66 to the Director and the Administrator requesting approval to apply an alternative to any requirement of sections 70. through 76.

75.2.a. The NO_x authorized account representative of a NO_x Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR §75.66 to the Director and the Administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR §75.72 or a NO_x concentration CEMS used under 40 CFR §75.71(a)(2).

75.2.b. Application of an alternative to any requirement of sections 70. through 76. is in accordance with sections 70. through 76. only to the extent the petition under subsection 75.2. is approved by both the Director and the Administrator.

§45-1-76. Additional Requirements to Provide Heat Input Data.

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

§45-1-80. Individual Opt-in Applicability.

80.1. A unit that is not a NO_x Budget unit under subsection 4.1., is not a unit exempt under subdivision 4.2.a., vents all of its emissions to a stack and is operating, may qualify to be a NO_x Budget opt-in unit under sections 80. through 88. A unit that is a NO_x Budget unit under subsection 4.1., is covered by an exemption under subdivision 4.2.a. or section 5. that is in effect, or is not operating is not eligible to become a NO_x Budget opt-in unit.

§45-1-81. Opt-in General Requirements.

81.1 Except otherwise as provided in this rule, a NO_x Budget opt-in unit shall be treated as a NO_x Budget unit for purposes of applying sections 1. through 76.

§45-1-82. Opt-in NO_x Authorized Account Representative.

82.1. A unit for which an application for a NO_x Budget opt-in permit is submitted, or a NO_x Budget opt-in unit, located at the same source as one or more NO_x Budget units, shall have the same NO_x authorized account representative as such NO_x Budget units.

§45-1-83. Applying for NO_x Budget Opt-in Permit.

83.1. Applying for initial NO_x Budget opt-in permit. -- In order to apply for an initial NO_x Budget opt-in permit, the NO_x authorized account representative of a unit qualified under section 80. may submit to the Administrator and Director at any time, except as provided under subsection 86.7.:

83.1.a. A complete NO_x Budget permit application under section 22.;

83.1.b. A monitoring plan submitted in accordance with sections 70. through 76.; and

83.1.c. A complete account certificate of representation under section 13., if no NO_x authorized account representative has been previously designated for the unit.

83.2. Duty to reapply. -- Unless the NO_x Budget opt-in permit is terminated or revised under subsection 86.5. or paragraph 87.2.a.1., the NO_x authorized account representative of a NO_x Budget opt-in unit shall submit to the Administrator and the Director a complete NO_x Budget permit application under section 22. to renew the NO_x Budget opt-in permit in accordance with subsection 21.3. and if applicable, an updated monitoring plan in accordance with sections 70. through 76.

§45-1-84. Opt-in Process.

84.1. The Director will issue or deny a NO_x Budget opt-in permit for a unit for which an initial

application for a NO_x Budget opt-in permit under section 83. is submitted in accordance with section 20. and the following:

84.2. Interim review of monitoring plan. -- The Director will determine on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO_x Budget opt-in permit under section 83. A monitoring plan is sufficient for purposes of interim review if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input rate of the unit are monitored and reported in accordance with sections 70. through 76. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan;

84.3. If the Director determines that the unit's monitoring plan is sufficient under subsection 84.2. and after completion of monitoring system certification under sections 70. through 76., the NO_x emissions rate and the heat input of the unit shall be monitored and reported in accordance with sections 70. through 76. for one full ozone season during which percent monitor data availability is not less than 90 percent and during which the unit is in full compliance with any applicable state or federal emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a "NO_x Budget unit" prior to issuance of a NO_x Budget opt-in permit covering the unit;

84.4. Based on the information monitored and reported under subsection 84.3., the Director will calculate the unit's baseline heat input, which will equal the unit's total heat input (in mmBtu) for the ozone season, and the unit's baseline NO_x emissions rate, which will equal the unit's total NO_x mass emissions (in lb) for the ozone season divided by the unit's baseline heat input.

84.5. Issuance of draft NO_x Budget opt-in permit for public comment. -- The Director will issue a draft NO_x Budget opt-in permit for public comment in accordance with section 20.;

84.6. Notwithstanding subsections 84.2. through 84.5., if at any time before issuance of a draft NO_x Budget opt-in permit for public comment for the unit, the Administrator or the Director determines that the unit does not qualify as a NO_x Budget opt-in unit under section 80., the Director will issue a draft denial of a NO_x Budget opt-in permit for public comment for the

unit in accordance with section 20.;

84.7. Withdrawal of application for NO_x Budget opt-in permit. -- A NO_x authorized account representative of a unit may withdraw its application for an initial NO_x Budget opt-in permit under section 83. at any time prior to the issuance of the initial NO_x Budget opt-in permit. Once the application for a NO_x Budget opt-in permit is withdrawn, a NO_x authorized account representative wanting to reapply must submit a new application for an initial NO_x Budget permit under section 83.; and

84.8. The unit shall be a NO_x Budget opt-in unit and a NO_x Budget unit starting May 1 of the first ozone season starting after the issuance of the initial NO_x Budget opt-in permit by the Director.

§45-1-85. NO_x Budget Opt-in Permit Contents.

85.1. Each NO_x Budget opt-in permit (including any draft or proposed NO_x Budget opt-in permit) will contain all elements required for a complete NO_x Budget opt-in permit application under section 22.

85.2. Each NO_x Budget opt-in permit is deemed to incorporate automatically the definitions of terms under section 2. and upon recordation by the Administrator under sections 50. through 57., sections 60. through 62. or sections 80. through 88., every allocation, transfer or deduction of NO_x allowances to or from the compliance accounts of each NO_x Budget opt-in unit covered by the NO_x Budget opt-in permit or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in unit is located.

§45-1-86. Withdrawal from NO_x Budget Trading Program.

86.1. Requesting withdrawal. -- To withdraw from the NO_x Budget Trading Program, the NO_x authorized account representative of a NO_x Budget opt-in unit shall submit to the Administrator and Director a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.

86.2. Conditions for withdrawal. -- Before a NO_x Budget opt-in unit covered by a request under subsection 86.1. may withdraw from the NO_x Budget

Trading Program and the NO_x Budget opt-in permit may be terminated under subsection 86.5., the following conditions must be met:

86.2.a. For the ozone season immediately before the withdrawal is to be effective, the NO_x authorized account representative must submit or must have submitted to the Administrator and Director an annual compliance certification report in accordance with section 30.;

86.2.b. If the NO_x Budget opt-in unit has excess emissions for the ozone season immediately before the withdrawal is to be effective, the Administrator will deduct or has deducted from the NO_x Budget opt-in unit's compliance account or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in unit is located, the full amount required under subsection 54.4. for the ozone season; and

86.2.c. After the requirements for withdrawal under subdivisions 86.2.a. and 86.2.b. are met, the Administrator will deduct from the NO_x Budget opt-in unit's compliance account or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in unit is located, NO_x allowances equal in number to and allocated for the same or a prior ozone season as any NO_x allowances allocated to that source under section 88. for any ozone season for which the withdrawal is to be effective. The Administrator will close the NO_x Budget opt-in unit's compliance account and will establish and transfer any remaining allowances to a general account specified by the owners and operators of the NO_x Budget opt-in unit.

86.3. A NO_x Budget opt-in unit that withdraws from the NO_x Budget Trading Program shall comply with all requirements under the NO_x Budget Trading Program concerning all years for which such NO_x Budget opt-in unit was a NO_x Budget opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

86.4. Notification.

86.4.a. After the requirements for withdrawal under subsections 86.1. and 86.2. are met (including deduction of the full amount of NO_x allowances required), the Director will issue a notification to the Administrator and the NO_x authorized account representative of the NO_x Budget opt-in unit of the acceptance of the withdrawal of the NO_x Budget opt-in

unit as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.

86.4.b. If the requirements for withdrawal under subsections 86.1. and 86.2. are not met, the Director will issue a notification to the Administrator and the NO_x authorized account representative of the NO_x Budget opt-in unit that the NO_x Budget opt-in unit's request to withdraw is denied. If the NO_x Budget opt-in unit's request to withdraw is denied, the NO_x Budget opt-in unit shall remain subject to the requirements for a NO_x Budget opt-in unit.

