

Proposed Regulatory Language

Title 7 Natural Resources and Environmental Control 1100 Air Quality Management Section 7 DE Admin. Code 1103: Ambient Air Quality Standards

~~09/11/99~~ insert effective date of revision

1.0 General Provisions

1.1 Air quality standards are required to assure that ambient air quality shall be consistent with established criteria and shall serve to effectively and reasonably manage the air resources of the State of Delaware.

1.1.1 Primary air quality standards provide public health protection, including protecting the health of sensitive populations such as asthmatics, children, and the elderly.

1.1.2 Secondary air quality standards provide public welfare protection, including protection against decreased visibility and damage to crops, animals, vegetation, and buildings.

1.2 At such time as additional pertinent information becomes available with respect to applicable air quality criteria, recommendations shall be incorporated and the air quality standards shall be subject to revisions.

1.3 The absence of a specific ambient air quality standard shall not preclude actions by the Department to control contaminants to assure protection, safety, welfare, and comfort of the people of the State of Delaware.

1.4 Air quality standards are defined by frequency distribution presentations and arithmetic averages. The characteristic parameters describing the frequency distribution are the geometric mean and 99th percentile.

1.4.1 The geometric mean is defined as the Nth root of the product of N numbers. Assuming a log-normal cumulative frequency distribution, the 50th percentile value will be equal to the geometric mean.

1.4.2 The arithmetic average mean is defined as the sum of a set of values divided by the number of values.

1.4.3 The 99th percentile for a group of numbers is defined as that value which is exceeded by one percent of the numbers.

- 1.5 The ambient air quality values stated herein shall apply to all areas outside a source property line.
- 1.6 The sampling and analytical procedures and techniques employed to determine ambient air concentrations of contaminants shall be consistent with methods which result in a representative evaluation of the prevailing conditions. The following methods shall be used directly or employed as reference standards against which other methods may be calibrated;
- 1.6.1 Ambient concentrations of total suspended particulates shall be determined by the reference high volume method in accordance with 40 CFR, Part 50, ~~Appendix B, June 29, 1979.~~ Appendix B, Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method), April 22, 1983.
- 1.6.2 Ambient concentrations of sulfur dioxide shall be determined by the reference or equivalent method in accordance with 40 CFR, Part 50, Appendix A-1, ~~June 29, 1979.~~ Reference Method Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method), June 22, 2010, or 40 CFR, Part 50, Appendix A-2, Reference Method for the Measurement of Sulfur Dioxide in the Atmosphere (Pararosaniline Method), June 22, 2010.
- 1.6.3 Ambient concentrations of carbon monoxide shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix C, ~~June 29, 1979.~~ Measurement Principle and Calibration Procedure for the Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry, August 31, 2011.
- 1.6.4 Ambient concentrations of ozone corrected for interferences due to nitrogen oxides and sulfur dioxide shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix D, ~~June 29, 1979.~~ Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere, July 18, 1997.
- 1.6.5 Ambient concentrations of methane and non-methane hydrocarbons shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix E, June 29, 1979.
- 1.6.6 Ambient concentrations of nitrogen dioxide shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix F, ~~June 29, 1979.~~ Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence), January 20, 1983.
- 1.6.7 Ambient concentrations of hydrogen sulfide shall be determined by gas chromatographic separation - flame photometric detection.

- 1.6.8 Ambient concentrations of lead shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix G, June 29, 1979, Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air, November 12, 2008.
- 1.6.9 Ambient concentrations of PM₁₀ particulate shall be determined by a reference method in accordance with 40 CFR, Part 50, Appendix J, Reference Method for the Determination of Particulate Matter as PM₁₀ in the Atmosphere, August 7, 1987, or an equivalent method.
- 1.6.10 Ambient concentrations of PM_{2.5} particulate shall be determined by the reference method based on 40 CFR, Part 50, Appendix L, as found in the Federal Register dated July 18, 1997, on page 38714 — 38752. Reference Method for the Determination of Fine Particulate Matter as PM_{2.5} in the Atmosphere, October 17, 2006.
- 1.7 Air quality standards are expressed in metric units with the approximate equivalent volumetric units in parentheses. The standard conditions for air ambient monitoring is 760 mm. Hg and 25°C. The formula to convert metric units to parts per million (ppm) is:

$$\text{ppm(vol)} = \frac{\mu\text{g}/\text{m}^3 \times 0.024465}{\text{MW}} \quad \text{or} \quad \frac{\text{mg}/\text{m}^3 \times 24.465 \times 10^{-6}}{\text{MW}}$$

where MW is molecular weight of the contaminant being measured.

02/01/1981

2.0 General Restrictions

No person shall cause the air quality standards specified in this Regulation to be exceeded.

02/01/1981

3.0 Suspended Particulates

3.1 The Primary Ambient Air Quality Standards for Particulate Matter are:

3.1.1 An annual geometric mean of 75 micrograms per cubic meter not to be exceeded, based upon 24 hour average concentrations.

3.1.2 A value of 260 micrograms per cubic meter not to be exceeded more than once per year, based upon 24 hour average concentrations.

3.2 The Secondary Ambient Air Quality Standards for Particulate Matter are:

- 3.2.1 An annual geometric mean of 60 micrograms per cubic meter as a guideline for achieving the secondary standard based upon 24 hour average concentrations.
- 3.2.2 A value of 150 micrograms per cubic meter not to be exceeded more than once per year, based upon 24 hour average concentrations.

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4.0 Sulfur Dioxide

~~4.1 The Primary Ambient Air Quality Standards for Sulfur Oxides measured as Sulfur Dioxide are as follows:~~

~~4.1.1 An annual arithmetic average value of $80 \mu\text{g}/\text{m}^3$, (0.03 ppm) not to be exceeded, based upon 24 hour average concentrations. The national primary 1-hour air quality standard for oxides of sulfur is 75 parts per billion (ppb) measured in the ambient air as sulfur dioxide. The 1-hour ambient air quality standard is when the three-hour average of the annual (99th percentile) of the daily maximum 1-hour average concentration is less than or equal to 75 ppb.~~

4.1.1. Compliance with the national primary 1-hour air quality standard is determined in accordance with 40 CFR Part 50 Appendix T, Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Sulfur (Sulfur Dioxide), June 23, 2010.

4.1.2. The national primary 1-hour air quality standard for oxides of sulfur is set forth in 40 CFR Part 50.17, National Primary Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide), June 22, 2010.