86.5. Permit amendment. -- After the Director issues a notification under subdivision 86.4.a. that the requirements for withdrawal have been met, the Director will revise the NO_x Budget permit covering the NO_x Budget opt-in unit to terminate the NO_x Budget opt-in permit as of the effective date specified under subdivision 86.4.a. A NO_x Budget opt-in unit shall continue to be a NO_x Budget opt-in unit until the effective date of the termination.

86.6. Reapplication upon failure to meet conditions of withdrawal. -- If the Director denies the request to withdraw the NO_x Budget opt-in unit, the NO_x authorized account representative may submit another request to withdraw in accordance with subsections 86.1. and 86.2.

86.7. Ability to return to the NO_x Budget Trading Program. -- Once a NO_x Budget opt-in unit withdraws from the NO_x Budget Trading Program and its NO_x Budget opt-in permit is terminated under subsection 86.5., the NO_x authorized account representative may not submit another application for a NO_x Budget opt-in permit under section 83. for the unit prior to the date that is 4 years after the date on which the terminated NO_x Budget opt-in permit became effective.

§45-1-87. Change in Regulatory Status.

87.1. Notification. -- When a NO_x Budget opt-in unit becomes a NO_x Budget unit under subsection 4.1., the NO_x authorized account representative shall notify in writing the Director and the Administrator of such change in the NO_x Budget opt-in unit's regulatory status within 30 days of such change.

87.2. Director's and Administrator's action.

87.2.a.1. When the NO_x Budget opt-in unit becomes a NO_x Budget unit under subsection 4.1., the Director will revise the NO_x Budget opt-in unit's NO_x Budget opt-in permit to meet the requirements of a NO_x Budget permit under section 23. as of an effective date that is the date on which such NO_x Budget opt-in unit becomes a NO_x Budget unit under subsection 4.1.

87.2.a.2.A. The Administrator will deduct from the compliance account for the NO_x Budget unit under paragraph 87.2.a.1. or the overdraft account of the NO_x Budget source where the unit is located, NO_x allowances equal in number to and allocated for the same or a prior ozone season as:

87.2.a.2.A.1. Any NO_x allowances allocated to the NO_x Budget unit (as a NO_x Budget opt-in unit) under section 88. for any ozone season after the last ozone season during which the unit's NO_x Budget opt-in permit was effective; and

87.2.a.2.A.2. If the effective date of the NO_x Budget permit revision under paragraph 87.2.a.1. is during an ozone season, the NO_x allowances allocated to the NO_x Budget unit (as a NO_x Budget opt-in unit) under section 88. for the ozone season multiplied by the number of days in the ozone season, starting with the effective date of the permit revision under paragraph 87.2.a.1., divided by the total number of days in the ozone season and rounded to the nearest whole number of NO_x allowances as appropriate.

87.2.a.2.B. The NO_x authorized account representative shall ensure that the compliance account of the NO_x Budget unit under paragraph 87.2.a.1. or the overdraft account of the NO_x Budget source where the unit is located, contains the NO_x allowances necessary for completion of the deduction under subparagraph 87.2.a.2.A. If the compliance account or overdraft account does not contain the necessary NO_x allowances, the Administrator will deduct the required number of NO_x allowances, regardless of the ozone season for which they were allocated, whenever NO_x allowances are recorded in either account.

87.2.a.3.A. For every ozone season during which the NO_x Budget permit revised under paragraph 87.2.a.1. is in effect, the NO_x Budget unit under paragraph 87.2.a.1. will be treated, solely for purposes of NO_x allowance allocations under section 42., as a unit that commenced operation on the effective date of the NO_x Budget permit revision under

paragraph 87.2.a.1. and will be allocated NO_x allowances under section 42. The unit's deadline under subsection 84.4. for meeting monitoring requirements in accordance with sections 70. through 76. shall not be changed by the change in the unit's regulatory status or by the revision of the NO_x Budget permit under paragraph 87.2.a.1.

87.2.a.3.B. Notwithstanding subparagraph 87.2.a.3.A., if the effective date of the NO_x Budget permit revision under paragraph 87.2.a.1. is during an ozone season, the following number of NO_x allowances will be allocated to the NO_x Budget unit under paragraph 87.2.a.1. under section 42. for the ozone season: the number of NO_x allowances otherwise allocated to the NO_x Budget unit under section 42. for the ozone season multiplied by the number of days in the ozone season, starting with the effective date of the permit revision under paragraph 87.2.a.1., divided by the total number of days in the ozone season and rounded to the nearest whole number of NO_x allowances as appropriate.

87.2.b.1. When the NO_x authorized account representative of a NO_x Budget opt-in unit does not renew its NO_x Budget opt-in permit under subsection 83.2., the Administrator will deduct from the NO_x Budget opt-in unit's compliance account or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in unit is located, NO_x allowances equal in number to and allocated for the same or a prior ozone season as any NO_x allowances allocated to the NO_x Budget opt-in unit under section 88. for any ozone season after the last ozone season for which the NO_x Budget opt-in permit is effective. The NO_x authorized account representative shall ensure that the NO_x Budget opt-in unit's compliance account or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in unit is located includes the NO_x allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain the necessary NO_x allowances, the Administrator will deduct the required number of NO_x allowances, regardless of the ozone season for which they were allocated, whenever NO_x allowances are recorded in either account.

87.2.b.2. After the deduction under paragraph 87.2.b.1. is completed, the Administrator will close the NO_x Budget opt-in unit's compliance account. If any NO_x allowances remain in the compliance account after completion of such deduction and any deduction under section 54., the Administrator

will close the NO_x Budget opt-in unit's compliance account and transfer any remaining allowances to a general account specified by the owners and operators of the NO_x Budget opt-in unit.

§45-1-88. NO_x Allowance Allocations to Opt-in Units.

88.1. NO_x allowance allocation.

88.1.a. By April 1 immediately before the first ozone season for which the NO_x Budget opt-in permit is effective, the Director will determine by order the NO_x allowance allocations for the NO_x Budget opt-in unit for the ozone season in accordance with subsection 88.2.

88.1.b. By no later than April 1, after the first ozone season for which the NO_x Budget opt-in permit is in effect, and April 1 of each year thereafter, the Director will determine by order the NO_x allowance allocations for the NO_x Budget opt-in unit for the next ozone season in accordance with subsection 88.2.

88.1.c. The Director will make available to the public each determination of NO_x allowance allocations under subdivisions 88.1.a. or 88.1.b. and provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with subsection 88.2. Based on any such objections, the Director will adjust each determination to the extent necessary to ensure that it is in accordance with subsection 88.2.

88.2. For each ozone season for which the NO_x Budget opt-in unit has an approved NO_x Budget opt-in permit, the NO_x Budget opt-in unit will be allocated NO_x allowances in accordance with the following procedures:

88.2.a. The heat input (in mmBtu) used for calculating NO_x allowance allocations will be the lesser of:

88.2.a.1. The unit's baseline heat input determined pursuant to subsection 84.4.; or

88.2.a.2. The unit's heat input, as determined in accordance with sections 70. through 76., for the ozone season in the year prior to the year of the ozone season for which the NO_x allocations are being

calculated; and

88.2.b. The Director will allocate NO_x allowances to the NO_x Budget opt-in unit in an amount equaling the heat input (in mmBtu) determined under subdivision 88.2.a. multiplied by the lesser of the unit's baseline NO_x emissions rate (in lb/mmBtu) determined pursuant to subsection 84.3.; or the most stringent state or federal NO_x emission limitation applicable to the unit during the ozone season, divided by 2000 lb/ton and rounded to the nearest whole number of NO_x allowances as appropriate.

§45-1-90. Reserved.

§45-1-100. Requirements for Emissions of NO_x from Cement Manufacturing Kilns.

100.1. NO_x Budget Trading Program eligibility. -- Any cement manufacturing kiln (kiln) subject to this section shall not be eligible for allowances from the state NO_x Trading Program Budget or subject to the state NO_x Budget Trading Program under sections 4. through 88. of this rule.