~~4.1.2 A twenty four average value of $365 \mu\text{g}/\text{m}^3$ (0.14 ppm) not to be exceeded more than once per year based upon 24 hour average concentrations. The 24-hour primary national ambient air quality standard for oxides of sulfur is 0.14 parts per million (ppm), not to be exceeded more than once per calendar year.~~

4.2.1 Compliance with the national 24-hour primary ambient air quality standard for oxides of sulfur is determined in accordance with 40 CFR Part 50, Appendix A-1, Reference Method Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method), June 22, 2010, or 40 CFR, Part 50, Appendix A-2, Reference Method for the Measurement of Sulfur Dioxide in the Atmosphere (Pararosaniline Method), June 22, 2010.

4.2.2 The national primary 24-hour ambient air quality standard for sulfur oxides is set forth in 40 CFR Part 50.4, National Primary Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide), June 22, 2010.

4.3 The national primary annual ambient air quality standard for sulfur oxides of 0.030 parts per million (ppm), annual arithmetic mean, shall not be exceeded.

4.3.1 Compliance with the national annual primary ambient air quality standard for oxides of sulfur is determined in accordance with 40 CFR Part 50, Appendix A-1, Reference Method Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method), June 22, 2010, or 40 CFR, Part 50, Appendix A-2, Reference Method for the Measurement of Sulfur Dioxide in the Atmosphere (Pararosaniline Method), June 22, 2010.

4.3.2 The national primary 24-hour ambient air quality standard for sulfur oxides is set forth in 40 CFR Part 50.4, National Primary Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide), June 22, 2010.

4.4 The national secondary 3-hour ambient air quality standard for sulfur oxides is 0.5 parts per million (ppm), not to be exceeded more than once per calendar year.

4.4.1 Compliance with the national secondary 3-hour ambient air quality standard for oxides of sulfur is determined in accordance with 40 CFR Part 50, Appendix A-1, Reference Method Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method), June 22, 2010, or 40 CFR, Part 50, Appendix A-2, Reference Method for the Measurement of Sulfur Dioxide in the Atmosphere (Pararosaniline Method), June 22, 2010.

4.4.2 The national secondary 3-hour ambient air quality standard for sulfur oxides is set forth in 40 CFR Part 50.5, National Secondary Ambient Air Quality Standard for Sulfur Oxides (Sulfur Dioxide), May 22, 1996.

~~4.2 The Secondary Ambient Air Quality Standards for Sulfur Oxides measured as Sulfur Dioxide are as follows:~~

~~4.2.1 A three-hour average value of 1300 micrograms per cubic meter (0.5 ppm), not to be exceeded more than once per year.~~

02/01/1981

5.0 Carbon Monoxide

5.1 The average concentration of carbon monoxide taken over any consecutive eight hours shall not exceed a value of 10 milligrams per cubic meter (9 ppm) more than once per year.

5.2 The average concentration of carbon monoxide taken over any one hour period shall not exceed 40 milligrams per cubic meter (35 ppm) more than once per year.

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6.0 Ozone

- 6.1 ~~One-hour primary and secondary ambient air quality standards for ozone. The average number of days per calendar year with a maximum one-hour average value exceeding $235 \mu\text{g}/\text{m}^3$ (0.12 ppm) shall be equal to or less than one, averaged over three consecutive years. The 1-hour primary and secondary ambient air quality standard for ozone is $235 \mu\text{g}/\text{m}^3$ (0.12 ppm). The primary and secondary ozone ambient air quality standards are met when the number of days per calendar year with maximum hourly average concentrations above $235 \mu\text{g}/\text{m}^3$ (0.12 ppm) is equal to or less than 1, as determined by 40 CFR Part 50, Appendix H, Interpretation of the 1-hour Primary and Secondary National Ambient Air Quality Standards for Ozone, July 18, 1997. The 1-hour primary and secondary national ambient air quality standards are set forth in 40 CFR Part 50.9, National 1-hour Primary and Secondary Ambient Air Quality Standards for Ozone, May 14, 2012. This standard shall be applicable to New Castle County and Kent County.~~
- 6.2 ~~Eight-hour primary and secondary ambient air quality standards for ozone. The average of the fourth highest daily maximum eight-hour average ozone concentration is less than or equal to 0.08 ppm, averaged over three consecutive years. The 8-hour primary and secondary ambient air quality standard for ozone is 0.075 parts per million (ppm). The primary and secondary ozone ambient air quality standards are met when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppb, as determined in accordance with 40 CFR Part 50, Appendix P, Interpretation of the Primary and Secondary Air quality Standards for Ozone, May 27, 2008. The 8-hour primary and secondary ozone standards are set forth in 40 CFR Part 50.15, National Primary and Secondary Air Standards for Ozone, May 27, 2008. This standard applies to all Counties in Delaware.~~

02/01/1981

7.0 Hydrocarbons

- 7.1 The hydrocarbons standard in 7.2 of this regulation is for use as a guide in devising implementation plans to achieve the ozone standard.
- 7.2 The average concentration of hydrocarbons, exclusive of methane, taken over a three hour period from 6 to 9 a.m., local time, shall not exceed 160 micrograms per cubic meter (0.24 ppm) more than once per year.

~~02/01/1981~~ insert effective date of revision

8.0 Nitrogen Dioxide

~~The annual arithmetic mean concentration of nitrogen dioxide shall not exceed 100 micrograms per cubic meter (0.05 ppm).~~

8.1 The national primary and secondary air quality standards for oxides of nitrogen (nitrogen dioxide indicator) are as follows:

8.1.1 The primary 1-hour air quality standard for oxides of nitrogen is 100 parts per billion (ppb), 1-hour average concentration, measured in the ambient air as nitrogen dioxide. Compliance with the 1-hour standard is demonstrated when the three-year average of the 98th percentile of the daily maximum 1-hour average concentration is less than or equal to 100 ppb, as determined with 40 CFR Part 50, Appendix S, Interpretation of the Primary Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide), February 9, 2010.

8.1.2 The primary annual air quality standard for oxides of nitrogen is 53 parts per billion (ppb), annual average concentration, measured in the ambient air as nitrogen dioxide. The primary annual air quality standard is demonstrated when the average annual concentration in a calendar year is less than or equal to 53 ppb, as determined with 40 CFR Part 50, Appendix S, Interpretation of the Primary Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide), February 9, 2010.

8.1.3 The secondary annual air quality standard for oxides of nitrogen is 53 parts per billion (ppb), annual arithmetic mean concentration, measured in the ambient air as nitrogen dioxide. The secondary ambient air quality standard is demonstrated when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm. To demonstrate attainment, an annual mean must be based upon hourly data that are at least 75 percent complete or upon data derived from manual methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter.