100.2. Applicability. -- Any owner or operator of the following kilns with process rates of at least the following shall comply with the applicable requirements of this section:

100.2.a. Long dry kilns $\geq$ 12 TPH;

100.2.b. Long wet kilns $\geq$ 10 TPH;

100.2.c. Preheater kilns $\geq$ 16 TPH; and

100.2.d. Precalciner and preheater/precalciner kilns $\geq$ 22 TPH.

100.3. Standard requirements. -- After May 1, 2004, an owner or operator of any Portland cement kiln subject to this section shall not operate the kiln during May 1 through September 30 unless the kiln has installed and operates during May 1 to September 30 with low-NO_x burners, mid-kiln firing or alternative control techniques, subject to approval by the Director, that achieve at least the same emissions decreases as low-NO_x burners or mid-kiln firing.

100.4. NO_x compliance plan. -- Any owner or operator of a source subject to the standard

requirements of subsection 100.3. may elect to use NO_x reductions from any non-affected kiln at a source with a Portland cement kiln subject to subsection 100.2. If the owner or operator so elects, he or she must submit for approval to the Director by May 1, 2004 a NO_x compliance plan which demonstrates the method(s) by which the operator will achieve NO_x reductions from non-affected kilns which achieve at least the same emissions decreases set forth in the standard requirements of subsection 100.3.

100.5. Reporting requirements. -- Any owner or operator subject to the requirements of subsection 100.3. shall comply with the following requirements:

100.5.a. By May 1, 2004, submit to the Director and Administrator the identification number and type of each kiln subject to this section, the name and address of the plant where the kiln is located and the name and telephone number of the person responsible for demonstrating compliance with the section; and

100.5.b. Submit a report documenting for that kiln the total NO_x emissions from May 1 through September 30 of each year to the Director and Administrator by October 31 of each year, beginning in 2004.

100.6. Monitoring requirements.

100.6.1. Any owner or operator of an kiln subject to this section shall complete an initial performance test and subsequent annual testing consistent with the requirements of 40 CFR Part 60, appendix A, method 7, 7A, 7C, 7D or 7E; and

100.6.2. The operator may use the results of continuous emission monitoring system (CEMS) to replace the annual testing requirements set forth in subdivision 100.6.1. Such equipment shall be installed and operated consistent with sections 70. through 76. and 40 CFR Part 75.

100.7. Recordkeeping requirements. -- Any owner or operator of an kiln subject to this section shall produce and maintain records which shall include, but are not limited to:

100.7.a. The emissions, in pounds of NO_x per ton of clinker produced from each affected Portland cement kiln;

100.7.b. The type of control used for each affected Portland cement kiln;

100.7.c. The date, time and duration of any startup, shutdown or malfunction in the operation of any of the cement kilns or the emissions monitoring equipment;

100.7.d. The results of any performance testing;

100.7.e. Daily cement kiln production records; and

100.7.f. All records required to be produced or maintained shall be retained on site for a minimum of 2 years and be made available to the Director or Administrator upon request.

100.8. Exemptions. -- The requirements of subsections 100.3., through 100.7. shall not apply to the following periods of operation:

100.8.a. Start-up and shut-down periods and periods of malfunction, not to exceed 36 consecutive hours; and

100.8.b. Regularly scheduled maintenance activities.

Division of Environmental Protection

Public Hearing: Rules 45CSR1, 45CSR6, 45CSR15, 45CSR16, 45CSR23, Time/Date: 8/14/2000 6:00 p
45CSR29, 45CSR30 and 45CSR34

	NAME	ADDRESS	COMMENT	
			YES	NO
1.	Tina Adams	Flexsys		X
2.	Kim Brown Poland	Robinson + McElwee LLP	X	
3.	WZ Appel	Robinson & McElwee LLP		X
4.	Dave Yausny	Robinson & McElwee LLP		X
5.	Kathy G. Beckett	Jackson & Kelly / W Chamber		
6.	Paul J. J.	Charleston Gazette		X
7.	David M Flannery	Jackson & Kelly		X
8.	Tim Mallon	AEP-WV		X
9.	Lisa McClung	OAG		X
10.	Karen Watson	//		X
11.				
12.				
13.				
14.				
15.				

ORIGINAL

BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 1 "NOx Budget Trading Program as a means of
control and Reduction of Nitrogen Oxides".

Transcript of proceedings had at a public
hearing in the above-styled matter taken by Missy L.
Young, Certified Court Reporter and Commissioner in and
for the State of West Virginia, at the West Virginia
Division of Environmental Protection, Office of Air
Quality, Conference Room, 7012 MacCorkle Avenue, S.E.,
Charleston, West Virginia, commencing at 6:03 p.m., on the
14th day of August 2000, pursuant to notice.

Missy L. Young, C.C.R.
Post Office Box 13221
Sissonville, WV 25360
(304) 984-2300 or 540-8179

P R O C E E D I N G S

MS. CHANDLER:

Good, evening. This public hearing will now come to order on this 14th day of August, 2000 at the West Virginia Division of Environmental Protection Office of Air Quality's conference room located at 7012 MacCorkle Avenue, South East, Charleston, West Virginia. The purpose of the Public Hearing is to receive comments on the proposed rules filed in the Secretary of State's Office on July 12, 2000 and noticed in the State Register on July 14, 2000. The proposed legislative rules are 45CSR1, 45CSR6, 45CSR15, 45CSR16, 45CSR23, 45CSR25, 45CSR30 and 45CSR34. The rules were noticed in a Class 1 Legal advertisement in both the Charleston Daily Mail and Charleston Gazette and notice was also sent to various individuals and organizations.

This public hearing is being held pursuant to the provisions of 29A of the WV Code and Section 110 of the Clean Air Act.

My name is Jeanne Chandler, and I'm with the Public Information Office of the WV Division of Environmental Protection, and I will be the moderator for the proceedings this evening.

In order to obtain separate transcripts for each

1 of the rules, the hearing procedure this evening will be
2 to introduce each rule individually, allow time for oral
3 comments, and close the hearing for that particular rule.
4 Written comments for any rule may be submitted by the end
5 of this public hearing tonight. For those of you wishing
6 to make oral comments, a sign-up sheet is made available,
7 so if you haven't had time to sign-up, please do so now.

8 We would appreciate it if you would limit
9 your comments to five minutes. Written comments may be
10 sent to the attention of Edward L. Kropp, Chief, Office of
11 Air Quality, 7012 MacCorkle Avenue, South East,
12 Charleston, 25304. Comments will be accepted by e-mail
13 only if they are received by the close of business on the
14 comment ending date. The comment period for 45CSR6,
15 45CSR23, 45CSR25, and 45CSR30 ends at the conclusion of
16 this hearing this evening.

17 The comment period has been extended for
18 45CSR1, 45CSR15, 45CSR16 and 45CSR34 until 5:00 p.m.,
19 Monday, August 21. If comments are delivered by U.S.
20 Mail, they must be postmarked in time to permit receipt by
21 August 21. Your comments will be made a part of the
22 rulemaking record.

23 The Court Reporter this evening is Missy Young.
24 If anyone desires a transcript of these proceedings,

1 please contact Ms. Young at 984-2300.

2 The purpose of this public hearing is to accept
3 comment on 45CSR1 - "NOx Budget Trading Program as a Means
4 of Control and Reduction of Nitrogen Oxides" This rule
5 partially fulfills the State's obligations in responding
6 to U.S. EPA's final rule, *Finding of Significant*
7 *Contribution and Rulemaking for Certain States in the*
8 *Ozone Transport Assessment Group Region for Purposes of*
9 *Reducing Regional Transport of Ozone*, herein referred to
10 as the NOx SIP Call). (27 Oct 1998, 63 FR 207 at Page
11 57356. Essentially, the federal rule requires that large
12 emitters of Nitrogen Oxides (NOx) significantly, reduce
13 emissions and constrain them to set budgets, starting in
14 2003 and maintaining them thereafter. Flexibility is
15 built in through "trading" provisions which allow sources
16 to buy/trade emission allocations from other participants.
17 Thus, a source which has an excess of allocations may sell
18 or trade them to a source, for whatever reason, has been
19 unable to achieve the required amount of reductions cost
20 effectively. This State rule applies to large stationary
21 sources which are not Electric Generating Units as defined
22 in the rule. DEP plans to address EGUs which are the
23 Electric Generating Units in a separate rulemaking,
24 45CSR26.