8.2 The primary and secondary air quality standards for nitrogen dioxide are as set forth in 40 CFR Part 50.11, February 9, 2010.

02/01/1981

9.0 Hydrogen Sulfide

9.1 The average concentration of hydrogen sulfide taken over any consecutive three minutes shall not exceed 0.06 ppm.

9.2 The average concentration of hydrogen sulfide taken over any consecutive 60 minutes shall not exceed 0.03 ppm.

~~02/01/1981~~ insert effective date of revision

10.0 Lead

~~The 24 hour concentration of lead averaged over a calendar quarter shall not exceed 1.5 micrograms per cubic meter.~~The national primary and secondary ambient air quality standard for

lead (Pb) and its compounds are 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), arithmetic mean concentration over a 3-month period measured in the ambient air as Pb. The national primary and secondary air quality standards are set forth in 40 CFR Part 50.16, National Primary and Secondary Ambient Air Quality Standards for Lead, November 12, 2008.

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11.0 PM₁₀ and PM_{2.5} Particulates

11.1 The Primary and Secondary Ambient Air Quality Standards for Particulate Matter, measured as PM₁₀ are:

11.1.1 The primary and secondary air quality standards for PM₁₀ are 150 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), 24 hour average concentration. The standards are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu\text{g}/\text{m}^3$, as determined in accordance with 40 CFR, Part 50, Appendix K, Interpretation of the National Ambient Air Quality Standards for Particulate Matter, October 17, 2006, is equal to or less than one. The national primary and secondary air quality standards are set forth in 40 CFR Part 50.6, National Primary and Secondary Ambient Air Quality Standards for PM₁₀.

11.1.2 ~~50 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), annual arithmetic mean. The standards are attained when the expected annual arithmetic mean concentration, as determined in accordance with 40 CFR, Part 50, Appendix K, is less than or equal to 50 $\mu\text{g}/\text{m}^3$.~~ Reserved

11.2 The Primary and Secondary Ambient Air Quality Standards for Particulate Matter, measured as PM_{2.5} are:

11.2.1 The 24-hour primary and secondary air quality standard is 6535 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), 24-hour average concentration. The 24-hour primary and secondary PM_{2.5} standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, as found in the Federal Register dated July 18, 1997, on page 38757 – 38758 Interpretation of the National Ambient Air Quality Standards for PM_{2.5}, January 15, 2013, is less than or equal to 6535 $\mu\text{g}/\text{m}^3$. The national 24-hour primary and secondary air quality standards are set forth in 40 CFR Part 50.13, National Primary and Secondary Air Quality Standards for PM_{2.5}, October 17, 2006.

11.2.2 The primary annual air quality standard is 152.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) annual arithmetic mean concentration. The annual primary and secondary PM_{2.5} standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, as found in the Federal Register dated July 18, 1997, on page 38756 – 38757 Interpretation of the National Ambient

Air Quality Standards for PM_{2.5}, January 15, 2013, is less than or equal to 15.0 µg/m³. The national annual primary and secondary air quality standards are set forth in 40 CFR Part 50.18, National Primary and Secondary Air Quality Standards for PM_{2.5}, January 15, 2013.

11.2.3 The secondary annual air quality standard is 15.0 micrograms per cubic meter (µg/m³) annual arithmetic mean concentration. The annual secondary PM_{2.5} standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, Interpretation of the National Ambient Air Quality Standards for PM_{2.5}, January 15, 2013, is less than or equal to 15.0 µg/m³. The national annual primary and secondary air quality standards are set forth in 40 CFR Part 50.13, National Primary and Secondary Air Quality Standards for PM_{2.5}, October 17, 2006.

Administrative Regulations
For
Public Hearings on Permits and Licenses

Section 1. Authority of the Secretary and Overview

a) The Secretary of the Department of Natural Resources and Environmental Control (“Department”) is authorized hold a public hearing on matters pending a final decision before the Department, as provided in Title 7 of the Delaware Code. These Guidelines set forth the procedures for a public hearing on a permit or license application. The Secretary may delegate the authority to preside over a public hearing to a subordinate, who may also delegate the authority to any person. The Department determines if a public hearing should be held based upon the mission and policies of the Department, the best interests of the State, and pursuant to applicable laws and regulations.

b) These Procedural Guidelines for Public Hearings on Permits and Licenses (“Guidelines”) apply only to public hearings held on permit or license applications under 7 Del. C. Chapters 60 (Environmental Control), 63 (Hazardous Waste Management), 66 (Wetlands), 70 (Coastal Zone Act and 72 (Subaqueous Lands). The programs under Chapter 60 subject to these Guidelines include: Air Quality Management, Wells, National Pollutant Discharge Elimination System (NPDES), Solid Waste, Water Allocation, Solid and Hazardous Waste, Wetlands and Subaqueous Lands. The term “public hearing” in these Guidelines refers only to public hearings conducted under the authorities listed above. In public hearings on initial permits and licenses pursuant to authorities and programs other than those listed above, a hearing officer may use these Guidelines as an advisory resource in appropriate proceedings.

c) The public hearings held pursuant to the programs listed in subsection (b) above do not fall within the scope of the procedural requirements applicable to the Department in the Delaware Administrative Procedures Act, 29 Del. C. Ch. 101, with the exception of public hearings under the Coastal Zone Act, which are made subject to APA by the *Regulations Governing Delaware’s Coastal Zone*, Section O.4.

d) The Department intends to make these Guidelines consistent with all statutes applicable to the Department, and with the Department’s regulations, but in the event that there is a conflict between these Guidelines and such statutes and regulations, the statutes and regulations control. Selected statutory provisions and sections of the Department’s Regulation are cited within these Guidelines for convenience, and such citation is not to be construed as restricting any private rights independent of the legal provision cited.

e) These Guidelines are provided to give applicants and the public an overview and idea of what to expect in a public hearing. These Guidelines are advisory only, and are limited to the intentions and expectations of the Department. The Department may need to make exceptions from these Guidelines in its discretion under appropriate circumstances. Nothing in these Guidelines is intended to bind the Department or to create any due process or other rights in any

persons. Many of the Guidelines are advisory to the Hearing Officer, and the Hearing Officer retains all full and due discretion to determine and tailor the best course of action under the circumstances at hand. These Guidelines are not intended to affect substantive rights.