1 The U.S. Environmental Protection Agency has
2 identified 23 jurisdictions, including West Virginia,
3 which allegedly contribute to ground-level ozone
4 nonattainment in downwind states. U.S. EPA accordingly
5 promulgated federal rules requiring these jurisdictions to
6 submit revisions to their State Implementation Plans,
7 including state rules, to reduce NOx emissions pursuant to
8 Section 110(a)(2)(D) of the 1990 Clean Air Act Amendments.
9 Originally, States were to submit control plans as
10 revisions to the applicable SIP, which is the State
11 Implementation Plan, by September, 1999. However, several
12 States, including West Virginia, filed legal challenges to
13 U.S. EPA's rulemaking. A federal court subsequently
14 stayed indefinitely the submittal requirement. In June
15 2000, the U.S. Court of Appeals for the D.C. Circuit made
16 a final ruling that largely upheld U.S. EPA's action.
17 Consequently, 19 jurisdictions, including West Virginia
18 are now required to submit SIP revisions by October 2000,

19 However, litigation continues through an
20 appeal to the U.S. Supreme Court. The Division of
21 Environmental Protection, Office of Air Quality is going
22 forward with the promulgation of this proposed rule which
23 adopts the federal requirements, pending the outcome of
24 the legal challenge. If the Court agrees to hear the case

1 and rules in the State's favor, the proposed State rule
2 may be withdrawn or modified accordingly.

3 Upon authorization and promulgation of new
4 45CSR1, the rule will be submitted to the U.S.
5 Environmental Protection Agency for its approval as part
6 of the State implementation Plan pursuant to the federal
7 Clean Air Act.

8 The floor is now open for public comment.
9 Please identify yourself and affiliation, if any, prior to
10 making your comment.

11 There being nothing further, this public hearing
12 for 45CSR1 is concluded. The comment period has been
13 extended until 5:00 p.m., Monday, August 21.

14 (WHEREUPON, the public hearing
15 was concluded.)

BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

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

I, the undersigned, Missy L. Young, a
Certified Court Reporter and Commissioner within and for
the State of West Virginia, duly commissioned and
qualified, do hereby certify that the foregoing is, to the
best of my skill and ability, a true and accurate
transcript of all the proceedings had in the
aforementioned matter.

Given under my hand and official seal this
22nd day of August, 2000.



Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF AIR QUALITY
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

2000 AUG 14 A 9 42

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August 11, 2000

Mr. Edward L. Kropp, Chief
West Virginia Division of Environmental Protection
Office of Air Quality
7012 MacCorkle Ave., SE
Charleston, West Virginia 25304

Dear Mr. Kropp, *skip*

In a July 13, 2000, letter from the West Virginia Division of Environmental Protection to EPA, you requested EPA review and comment on the proposed NOx SIP Call rule 45CSR1. In response to your request, EPA reviewed rule 45CSR1 and prepared the following comments listed in the enclosure. EPA appreciates the care you have taken to include the provisions of the Model Rule, 40 CFR Part 96. This West Virginia rule only applies to large stationary sources which are not Electric Generating Units (non-EGUs). EPA looks forward to the review of NOx SIP Call rule 45CSR26 that will address EGUs, and hopes West Virginia will include the provisions of 40 CFR Part 96, to allow for a smoothly operating trading program. Please enter the enclosed comments into the official public record for this rule, which closes on August 14, 2000.

Thank you for the opportunity to comment on your proposed rule. If you have any questions or wish to discuss these comments, please contact me or Cristina Fernandez at (215) 814-2178.

Sincerely,

David L. Arnold, Chief
Ozone & Mobile Sources Branch

Enclosure

2000 AUG 14 A 9:42

Enclosure

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U.S. EPA Comments on West Virginia's NOx SIP Call Rule 45CSR1

The following are our comments in response to 45CSR1, West Virginia's proposed rule entitled "NOx Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides". Thank you for letting us review this draft. We hope that our comments are helpful.

Overall, West Virginia's proposed rule for non-electric generating units (non-EGUs) is in good shape. We appreciate the care West Virginia has taken to include the provisions of the model rule (40 CFR part 96), as well as the State's efforts to consider part 97 in the development of proposed rule. We stress, however, that it is impossible to evaluate the sufficiency of the SIP revisions in the absence of the electric generating unit (EGU) portion of the proposed rule.

In the absence of the EGU provisions, EPA cannot determine whether the State has adequately responded to the NOx SIP call, which requires West Virginia to meet the specified NOx emissions budget level established in the final rule. Assuming that West Virginia cannot rely solely on non-EGU NOx emissions limits in order to meet the overall State emissions budget, the forthcoming proposed EGU regulation should be substantively identical to the EGU-specific provisions of part 96 in order to receive automatic approval of the NOx Budget Trading Program portion of the SIP revision. The conditions for streamlined approval are specified in 40 CFR 51.121(p).

The following are specific comments on the rule language in 45CSR1:

Definitions

2.45. Most stringent state or federal NOx emissions limitation: The phrase "with regard to a NOx Budget opt-in source" should be removed. The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

2.48. NOx allowance: The phrase "by the Director or the Administrator", immediately following the word "authorization", should be omitted throughout the definition.

The reference to a State NOx Budget Trading Program in the final sentence of 2.48 should be changed to refer to the Federal NOx Budget Trading Program established under the section 126 final rule. The sentence should be changed to read "in accordance with a Federal NOx Budget Trading Program established by the Administrator under 40 CFR part 97." These changes are necessary to ensure that NOx allowances from other State trading programs can be used for compliance in West Virginia's trading program. This will allow integration of the EPA-administered State and Federal programs.

Further, section 40, State Trading Program Budget, should be included in the list of exceptions to the definition of NOx allowance. The provision should read: "For purposes of all sections of this rule, except sections 40., 41., 42., 43., or 88., "NOx allowance" also

includes an authorization...". The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

2.60. NOx Budget Trading Program: The definition should use the phrase "approved and administered by the Administrator", rather than "established by the Administrator". The definition should also specifically reference 40 CFR 51.121, rather than 40 CFR 51. This will facilitate integration of the EPA-administered State and Federal programs.

2.61. NOx Budget unit: A NOx Budget unit is subject to the NOx Budget emissions limitation, rather than the NOx Budget Trading Program emissions limitation. The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

2.70. Percent monitoring data availability: EPA suggests changing the definition to read: "Percent monitoring data availability means, for purposes of subdivision 43.1.a., total unit operating hours for which quality-assured data were recorded under sections 70. through 76. in an ozone season, divided by *the total unit operating hours in the ozone season* and multiplied by 100 percent." The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

West Virginia should consider adding a definition for "State", which is used in 54.6 and is undefined. See §96.2 (definition of State) and the comment on 54.6.

Applicability

Under §45-1-4.1.b.3.B. How does West Virginia intend to regulate NOx emissions from a unit that is greater than 250 mmBtu/hr but serves a small (<25 MW) generator producing some electricity for sale?

Retired Unit Exemption

Under §45-1- 5.3.f.3, the timing provisions for a loss of an exemption should include a statement to address a situation in which an authorized account representative may not be required to submit a NOx Budget permit application. Add a provision to 5.3.f.3 to read: "The date on which the unit resumes operation, if the authorized account representative is not required to submit a NOx Budget permit application." Add the word "or" to the end of the provision in 5.3.f.2. The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

Under §45-1- 6.3.a, the provision should include additional language to ensure that the source holds sufficient NOx allowances to cover the full range of deductions beyond deductions for emissions in the current control period. See 97.6(c)(1). EPA suggests adding the following phrase at the end of the paragraph: "...or to account for excess emissions for a prior control period under 54.4 or to account for withdrawal from the NOx Budget trading Program, or a change in regulatory status, of a NOx Budget opt-in unit under section 86. or section 87."

Under §45-1- 6.3.b, the underlined language should be added: Each ton of nitrogen oxides emitted in excess of the NOx Budget emissions limitation shall constitute a separate violation of this rule, the CAA, and applicable State law.

Permitting

Under §45-1- 21.2, West Virginia should consider whether to allow submission of permit applications less than 18 months ahead, since some new sources may take less than 18 months to plan and construct.

State NOx Budget Trading Program

Under §45-1-40, the amount of the non-EGU budget for West Virginia should be included in the provision, rather than the language "the trading program budget for West Virginia". Since, EGUs and non-EGUs are being addressed in separate rulemakings, West Virginia needs to specify how many tons of the overall state budget will be designated to the trading program. This is clearer and more accurate.

Timing Requirements for State NOx Allowance Allocations

Under §45-1-41.1, West Virginia should submit the allowance allocations for the ozone seasons in 2003 through 2007 on or before October 30, 2000, which is the SIP submittal date.

The underlined date should be changed to October 30, 2000: By April 1, 2001, the Director will determine by order and submit to the administrator the state Nox allowance allocations, in accordance with subdivisions 42.1.a and subsection 42.3 for the ozone seasons in 2003 through 2007.

State NOx Allowance Allocations

Under §45-1- 42.5.a, EPA notes that the correct formula should read: "NOx allowances deducted for actual heat input for units under 4.1.b.1., 4.1.b.2., and 4.1.b.3., = (unit's NOx allowances allocated for ozone season) - ((unit's actual ozone season heat input x the lessor of 0.17 lb/mmBtu or the unit's most stringent state or federal NOx emissions limitation) ÷ 2000 lb/ton)." The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

Under §45-1- 51.2.a.4., the word "NOx" should be inserted before the phrase "allowances held in the general account". The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

Compliance Supplement Pool

The language under §45-1-43.2 describes the requirements to request early reduction credits for any NOx budget unit that is subject to the Ozone Transport Commission NOx Budget Program under title I of the Clean Air Act. Since, West Virginia is not a member of the Ozone Transport

Commission, EPA does not consider necessary the inclusion of these requirements in rule 45CSR1

Compliance

Under §45-1- 54.6, under the NOx SIP call, the Administrator will determine, starting in 2004 (not 2005), which allowances are available for deduction on a one-for-one or one-for-two basis.

Under §45-1- 54.6, reference "55.1.b", not "55.2", remove the colon at the end of the paragraph, and insert the following language: "The terms "compliance account", "overdraft account", "general account", "states", and "trading program budgets" in sections 54.6.a. through 54.6.c.2. shall be read to include respectively a compliance account, an overdraft account, a general account, each State or portion of a State, and the trading program budget of each State or portion of a State under the NOx Budget Trading Program or under the Federal NOx Budget Trading Program established by the Administrator pursuant to 40 CFR part 97." The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

Allowance Transfer Recordation

Under §45-1- 61.2, EPA suggests changing the provision to read: "...after the Administrator completes the recordation of NOx allowances under 53. for the control period in the *third* year after the NOx allowance transfer deadline." The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

Petitions

Under §45-1- 75.1. and 75.2, EPA notes that under the NOx SIP call, the State, as well as EPA, must approve petitions for NOx Budget units that are not also Acid Rain units. See §96.75. West Virginia should consider whether to adopt the approach in the NOx SIP call rule.

Change in Regulatory Status

Under §45-1- 87.2.a.3.A, insert the word "be" after the words "shall not". The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

Appeals

West Virginia needs to have an administrative appeals procedure to ensure parties have an opportunity to object to determinations (e.g., determinations on compliance under 54. or monitoring under 70. through 75.) under the NOx Budget Trading Program.



WV DIV OF ENVIR. PROTECTION
OFFICE OF AIR QUALITY

2000 AUG 14 P 6:51

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WEST VIRGINIA MANUFACTURERS ASSOCIATION

2001 Quarrier Street, Charleston, WV 25311

Telephone: (304) 342-2123

FAX: (304) 342-4552

wwma@wwma.com

August 14, 2000

Edward L. Kropp, Esq.
Chief, Office of Air Quality
Division of Environmental Protection
7012 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304-2943

Re: Proposed 45 CSR 1 "NO_x Budget Trading Program as a
Means of Control and Reduction of Nitrogen Oxides"

Dear Chief Kropp:

These comments are submitted by the WVMA on behalf of its several member companies which are directly affected by proposed Regulation 1. As the economic effect of this rule is very great in both capital and operation and maintenance costs, the WVMA wishes to be sure that the rules can be approved by EPA for administration by the Office of Air Quality, and that they provide for the full participation of our affected members in the regional trading program. We believe that Regulation 1 as proposed will accomplish both of these goals.

However, we must stress that the WVMA and several of its member companies (as well as the State) are petitioner litigants in lawsuits against EPA regarding both the counterpart NO_x SIP Call rules and the Section 126 rules. Those lawsuits are still pending. Accordingly, our statement of support for these proposed rules is qualified by the fact that both we and the OAQ are at this time proceeding with this rulemaking because of a federally mandated deadline to submit these rules to EPA. If the state does not, EPA has made it plain that it will impose a Federal Implementation Plan (FIP) "immediately after the SIP submittal due date for each upwind State that fails to submit a complete SIP that meets the terms of the NO_x SIP call." 63 Fed. Reg. 56394, 56399 (Oct. 21, 1998). In addition, EPA will also "withhold all or a portion of the State's" annual grant money in order to administer the FIP. 63 Fed. Reg. at 56400. The State would further be subject to sanctions of withholding highway funds and new sources would have to make more stringent offsets. 42 USCA 7509(b). Finally, as to industrial boilers, the Section 126 rules will be enforced against them directly by EPA until and unless the State puts EPA - approved rules into effect in lieu of them.

Board of Directors

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Edward L. Kropp, Esq.
August 14, 2000
Page 2

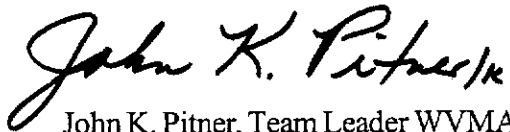
Accordingly, affected sources are between the proverbial rock and a hard place. Therefore, as to the non-utility industrial boilers and kilns affected by Regulation 1, we support the promulgation of "compliance" rules if the state remains bound by the current SIP submittal deadline of October 30, 2000. If the WVMA and other litigants win the lawsuits, or interim stays affect this submittal date or the ultimate compliance date, then we would advocate the amendment or withdrawal of the rule at that time.

We are especially mindful of the fact that the D.C. Circuit Court of Appeals (Case No. 98-1497 and consolidated cases) has not yet ruled on a pending motion to delay the compliance date until at least the ozone season of 2004 nor on a pending motion by the states, including West Virginia, to stay the SIP submittal deadline while this case is still pending on appeal. Accordingly, we wish to plainly state that we will certainly seek, if appropriate, amendments to these rules before they become final, during any period of emergency implementation, and before the Legislature to assure that they do not put West Virginia sources at greater hardship than those in other states affected by this rule, nor at any sooner date; this includes seeking a complete withdrawal/rejection of the rule if the litigation rulings are ultimately in our favor.

That being said, we would be amiss not to gratefully acknowledge the hard work of the OAQ staff in drafting these rules to reflect the best of available language from among the federal rules and in creating some flexibility for sources to achieve the required reductions. We are also gratified that the State has moved to this adaption process in order to posture the State, rather than EPA, to implement and administer this program from "the get go." That is certainly our hope as well.

We look forward to a continued cooperative approach to dealing with these difficult issues.

Sincerely,

A handwritten signature in black ink that reads "John K. Pitner". The signature is written in a cursive, flowing style. To the right of the signature, there is a small handwritten mark that appears to be "JK".