Section 2. General Guiding Principles

a) The purpose of a public hearing is to provide the public with an opportunity to be heard and for those comments to be part of a record upon which decisions regarding permits and licenses are made. A member of the public is not a party to the proceeding by the fact of having requested the hearing, and as such, is not entitled to rights such as the right to cross examine, provided that, in the hearing officer's discretion, questions may be presented to participants.

b) The Department will conduct its public hearings in an open and fair manner, which should encourage public participation, within reasonable time limits and other practical constraints. The Department and all other public hearing participants should respect the views and opinions expressed during the public hearing. All participants in the public hearing process, including an applicant, the public and the Department, are expected to conduct themselves with the utmost courtesy and respect for others, and to comply with the decisions and rulings of the Hearing Officer.

Section 3. Guidelines for Timeliness

Permit and license applications shall be acted on in a timely manner by the Department as follows:

- a) In the event that a public hearing is held, the Hearing Officer shall issue a report to the Secretary within four months of the closure of the record.
- b) If the record is reopened, the report shall be issued within 6 months of the initial closure of the record.
- c) The Secretary shall issue a decision on the application within two months of the receipt of the report from the Hearing Officer.
- d) In the event that either the Hearing Officer or the Secretary finds it necessary to have additional time to issue the report, Secretary's report or decision, the Hearing Officer or the Secretary shall publicly announce the reason for the delay and establish a new date for delivery of the report, Secretary's Order or decision.

Section 4. Public Notice

a) The purpose of the public notice is to inform the public of the pending action, so that the public may request in writing a public hearing within a specified time period.

b) The public notice should occur through publication as a legal classified advertisement. This generally consists of publication in a newspaper of general circulation in each county in which the subject of the proposed notice may take place and in a newspaper of general circulation throughout the State. The legal notice will include a description of the pending action and its location. It will also provide information on how a member of the public may contact the Department to obtain further information about how to request a public hearing.

c) The public notice should provide the public with at least 15 days from the date of publication of the legal notice to request a hearing. However, the Department may determine longer time periods may be appropriate or required to accommodate other legal requirements or as warranted by the nature of the pending action.

d) For more specific information on public notice on permit and license applications and particular legal requirements, See 7 Del. C. §§ 6004, 6312, 6608, 7005, and 7205; Regulations Governing Solid Waste, Section 4.A.2; Title 7, Delaware Administrative Code, 1102 Air Quality Management Regulations, Section 12; Regulations Governing the Construction and Use of Wells, Section 12; Regulations Governing the Allocation of Water, Section 4.02 F and G; Regulations Governing the Control of Water Pollution, Sections 511-513; Title 7, Delaware Administrative Code, 7501 Marina Regulations, Sections 4.3.2.4 and 4.3.2.5; Title 7, Delaware Administrative Code, 7502 Wetlands Regulations, Sections 11.0; Guidance Document for the Delaware Regulations Governing the Location of Hazardous Waste Storage, Treatment, and Disposal Facilities, Section (b); and Regulations Governing Delaware's Coastal Zone, Sections N and O.

Section 5. Request for a Public Hearing

a) A person may request a public hearing on a pending action that was the subject of a public notice, by hand-delivery, U.S. mail or e-mail, to the Department's contact person for the application, a meritorious request for a hearing, which should indicate the following: 1) a familiarity with the Department's pending action, and 2) a reasoned statement of the probable impact of the pending action. In addition, the request should include the person's name and address, and, if available, a telephone number and e-mail address. The request for a hearing must be received by the Department on or before the time deadline specified in the public notice.

b) The Department will notify the person(s) requesting the public hearing of its decision on whether or not to hold a public hearing.

c) For each pending matter, the Department will maintain a list of persons who may be affected by the Department's final decision as an "Interested Persons List." The Department intends to include on the Interested Persons List each person who provided the Department with a name and address in order to receive Department communications on the specific pending matter. The Department may add additional names based upon a person's involvement in any preliminary or prior decisions. The Interested Persons List should include: 1) all persons who requested to be added to the Department's mailing list pursuant to a public notice or the Department determined should be added due to their prior interest; 2) all persons who provided their name and address on the Interested Persons List at the public hearing or who submitted timely written comments to the Department, and 3) the person who applied for the regulatory permission that was the subject of the public hearing. The Department will use such lists to communicate regarding issues associated with a hearing such as extensions of deadlines for comments, reopening of the record and notification of final decisions.

d) For more specific information on requests for public hearings on permit and license applications and particular legal requirements, See 7 Del. C. §§ 6004, 6312, 6608, 7005, and 7205 and applicable regulations. See also Section 3.d. *supra*.

e) After consultation to the extent practical with all persons requesting the public hearing and with the applicant, the Department will schedule a public hearing at a location convenient and suitable for the public to attend and reasonably near the subject of the public hearing.

f) Section 4, subsections (a), (b), (d) and (e), are not applicable to requests for permits for manufacturing land uses and for the expansion or extension of nonconforming uses under the Coastal Zone Act because the public hearing is mandatory under 7 Del. C. § 7005(a).

Section 6. Informal Pre-hearing Procedures and Public Workshop

a) Public Workshop -- Prior to holding a public hearing, the Department may hold one or more public workshops. The public workshop is a chance for the Department, the applicant, and the public to exchange information and ideas in an informal setting, with the goal of enhancing the public's ability to make meaningful, helpful and insightful comments at the public hearing. The Department will make efforts to hold a public workshop, at a location and time convenient to the public, in order to allow the public to learn about the pending action in a more informal setting. The Department may provide notice of a public workshop in the same manner as notices of pending actions, except that the time for adequate notice may be reduced if warranted by time constraints. Consistent with the informal nature of the public workshop, it will not be transcribed or recorded. A Department representative will preside over a public workshop. Department and applicant representatives should answer, to the extent reasonably possible and prudent, all relevant, material, non-privileged, and not unduly burdensome, questions and requests for information at the public workshop. The Department and applicant may provide information at a later date if additional time is needed to answer a question or to provide the requested information. The Department's presiding representative at a public workshop may make a decision concerning any dispute over any information requested at a public workshop. All attendees should comport themselves accordingly. To preserve the informal setting, the public hearing will ordinarily not refer back to the proceedings of the public workshop, and documents distributed at the public workshop will ordinarily not be included in the record, provided that use of such documents in a public workshop is not by itself grounds for excluding such documents from the record.

b) Informal Pre-hearing Procedure -- The Department may hold informal meetings or conference calls, prior to the public hearing, with the applicant and persons requesting the public hearing, that may seek to resolve the request for a public hearing and may employ alternative dispute resolution techniques in order to achieve a complete or partial consensus. If all persons requesting the public hearing agree to withdraw their requests, the Department may choose to not hold the public hearing, and if so, the Department will make efforts to inform the public.