John K. Pitner, Team Leader WVMA Air Team

/lmw

cc: Karen S. Price, President, WVMA
Air Team Members



United States Department of the Interior

WV DIV OF ENVIR PROTECT
OFFICE OF AIR QUALITY

Shenandoah National Park
3655 U.S. Hwy. 211 E
Lynch, Virginia 22835-9036

2000 AUG 25 P 12:30

IN REPLY REFER TO:

N3615(2350)

RECEIVED

August 21, 2000

Mr. Edward L. Kropp
West Virginia Division of Environmental Protection
Office of Air Quality
7012 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304-2943

Dear Mr. Kropp:

The National Park Service (NPS) appreciates the one-week extension to August 21, 2000, you provided us to review and comment on the proposed West Virginia rules 45CSR1 (nitrogen oxides (NO_x) budget trading program), 45CSR15 and 34 (emission standards for hazardous air pollutants), and 45CSR16 (standards for performance for new stationary sources). We have no substantive comments on the latter three proposed rules that adopt recent federal standards by reference. Our interest in the State's NO_x rulemaking is based on the need to reduce not only the widespread, unhealthful levels of ambient ozone affecting much of the eastern United States, including many units of the national park system (e.g., part of Shenandoah National Park is a preliminary ozone nonattainment area), but also the documented adverse effects that ozone has on sensitive resources in eastern NPS units.

Except for the fact that the State's rule is only applicable to non-electric generating units (non-EGUs), our review of 45CSR1 indicates that West Virginia has closely followed the Environmental Protection Agency's (EPA) provisions for a NO_x Budget Trading Program for State Implementation Plans promulgated by EPA (63 FR 57356, October 27, 1998). Some minor revisions to the State's proposal may be needed to ensure complete compatibility with EPA's regulations with respect to non-EGUs, but the proposed rule appears to encompass the framework and mechanisms necessary for carrying out the substantive requirements of a budget trading program.

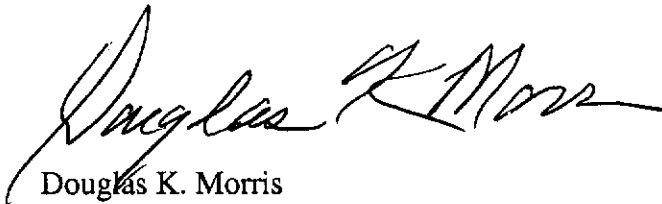
Our review did reveal one possible omission that may need correcting with respect to section 45-1-40.State NO_x Trading Program Budget. In that section, the State makes reference to the "trading program budget for West Virginia" but no budget is specified in the proposal. We believe it is important for the State to indicate what the budget is (in tons of NO_x) for the non-EGU's that are subject to the proposed rule. In EPA's 1998 regulation, it appears that the non-EGU budget for West Virginia is approximately 31,300 tons (a 22% reduction from projected 2007 non-EGU emissions of around 40,200 tons).

It is our understanding that a State rule applicable to electric generating units (EGUs) will be forthcoming within the next couple of weeks, and we look forward to the timely receipt of that

rule for our review. According to the NO_x budgets listed in EPA's 1998 rule, reductions in emissions from the EGU sector represent the bulk of emission reductions needed from West Virginia sources and are an order of magnitude greater than the non-EGU reductions envisioned for the State. It will be important for West Virginia and other states subject to the requirements of EPA's rule to ensure these reductions occur in order to restore ozone to healthful levels throughout the ozone transport region of the eastern U.S.

Thank you again for this opportunity to comment on the State's NO_x Trading Program for non-electric generating units. If you have any questions about these comments, please contact Brian Mitchell, NPS Air Resources Division - Denver, at 303-969-2819 (e-mail: Brian_Mitchell@nps.gov) or Christi Gordon, Shenandoah National Park, at 540-999-3499 (e-mail: Christi_Gordon@nps.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas K. Morris". The signature is fluid and cursive, with the first name "Douglas" being more prominent and the last name "Morris" following in a similar style.

Douglas K. Morris
Superintendent

cc: David Arnold, EPA Region III

bcc: ARD – B.Mitchell, J.Bunyak
SHEN – G.Somers, C.Gordon
NERO – D.Reynolds
Bruce Boyle
1720 Peachtree Rd. NW
Suite 816-N
Atlanta, GA 20209

CAPITOL CEMENT CORPORATION

SOUTH QUEEN STREET
P.O. BOX 885
MARTINSBURG, WEST VIRGINIA 25402
TELEPHONE (304) 267-8966

WV DIV OF ENVIR PROTECT
OFFICE OF AIR QUALITY

August 17, 2000

2000 AUG 21 P 1:57

RECEIVED

Edward L. Kropp, Esq.
Chief, Office of Air Quality
Division of Environmental Protection
7012 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304-2943

Re: Comments on proposed NO_x Rule 45 CSR 1

Dear Chief Kropp:

These comments are submitted on behalf of Capitol Cement Corporation as a unit directly effected by the proposed regulations for the reduction of NO_x reflected in 45 CSR 1. Although we generally agree that the requirements regarding cement manufacturing set forth in Section 100 of the regulations are appropriate, we would ask for your consideration in for making a few additional amendments to address these specific concerns about cement kilns.

Section 2.85 contains the definition for "startup." We are concerned that section 2.85.b defines the startup period to begin with the setting and operation of a Portland Cement kiln for any purpose. All other types of sources have startup periods defined to mean the period of time from commencement of operation until normal operating temperature is reached. We believe that subsection 2.85.b should be deleted and kilns made subject to the same definition as other types of effected units as reflected in subsection 2.85.a. This is important because the standards of this regulation do not apply during start-up and shut-down periods and periods of malfunction which do not exceed 36 consecutive hours. It is simply not possible with cement kilns to be certain that all control techniques are fully engaged and fully effective during the start-up period before

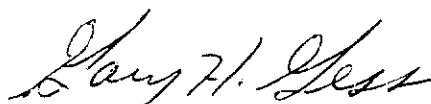
normal operating temperatures are reached. For the same reasons, the definition of "shut-down" in subsection 2.83.b should also be changed to be the cessation of "normal" operation of a Portland Cement kiln for any reason since Nox reduction conditions cannot be maintained once "normal" steady state cement kiln operation ceases.

We are also concerned that the definition for "mid-kiln firing" contained in subsection 2.43 should not be confined to injecting alternative fuel at an intermediate point, but rather should permit secondary firing by injecting fuel at some point other than the main burner. This will make the definition somewhat more flexible and allow Capitol Cement to continue or take advantage of other fuel alternatives which have the result of decreasing NO_x emissions. This includes the use of tire- derived fuel and other alternative fuels which kilns are designed to accommodate and which have been approved by the OAQ.

We would also suggest that under subsection 100.2 it would be appropriate to add that operators have the option to reduce production rates or hours of operation to achieve NOx reduction goals.

We very much appreciate your consideration of these requests.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gary H. Gess".

Gary H. Gess

Environmental and Government Affairs Director

/lmw

cc: Mr. John Benedict, WV OAQ

Mr. Jim Mason, WV OAQ

FAX

Date:

8/8/00

Number of pages including cover sheet:

2

To:

Edward L. Kropp

Phone:

Fax phone:

CC:

From:

Peggy CorbinSuperintendent's OfficeShenandoah National Park3655 U. S. Highway 211 EastLuray, Virginia 22835

Phone:

540/999-3400

Fax phone:

540/999-3601

REMARKS:

☐

Urgent

☐

For your review

☐

Reply ASAP

☐

Please comment





United States Department of the Interior

NATIONAL PARK SERVICE

Shenandoah National Park
3655 U.S. Hwy. 211 E
Luray, Virginia 22835-9036

IN REPLY REFER TO:

N3615

Mr. Edward L. Kropp, Chief
Office of Air Quality
West Virginia Department
Of Environmental Protection
1558 Washington Street East
Charleston, WV 15311

Dear Mr. Kropp:

The National Park Service requests a two week extension of the public comment period for West Virginia's proposed new rule for NOX emission trading (non-utilities sources) and revised rules for standards for performance and hazardous air pollutants. This request is necessary due to the two week time lapse between our request and our receipt of these proposed rules from your office.

We understand that West Virginia's proposed new NOX emissions rule for utilities sources should be available by mid-August., and would appreciate electronic copies mailed to Christi Gordon (christi_gordon@nps.gov) and Brian Mitchell (brian_mitchell@nps.gov) as soon as possible. We would prefer to review and comment on non-utilities and utilities source rules simultaneously. If that is not feasible, we still need a two week extension to August 28 for the non-utilities comment period. We intend to evaluate when and where actual reductions in NOX emissions would occur, and what the likely effects may be on the Class I Shenandoah National Park's air quality and related values.