Section 7. Notice of a Public Hearing

a) The Department will provide public notice of the public hearing in the manner provided in Section 3, except that the notice will allow the submission of timely written comments, including questions, if a person cannot attend the public hearing or otherwise may want to submit comments in writing.

b) The public notice also should be provided to any person entitled to receive a public notice pursuant to law or regulations, including but not limited to the applicant and all persons requesting the public hearing.

c) Written comments are to be submitted at or before the public hearing, but the time to submit written comments may be extended in the discretion of the Hearing Officer.

Section 8. The Hearing Officer, Conduct of the Public Hearing, and the Record

a) The Hearing Officer will open the public hearing at the designated time and place and concisely explain the nature and purpose of the public hearing and the scheduled reasonable time to conclude the hearing. The Hearing Officer will request that each person present at the public hearing identify themselves on a list of persons in attendance at the hearing. The

identification should include their name and address, including e-mail address, and telephone number. The list will be used to identify public speakers and to inform the persons of the Department's final action.

b) The Hearing Officer is charged with taking and analyzing the comments and evidence, and making a Report. The Report will consist of recommended findings of fact, recommended conclusions of law, and a recommended decision. The standard of proof for each findings of fact is by a preponderance of the evidence. While the making of a Report is standard practice, it is not required by law and the record of some hearings may not include a Report.

c) The Hearing Officer may allow the Department and applicant to make brief introductory statements to assist in the public's understanding of the subject matter of the public hearing. The Hearing Officer may allocate time among the public speakers to allow the opportunity to hear from all public speakers within the scheduled hearing time. The Hearing Officer may arrange the order of the public speakers for the convenience of all concerned. Once all public speakers have been heard from initially, the Hearing Officer may allow the remaining time for any public speakers to speak. The Hearing Officer may allow questions from the public in attendance. Answers to relevant questions, at the discretion of the Hearing Officer, may be provided at the hearing or in written form following the hearing and included in the Record.

d) The Hearing Officer may make rulings as needed and otherwise take action to maintain proper decorum and civility during the public hearing. The Hearing Officer may exercise discretion to exclude comments that are irrelevant, immaterial, repetitive, unduly burdensome, offensive, inappropriate, or of limited probative value, including questions or requests for information. Persons not complying with the Hearing Officer's ruling, or otherwise disrupting the public hearing, are subject to removal from the public hearing and other sanctions including criminal prosecution for disorderly conduct. .

e) The Hearing Officer has the authority to collect and seek information to facilitate the development of a proper and informative record upon which the permit or license decision can be prudently and effectively decided. The record should include the legal notices and other underlying procedural documents, the transcript of the public hearing, and any non-privileged documents provided to the Hearing Officer, or relied upon, in making the Report. The Hearing Officer will retain custody and control of the record in such a way that the record will be available for the Secretary's review. Once the Secretary's Order is issued, the Hearing Officer will retrieve the record and retain custody and control of it until such time as it is certified and transmitted to the appropriate appellate body by the Hearing Officer or until after the time for appeal has expired. Every document in the record should be marked in sequential lettering or numbering. Every document introduced at the public hearing should be identified by the Hearing Officer on the transcript, by heading and by the person offering it.

f) Pertinent information previously determined to be confidential information and protected from public release, under the Department's Freedom of Information Act Regulations § 6, may be considered and relied upon by the Hearing Officer and the Secretary, but will remain confidential and protected from public release. This confidential information considered and relied upon by the Hearing Officer or the Secretary will be filed under seal when the record is certified and transmitted to the appropriate appellate body by the Hearing Officer.

g) The Hearing Officer may close the record for public comments at the conclusion of the public hearing. The Hearing Officer may determine that the hearing will be continued or that the

record will remain open for a certain time period in order to allow an additional written or oral comment at a continued public hearing.

h) The record may be re-opened after it has closed to allow consideration of new important information. A person may request that the record be re-opened by submitting a written request to the Hearing Officer that includes the new and important information that should be considered, and provide an adequate explanation of the reasons the information was not provided when the record was open. In the exercise of discretion, the Hearing Officer will consider whether the delay is justified balanced against the value of the information expected to be received. The Hearing Officer will determine whether the re-opening of the record requires further public notice and whether additional public comments will be accepted.

i) The Hearing Officer will make his Report solely based on and relying on facts in the record. The Hearing Officer will not prejudge the matter and will consider the public comments with an open mind; The Hearing Officer will not make a final judgment on an appropriate outcome until after the close of the record.

Section 9. The Role of the Department and an Applicant

a) The applicant is expected to participate at the public hearing through the presence of knowledgeable representative(s) capable of answering relevant questions on the subject matter of the public hearing. In appropriate cases and circumstances, the Hearing Officer may need the applicant to file complex, technical testimony in writing prior to the public hearing. The applicant may appear personally or by counsel at the public hearing and produce any competent evidence on the applicant's behalf. The Department may provide the applicant with questions prior to the public hearing which may be answered at the public hearing by the applicant. The burden is on the applicant to demonstrate that the applicant has complied with and fulfilled all programmatic and other requirements to be considered for the permit or license, and that the applicant should be granted the permit or license, consistent with sound public policy and applicable statutory and regulatory directives including without limitation 7 Del. C. §§ 6001, 6301, 6602, 7001 and 7201.

b) The Department intends to have knowledgeable staff at the public hearing familiar with the application, who can address anticipated issues. When the subject of the public hearing is a draft document/permit/plan of the Department, Department staff will explain the basis for the draft, and a greater degree of participation by Department staff can be expected. For all other public hearings on permit applications, Department staff ordinarily will not be in a position to provide any recommendation as to the appropriate and ultimate disposition of the permit application.

c) The Hearing Officer can draw on the technical assistance of the Department's experts after the close of the record, in reviewing the record and answering technical questions and such assistance need not be included or reflected in the record.

d) The applicable Division(s) of the Department may prepare a memorandum ("Response Document"), for inclusion in the record, to assist the Hearing Officer or otherwise respond to questions or issues raised as part of the public hearing process. The Response document may explain the reasons supporting one or more positions, and may include the Division's proposed recommended action or permit.