Please notify us of your decision on our request for an extended public comment period via facsimile (540-999-3601) as soon as possible. If you have any questions, contact Christi via phone (540-999-3311) or e-mail.

Sincerely,


Douglas K. Morris
Superintendent

for West Virginia's proposed new rule for NOX emission trading (non-utilities sources) and revised rules for standards for performance and hazardous air pollutants. This request is necessary due to the two week time lapse between our request and our receipt of these proposed rules from your office.

We understand that West Virginia's proposed new NOX emissions rule for utilities sources should be available by mid-August., and would appreciate electronic copies mailed to Christi Gordon (christi_gordon@nps.gov) and Brian Mitchell (brian_mitchell@nps.gov) as soon as possible. We would prefer to review and comment on non-utilities and utilities source rules simultaneously. If that is not feasible, we still need a two week extension to August 28 for the non-utilities comment period. We intend to evaluate when and where actual reductions in NOX emissions would occur, and what the likely effects may be on the Class I Shenandoah National Park's air quality and related values.

Please notify us of your decision on our request for an extended public comment period via facsimile (540-999-3601) as soon as possible. If you have any questions, contact Christi via phone (540-999-3311) or e-mail.

Sincerely,



Douglas K. Morris
Superintendent

**NO_x BUDGET TRADING PROGRAM AS A MEANS OF CONTROL
AND REDUCTION OF NITROGEN OXIDES**

RESPONSE TO COMMENTS

On August 14, 2000 the Office of Air Quality (OAQ) held a public hearing to accept oral comments on proposed legislative rule 45CSR1 - "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides." The Division of Environmental Protection, Office of Air Quality (OAQ) had previously received written comments on the rule from the West Virginia Manufacturers Association, the United States Environmental Protection Agency (US EPA) Region III, the United States Department of the Interior (National Park Service) and Capitol Cement Corporation. One written request was received from the National Park Service requesting that the public comment period be extended. The OAQ responded to this request by extending the comment period from August 14, 2000 to August 21, 2000. The OAQ has summarized these comments and provides the following response.

I. Commenter: West Virginia Manufacturers Association

COMMENT A. *".....the WVMA wishes to be sure that the rules can be approved by EPA for administration by the Office of Air Quality, and that they provide for the full participation of our affected members in the regional trading program. We believe Regulation 1 will accomplish both of these goals."*

RESPONSE A. OAQ gratefully acknowledges the West Virginia Manufacturers Association's support of proposed legislative rule 45CSR1. WVMA provided no specific comments on rule language in 45CSR1.

COMMENT B. *"If the WVMA and other litigants win the lawsuits (litigation related to the NO_x SIP Call and the Section 126 rules) or interim stays affect this submittal date or the ultimate compliance date, then we would advocate the amendment or withdrawal of the rule at that time."*

RESPONSE B. OAQ recognizes the dynamic state of the counterpart federal requirements and related litigation. Accordingly, the agency has revised the rule to reflect a later compliance date of May 2004 rather than May 2003 as authorized by a federal court order issued by the U.S. Court of Appeals for the D.C. Circuit on August 30, 2000.

II. Commenter: National Park Service

COMMENT A. *"Except for the fact that the State's rule is only applicable to non-electric generating units (non-EGUs), our review of 45CSR1 indicates that West Virginia has closely followed the Environmental Protection Agency's (EPA) provisions for a NO_x Budget Trading Program for State Implementation Plans promulgated by EPA (63 FR 57356, October 27, 1998)..... the proposed rule appears to encompass the framework and mechanisms necessary for carrying out the substantive requirements of a budget trading program."*

RESPONSE A. OAQ appreciates the National Park Service's support of proposed legislative rule 45CSR1. OAQ intends to address electric generating units under 45CSR26.

COMMENT B. *"Our review did reveal one possible omission that may need correcting with respect to section 45-1-40, State NOx Trading Program Budget. In that section, the State makes reference to the "trading program budget for West Virginia" but no budget is specified in the proposal. We believe it is important for the State to indicate what the budget is (in tons of NOx) for the non-EGUs subject to the proposed rule."*

RESPONSE B. OAQ has revised section 40 to read "..... the Director will allocate to the NO_x Budget units under subsection 4.1. for each ozone season specified in section 41., a total number of allowances equal to 2184 tons"

III. Commenter: EPA

COMMENT A. Definitions

2.45. *Most stringent state or federal NOx emissions limitation:* The phrase "with regard to a NO_x Budget opt-in source" should be removed. The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

2.48. *NOx allowance:* The phrase "by the Director or the Administrator", immediately following the word "authorization", should be omitted throughout the definition.

The reference to a State NO_x Budget Trading Program in the final sentence of 2.48 should be changed to refer to the Federal NO_x Budget Trading Program established under the section 126 final rule. The sentence should be changed to read "in accordance with a Federal NO_x Budget Trading Program established by the Administrator under 40 CFR part 97." These changes are necessary to ensure that NO_x allowances from other State trading programs can be used for compliance in West Virginia's trading program. This will allow integration of the EPA-administered State and Federal programs.

Further, section 40, State Trading Program Budget, should be included in the list of exceptions to the definition of NO_x allowance. The provision should read: "For purposes of all sections of this rule, except sections 40., 41., 42., 43., or 88., "NO_x allowance" also includes an authorization...". The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

2.60. *NOx Budget Trading Program:* The definition should use the phrase "approved and administered by the Administrator", rather than "established by the Administrator". The definition should also specifically reference 40 CFR 51.121, rather than 40 CFR 51. This will facilitate integration of the EPA-administered State and Federal programs.

2.61. *NOx Budget unit:* A NO_x Budget unit is subject to the NO_x Budget emissions limitation, rather than the NO_x Budget Trading Program emissions limitation. The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

2.70. *Percent monitoring data availability*: EPA suggests changing the definition to read: "Percent monitoring data availability means, for purposes of subdivision 43.1.a., total unit operating hours for which quality-assured data were recorded under sections 70. through 76. in an ozone season, divided by *the total unit operating hours in the ozone season* and multiplied by 100 percent." The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

West Virginia should consider adding a definition for "State", which is used in 54.6 and is undefined. See §96.2 (definition of State) and the comment on 54.6.

RESPONSE A. OAQ has incorporated the recommended revisions to these definitions in the rule.

COMMENT B. Applicability

Under §45-1-4.1.b.3.B. How does West Virginia intend to regulate NOx emissions from a unit that is greater than 250 mmBtu/hr but serves a small (<25 MW) generator producing some electricity for sale?

RESPONSE B. OAQ intends to regulate NOx emissions from a unit that is greater than 250 mmBtu/hr but serves a small (<25 MW) generator under this rule. Consequently, OAQ has reinserted the following language under subparagraph 4.1.b.3.B.: "*At any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of 25MW_e or less and has the potential to use no more than 50 percent of the potential electrical output capacity of the unit.*" The omission reflects an OAQ processing error.

COMMENT C. Retired Unit Exemption

Under §45-1- 5.3.f.3, the timing provisions for a loss of an exemption should include a statement to address a situation in which an authorized account representative may not be required to submit a NOx Budget permit application. Add a provision to 5.3.f.3 to read: "The date on which the unit resumes operation, if the authorized account representative is not required to submit a NOx Budget permit application." Add the word "or" to the end of the provision in 5.3.f.2. The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

Under §45-1- 6.3.a, the provision should include additional language to ensure that the source holds sufficient NOx allowances to cover the full range of deductions beyond deductions for emissions in the current control period. See 97.6(c)(1). EPA suggests adding the following phrase at the end of the paragraph: "...or to account for excess emissions for a prior control period under 54.4 or to account for withdrawal from the NOx Budget trading Program, or a change in regulatory status, of a NOx Budget opt-in unit under section 86. or section 87."

Under §45-1- 6.3.b, the underlined language should be added: Each ton of nitrogen oxides emitted in excess of the NOx Budget emissions limitation shall constitute a separate violation of this rule, the CAA, and applicable State law.

RESPONSE C. OAQ has incorporated the recommended revisions and revised subdivision 6.3.b to read "..... shall constitute a separate violation of this rule, the CAA and W.Va. Code §§22-5-1 et seq."

COMMENT D. Permitting

Under §45-1- 21.2, West Virginia should consider whether to allow submission of permit applications less than 18 months ahead, since some new sources may take less than 18 months to plan and construct.

RESPONSE D. OAQ has revised the time period from "18 months" to "6 months" in paragraphs 21.2.a.2., 21.2.b.1. and 21.2.b.2. to better follow the construction permit issuance timelines under 45CSR13.

COMMENT E. State NO_x Budget Trading Program

Under §45-1-40, the amount of the non-EGU budget for West Virginia should be included in the provision, rather than the language "the trading program budget for West Virginia". Since, EGUs and non-EGUs are being addressed in separate rulemakings, West Virginia needs to specify how many tons of the overall state budget will be designated to the trading program. This is clearer and more accurate.

RESPONSE E. OAQ has revised section 40 to read "..... the Director will allocate to the NO_x Budget units under subsection 4.1. for each ozone season specified in section 41., a total number allowances equal to 2184 tons"

COMMENT F. Timing Requirements for State NO_x Allowance Allocations

Under §45-1-41.1, West Virginia should submit the allowance allocations for the ozone seasons in 2003 through 2007 on or before October 30, 2000 , which is the SIP submittal date. The underlined date should be changed to October 30, 2000: By April 1, 2001, the Director will determine by order and submit to the administrator the state NO_x allowance allocations, in accordance with subdivisions 42.1.a and subsection 42.3 for the ozone seasons in 2003 through 2007.

RESPONSE F. Because 45CSR1 is a proposed legislative rule, OAQ has incorporated the date April 1, 2001 to avoid "prospective rulemaking" in violation of state law. OAQ will revise the date to read October 30, 2000 in emergency rule 45CSR1.

COMMENT G. State NO_x Allowance Allocations

Under §45-1- 42.5.a, EPA notes that the correct formula should read: "NO_x allowances deducted for actual heat input for units under 4.1.b.1., 4.1.b.2., and 4.1.b.3., = (unit's NO_x allowances allocated for ozone season) - ((unit's actual ozone season heat input x the lessor of 0.17 lb/mmBtu or the unit's most stringent state or federal NO_x emissions limitation) ÷ 2000 lb/ton)." The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

Under §45-1- 51.2.a.4., the word "NO_x" should be inserted before the phrase "allowances held in the general account". The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

RESPONSE G. OAQ has incorporated the recommended revisions in the rule.

COMMENT H. Compliance Supplement Pool

The language under §45-1-43.2 describes the requirements to request early reduction credits for any NOx budget unit that is subject to the Ozone Transport Commission NOx Budget Program under title I of the Clean Air Act. Since, West Virginia is not a member of the Ozone Transport Commission, EPA does not consider necessary the inclusion of these requirements in rule 45CSR1

RESPONSE H. OAQ has deleted the Ozone Transport Commission requirements under subsection 43.2.

COMMENT I. Compliance

Under §45-1- 54.6, under the NOx SIP call, the Administrator will determine, starting in 2004 (not 2005), which allowances are available for deduction on a one-for-one or one-for-two basis.

Under §45-1- 54.6, reference "55.1.b", not "55.2", remove the colon at the end of the paragraph, and insert the following language: "The terms "compliance account", "overdraft account", "general account", "states", and "trading program budgets" in sections 54.6.a. through 54.6.c.2. shall be read to include respectively a compliance account, an overdraft account, a general account, each State or portion of a State, and the trading program budget of each State or portion of a State under the NOx Budget Trading Program or under the Federal NOx Budget Trading Program established by the Administrator pursuant to 40 CFR part 97." The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

RESPONSE I. OAQ has incorporated the recommended revisions in the rule.

COMMENT J. Allowance Transfer Recordation

Under §45-1- 61.2, EPA suggests changing the provision to read: "...after the Administrator completes the recordation of NOx allowances under 53. for the control period in the *third* year after the NOx allowance transfer deadline." The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

RESPONSE J. OAQ has incorporated the recommended revision in the rule.

COMMENT K. Petitions

Under §45-1- 75.1. and 75.2, EPA notes that under the NOx SIP call, the State, as well as EPA, must approve petitions for NOx Budget units that are not also Acid Rain units. See §96.75. West Virginia should consider whether to adopt the approach in the NOx SIP call rule.

RESPONSE K. OAQ has determined the proposed language is nearly identical to 40

CFR §97.75. However, OAQ has revised the section to accommodate NOx Budget units that are not also Acid Rain units by incorporating language from 40 CFR §96.75.

COMMENT L. Change in Regulatory Status

Under §45-1-87.2.a.3.A, insert the word “be” after the words “shall not”. The wording in the West Virginia rule reflects an error in part 97 that EPA intends to correct in the future.

RESPONSE L. OAQ has incorporated the recommended revision in the rule.

COMMENT M. Appeals

West Virginia needs to have an administrative appeals procedure to ensure parties have an opportunity to object to determinations (e.g., determinations on compliance under 54. or monitoring under 70. through 75.) under the NOx Budget Trading Program.

RESPONSE M. West Virginia’s administrative appeal process relating to the appeal of official actions by the Director under the air pollution control program is governed by the provisions of W.Va. Code §§22-5-1 et seq. and §§22B-1-1 et seq. The Office of Air Quality does not believe it is necessary to repeat the provisions of the State Code in its rules, and generally does not do so.

IV. Commenter: Capitol Cement Corporation

COMMENT A. *“Section 2.85 contains the definition for “startup.” We are concerned that section 2.85.b defines the startup period to begin with the setting and [sic] operation of a Portland Cement kiln for any purpose. All other types of sources have startup periods defined to mean the period of time from commencement of operation until normal operating temperature is reached. We believe that subsection 2.85.b should be deleted and kiln made subject to the same definition as other type of effected [sic] units as reflected in subsection 2.85.a. “..... the definition of “shutdown” in subsection 2.83.b should also be changed to be the cessation of “normal” operation of a Portland cement kiln for any reason since NOx reduction conditions cannot be maintained once “normal” steady state cement kiln operation ceases.*

RESPONSE A. OAQ has reviewed the definitions for “startup” and “shutdown” and determined that though the definitions do not include a specific startup or shutdown period for cement kilns under this rule, the standard requirements under subsection 100.3, which are exempted under 100.8 during startup or shutdown, require only that the operator must have installed and operate the applicable kiln during the ozone season with either (1) low NOx burners, (2) mid-kiln firing or (3) approved alternative control techniques. With the absence of specific NOx emission limitations under section 100, OAQ does not anticipate non-compliance with cement kiln standard requirements unless the kiln is fitted and operated contrary to subsection 100.3. Additionally, OAQ recognizes that inherent to the use of cement kilns, optimum levels of NOx control generally are not achieved during startup and shutdown, but rather during steady state cement kiln operation. Therefore, OAQ has retained the original definition.

COMMENT B. *"We are also concerned the definition for "mid-kiln firing" contained in subsection 2.43 should not be confined to injecting alternative fuel at some point other than the main burner. This will make the definition somewhat more flexible and allow Capitol Cement to continue or take advantage of other fuel alternatives which have the result of decreasing NOx emissions."*

RESPONSE B. OAQ has reviewed the definition for "mid-kiln firing" and determined that the term specifically identifies *"..... a secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln"* OAQ has determined such substantive change flaws the definition. Therefore, OAQ has retained the original definition.

COMMENT C. *"We would also suggest that under subsection 100.2 it would be appropriate to add that operators have the option to reduce production rates or hours of operation to achieve NOx reduction goals."*

RESPONSE C. OAQ has reviewed subsection 100.2 and determined the addition of an option to reduce production rates or hours of operation in the subsection is not germane to the applicability of cement kilns to the requirements under section 100 of this rule. Therefore, OAQ has retained the original language in the subsection.