Section 10. Issuance of a Secretary's Order

a) The Secretary will issue a final written Order as the Department's final decision, which shall be effective on the date as stated in the Order ("Order"). The Order may adopt, reject or modify, in whole or in part, the Hearing Officer's Report, or remand for further development of the record or consideration of other information or concerns.

b) The Order may direct and delegate implementation of the Order.

c) The Department intends to serve the Secretary's Order on the permit applicant, and on all person(s) who requested the public hearing, by appropriate means such as personal service or by U.S. mail or e-mail, and will otherwise serve it as required by law,

d) The Department also intends to provide notice of the issuance of the Secretary's Order by U.S. mail or e-mail, to all interested persons as determined in Section 4, List of Other Interested Persons.

e) Appeals of the Secretary's Order shall be as provided in the applicable provisions of the Delaware Code and the Department's Regulations.

7 DE Admin. Code 1101: Definitions and Administrative Principles

02/01/1981 insert effective date of revision

3.0 Administrative Principles

- 3.1 In certain regulations, air quality standards will be established. These standards shall not be interpreted to allow significant deterioration of existing air quality in any portion of the State; otherwise, they shall be paramount in matters pertaining to the control of air pollution throughout the State.
- 3.2 In addition to or supplemental to these air quality standards, certain emission requirements will be specified. Such emission requirements are selected as minimum controls necessary to ensure a reasonable quality of air throughout the State. Where it is established that these emission requirements are inadequate to attain or maintain the applicable air quality standard, the Department shall exercise its authority to require additional control measures.
- 3.3 The Department intends to have regulations adopted governing the control of air pollution as rapidly as practicable. The lack of Regulation governing an air contaminant or combination of air contaminants will not prevent the Department from taking any and all actions necessary to maintain a reasonable quality of air throughout the State.
- 3.4 If any part of 7 DE Admin. Code 1100~~these regulations~~, or the application of any part thereof, is held invalid or unconstitutional, the application of such part to other persons or circumstances, and the remainder of 7 DE Admin. Code 1100 ~~these Regulations~~ shall not be affected thereby and shall be deemed valid and effective.
- 3.5 The Department may enter into agreement or agreements on a regional basis for the purpose of attaining air quality goals. Such interstate agreements shall facilitate the attainment and maintenance of air quality standards.

7 DE Admin. Code 1104: Particulate Emissions from Fuel Burning Equipment

~~02/01/1981~~ insert effective date of revision

1.0 General Provisions

- 1.1 The emission of particulate matter from fuel burning equipment shall be controlled to a limit that shall meet the ambient air quality requirements.
- 1.2 The provisions of this Regulation shall not apply where the heat input capacity of ~~to~~ the equipment is less than 1,000,000 BTU per hour.
- 1.3 The provisions of this regulation shall not apply to equipment or operations whose emissions are controlled by 7 **DE Admin. Code** 1105 or 7 **DE Admin. Code** 1107 or 7 **DE Admin. Code** 1129.
- 1.4 For purposes of this Regulation, the heat input value shall be based upon the manufacturer's guaranteed maximum input or the Department's calculated input capacity.
- 1.5 The provisions of this Regulation shall not apply to the start-up and shutdown of equipment which operates continuously or in an extended steady-state when emissions from such equipment during start-up and shutdown are governed by an operation permit issued pursuant to the provisions of 2.0 of 7 **DE Admin. Code** 1102.

02/01/1981

2.0 Emission Limits

No person shall cause or allow the emission of particulate matter in excess of 0.3 pound per million BTU heat input, maximum two-hour average, from any fuel burning equipment.

7 DE Admin. Code 1114: Visible Emissions

07/17/1984 insert effective date of revision

1.0 General Provisions

- 1.1 The purpose of this regulation is to control the emissions of visible air contaminants from all stationary sources except electric arc furnaces and their associated dust-handling equipment as set forth in 2.2 of this regulation.
- 1.2 Measurements of air contaminant visibility shall be in accordance with accepted practices of Ringelmann values or opacity percentages.
- 1.3 The provisions of this regulation shall not apply to the start-up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start-up and shutdown are governed by an operation permit issued pursuant to the provisions of 2.0 of 7 DE Admin. Code 1102.

2.0 Requirements

- 2.1 No person shall cause or allow the emission of visible air contaminants or smoke from a stationary or mobile source, the shade or appearance of which is greater than 20% opacity for an aggregate of more than three minutes in any one hour or more than 15 minutes in any 24 hour period. For guideline purposes only, Shade Number 1 of the Ringelmann Smoke Chart coincides with the regulatory limit of 20% opacity, when observing black smoke.
- 2.2 The requirements of 2.1 of this regulation shall not apply to electric arc furnaces, and their associated dust-handling equipment, with a capacity of more than 100 tons which are governed by 7 DE Admin. Code 1123.
- ~~2.3 The requirements of 2.1 of this regulation shall not apply to any existing Catalytic Cracking Unit. No person shall cause or allow the emission of visible air contaminants or smoke from any existing Catalytic Cracking Unit, the shade or appearance of which is greater than 50% opacity.~~

Repeal of all regulatory language is proposed.

~~Title 7 Natural Resources and Environmental Control~~

~~1100 Air Quality Management Section~~

~~1139 Nitrogen Oxides (NO_x) Budget Trading Program~~

~~12/11/2000~~

~~1.0 Purpose~~

~~1.1 This regulation establishes Delaware's participation in the NO_x Budget Trading Program. The NO_x Budget Trading Program is a multi state NO_x emissions cap and trade program, established pursuant to Title 40, Part 96 of the Code of Federal Regulations (40 CFR Part 96) and 40 CFR Part 51.121. Its purpose is to reduce emissions of the ozone precursor NO_x.~~

~~1.2 The goals of this regulation are to 1) improve air quality, 2) encourage NO_x reductions in Delaware, 3) help to satisfy rate of progress requirements under Section 182(e) of the CAA, and 4) help to satisfy Delaware's obligations under Section 110(a)(2)(D) of the CAA to not contribute to other states' non-attainment. The Department believes that, considering the regional nature of ozone nonattainment and the phenomena of ozone and ozone precursor transport, participation in the NO_x Budget Trading Program provides for an effective means to meet these goals, and an economical alternative to traditional command and control type regulations.~~

~~1.3 This regulation establishes general, administrative, permitting, monitoring, compliance, penalty and opt in provisions, that are consistent with 40 CFR Part 96, and allow the transfer of NO_x allowances for compliance with any NO_x Budget unit that is covered by this regulation or by the regulation of any other state participating in the NO_x Budget Trading Program.~~

~~1.4 This regulation establishes a follow on program to the program established by 7 DE Admin. Code 1137 (formerly Regulation No. 37), NO_x Budget Program, of the State of Delaware "Regulations Governing the Control of Air Pollution." The program established by Regulation No. 37 ends with the end of the 2002 NO_x control period.~~

~~12/11/2000~~

~~2.0 Emission Limitation~~

~~2.1 Each NO_x Budget unit shall hold in its compliance account or its overdraft account, as of the NO_x allowance transfer deadline of each control period, a quantity of NO_x allowances available for deduction that is equal to or greater than the total NO_x emissions from that NO_x Budget unit for that control period.~~

~~2.2 Each NO_x Budget unit shall be subject to the requirements of 2.1 of this regulation starting on the later of May 1, 2003 or the date the unit commences operation.~~

12/11/2000

3.0 Applicability

3.1 This regulation applies to:

3.1.1 Any unit located within the State of Delaware that:

3.1.1.1 Serves a generator with a nameplate capacity of 15 megawatts electrical (MWe), or greater;
or

3.1.1.2 Is not a unit under 3.1.1.1 of this regulation and that has a maximum design heat input capacity of 250 million British Thermal Units per hour (MMBTU/hr), or greater; or

3.1.2 Any unit located in the State of Delaware that is issued a final NO_x Budget permit under 14.0 of this regulation; or

3.1.3 Any person that establishes a general account pursuant to 15.0 of this regulation.

3.2 Once any unit becomes a NO_x Budget unit, it shall remain subject to all of the requirements of this regulation, except as follows:

3.2.1 For any NO_x Budget unit that is retired, the NO_x authorized account representative may submit to the Department, with a copy to the Administrator, a statement indicating that unit is retired and that it shall comply with all of the provisions of 3.2 of this regulation.

3.2.2 Upon receipt of the submission under 3.2.1 of this regulation, the Department shall amend or cancel, as applicable, the unit's NO_x Budget permit.

3.2.3 Except as provided for in 3.2.7 of this regulation, an exemption from the requirements of this regulation shall be in effect on and after the date any submission is made pursuant to 3.2.1 of this regulation.

3.2.4 The unit shall not emit any NO_x while the exemption is in effect.

3.2.5 The NO_x authorized account representative of the unit:

3.2.5.1 Shall comply with all of the requirements of this regulation 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.

3.2.5.2 Shall, except as provided for in 3.2.5.3 of this regulation, comply with all of the requirements of this regulation except for the requirements of 2.0, 7.0, 8.0 and 11.0 through 15.0 of this regulation.

3.2.5.3 May, at his option and provided the unit does not receive an annual allocation under Appendix A of this regulation, request that the Administrator close the NO_x Budget units compliance account and establish and transfer any remaining allowances to a new general account for the owner and operator of the NO_x Budget source. The NO_x authorized account representative for the NO_x Budget source shall become the NO_x authorized account representative for that general

account, and shall comply with all of the requirements of this regulation except for the requirements of 2.0, 6.0, 7.0, 8.0, and 11.0 through 14.0 of this regulation.

~~3.2.6 For any unit identified in 3.1.1 of this regulation that receives an annual allocation under Appendix A of this regulation, that unit shall continue to receive that allocation as provided for in 3.0 of **Appendix A** of this regulation. Any unit identified in 3.1.2 of this regulation shall not receive an allocation under 14.6 of this regulation while the exemption is in effect.~~

~~3.2.7 If any unit exempted under 3.2 of this regulation is ever reactivated, upon reactivation, for the purposes of applying the requirements of 8.0 of this regulation, the unit shall be treated as a new unit that commences operation or commences commercial operation on the first date on which the unit resumes operation. Prior to commencing operations, the NO_x-authorized account representative shall secure or amend, as applicable, a NO_x Budget permit.~~

12/11/2000

4.0 Definitions

The terms used in this regulation shall have the meanings set forth in 4.0 of this regulation.

~~“**Administrator**” means the Administrator of the United States Environmental Protection Agency or the Administrator’s duly authorized representative.~~

~~“**Allocate or allocation**” means the determination by the Department or the Administrator of the number of NO_x allowances to be initially credited to a NO_x Budget unit.~~

~~“**Allowance**” means a NO_x allowance described in 5.1.2 through 5.1.4 of this regulation.~~

~~“**Automated data acquisition and handling system**” means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use pursuant to 8.0 of this regulation, 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 8.0 of this regulation.~~

~~“**CAA**” means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended by Pub. L. No. 101549 (November 15, 1990).~~

~~“**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.~~

~~1. Except as provided in 3.2.7 of this regulation, for a unit that is a NO_x Budget unit under 3.1.1.1 of this regulation 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.~~

~~2. Except as provided in 3.2.7 or 14.0 of this regulation, for a unit that is not a NO_x Budget unit on the date the unit commences commercial operation, the date the unit becomes a NO_x Budget unit shall be the unit's date of commencement of commercial operation.~~

~~“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.~~

~~1. Except as provided in 3.2.7 of this regulation, for a unit that is a NO_x Budget unit under 3.1.1 of this regulation on the date the unit commences operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered.~~

~~2. Except as provided in 3.2.7 or 14.0 of this regulation, for a unit that is not a NO_x Budget unit on the date the unit commences operation, the date the unit becomes a NO_x Budget unit shall be the unit's date of commencement of operation.~~

~~“Common stack” means a single flue through which emissions from two or more pieces of equipment are exhausted.~~

~~“Compliance account” means a NATS account, established by the Administrator for a NO_x Budget unit pursuant to 9.0 of this regulation, in which any allocation for the NO_x Budget unit is initially recorded and in which are held NO_x allowances available for deduction by the NO_x Budget unit for a control period for the purpose of meeting the NO_x Budget unit's NO_x Budget emissions limitation.~~

~~“Continuous emission monitoring system (CEMS)” means the equipment required pursuant to 8.0 of this regulation used to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of NO_x emissions, expressed in pounds of NO_x per hour. The following systems are component parts included, to the extent required by 8.0 of this regulation, in a continuous emission monitoring system:~~

- ~~1. Flow monitor;~~
- ~~2. NO_x pollutant concentration monitors;~~
- ~~3. Diluent gas monitor (O₂ or CO₂);~~
- ~~4. A continuous moisture monitor; and~~
- ~~5. An automated data acquisition and handling system.~~

~~“Control period” means the period beginning May 1 of a year and ending on September 30 of that same year, inclusive.~~

~~“Deducted, Deduction, or Deduct NO_x Allowance” means the permanent withdrawal of NO_x allowances by the Administrator from a NATS compliance account or overdraft account, under 12.0 of this regulation, to account for the number of tons of NO_x emissions from a NO_x Budget unit for a control period, quantified in accordance with 8.0 of this regulation, or for any other allowance surrender obligation of this regulation.~~

~~“Department” means the State of Delaware Department of Natural Resources and Environmental Control.~~

~~“Emissions” means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the NO_x authorized account representative and as determined by the Administrator in accordance with 8.0 of this regulation.~~

~~“Excess emissions” means any tonnage of NO_x emitted by a NO_x Budget unit during a control period that exceeds that unit’s NO_x Budget emissions limitation.~~

~~“General account” means a NATS account, established in accordance with 15.0 of this regulation, that is neither a compliance account nor an overdraft account.~~

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

~~“Heat input” means the product (in MMBTU/time) of the gross calorific value of the fuel (in MMBTU/lb) and the fuel feed rate into a combustion device (in lb of fuel/time), or as calculated by any other method approved by the Department and the Administrator, as measured, recorded, and reported to the Administrator by the NO_x authorized account representative and as determined by the Administrator in accordance with 8.0 of this regulation, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.~~

~~“Hold NO_x allowances or NO_x allowances held” means the NO_x allowances recorded by the Administrator, or submitted to the Administrator for recordation in a NATS account in accordance with 9.0 or 10.0 of this regulation.~~

~~“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:~~

- ~~1. For the life of the unit; or~~
- ~~2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or~~
- ~~3. For a period equal to or greater than 25 years or 70% 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.~~

~~“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.~~

~~“Monitoring system” means any monitoring system that meets the requirements of 8.0 of this regulation, including a continuous emission monitoring system, an excepted monitoring system, or an alternative monitoring system.~~

~~“Nameplate capacity” means the maximum electrical generating output (in MWe) 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.~~

~~“NATS” means NO_x Allowance Tracking System; the system by which the Administrator records any allocation, deduction, or transfer of any NO_x allowances under the NO_x Budget Trading Program.~~

~~“NATS account” means a compliance, overdraft, or general account in the NATS, established by the Administrator, for purposes of recording any allocation and holding, transferring, or deducting any NO_x allowances.~~

~~“NO_x allowance transfer deadline” means midnight of November 30 or, if November 30 is a weekend or federal holiday, midnight of the first business day thereafter and is the deadline by which NO_x allowances must be submitted for recordation in a NO_x Budget units compliance account or overdraft account, in order to meet the unit’s NO_x Budget emissions limitation for the control period immediately preceding such deadline.~~

~~“NO_x authorized account representative” means:~~

~~1. For a NO_x Budget source, the natural person who is authorized by the owners and operators of that source and all NO_x Budget units at that source, in accordance with 6.0 of this regulation, to represent and legally bind each owner and operator in matters pertaining to the NO_x Budget Trading Program.~~

~~2. For a general account, the natural person who is authorized, in accordance with 15.0 of this regulation, to transfer or otherwise dispose of NO_x allowances held in the general account.~~

~~3. Except where used in 6.0 and 15.0 of this regulation, the term NO_x authorized account representative shall be construed to include any alternate NO_x authorized account representative.~~

~~“NO_x Budget emissions limitation” means the limitation described in 2.1 of this regulation.~~

~~“NO_x Budget permit” means the permit described in 7.0 and 14.0 of this regulation.~~

~~“NO_x Budget source” means a source that includes one or more NO_x Budget unit or units.~~

~~“NO_x Budget Trading Program” means the program described in 1.1 of this regulation.~~

~~“NO_x Budget unit” means any unit described in 3.1.1 or 3.1.2 of this regulation.~~

~~“Operator” means any person who operates, controls, or supervises a NO_x Budget unit, a NO_x Budget source, or a unit for which an application for a NO_x Budget permit under 14.0 of this regulation 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.~~

~~“Opt-in unit” means a unit described in 3.1.2 of this regulation.~~

~~“Overdraft account” means the NATS account, established by the Administrator under 9.1.1 of this regulation, for each NO_x Budget source where there are two or more NO_x Budget units.~~

~~“Owner” means any of the following persons:~~

~~1. 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 permit under 14.0 of this regulation is submitted and not denied or withdrawn; or~~

~~2. 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 permit under 14.0 of this regulation is submitted and not denied or withdrawn; or~~

~~3. Any purchaser of power from a NO_x Budget unit or from a unit for which an application for a NO_x Budget permit under 14.0 of this regulation 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 permit under 14.0 of this regulation is submitted and not denied or withdrawn; or~~

~~4. 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.~~

~~“Receive or receipt of” means, when referring to the Department 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 Department or the Administrator in the regular course of business.~~

~~“Recordation, record, or recorded” means, with regard to any NO_x allowance, the movement of that NO_x allowance by the Administrator from one NATS account to another, for purposes of allocation, transfer, or deduction.~~

~~“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.~~

~~“State trading program budget” means the total number of NO_x tons apportioned to all NO_x Budget units in a given State, in accordance with the NO_x Budget Trading Program, for use in a given control period.~~

~~“Submit” means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:~~

~~1. In person;~~

~~2. By United States Postal Service; or~~

~~3. By other means of dispatch or transmission or 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.~~

~~“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 a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with 8.0 of this regulation, 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.~~

~~“Unit” means any of the following fossil fuel fired combustion operations: boiler, indirect heat exchanger, combustion turbine, or combined cycle system. For the purposes of this definition:~~

~~1. Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.~~

~~2. Fossil fuel fired means,~~

~~A. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a BTU basis during any year starting in 1990 or, if a unit had no heat input starting in 1990, during the last year of operation of the unit prior to 1990; or~~

~~B. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50% 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.~~

~~3. 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.~~

~~4. Indirect heat exchanger means combustion equipment in which the flame or products of combustion are separated from any contact with the principal material in the process by metallic or refractory walls, which includes, but is not limited to, steam boilers, vaporizers, melting pots, heat exchangers, column reboilers, fractioning column feed preheaters, and fuel fired reactors such as steam hydrocarbon reformer heaters and pyrolysis heaters.~~

~~5. 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.~~

~~6. 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.~~

12/11/2000

5.0 General Provisions

5.1 Allocations and NO_x Allowances.

~~5.1.1 An allocation may be made only by the Department in accordance with **Appendix A**, **Appendix B**, and 14.6 of this regulation, or by the Administrator as provided for in **Appendix A** of this regulation.~~

~~5.1.2 A NO_x allowance is a limited authorization, by the Department and the Administrator, to emit up to one ton of NO_x during the control period of a specified year or of any year thereafter, 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 3.2 of this regulation, and no provision of law shall be construed to limit the authority of the United States or the State of Delaware to terminate or limit such authorization.~~

~~5.1.3 NO_x allowances shall be held in, deducted from, or transferred among NATS accounts in accordance with 9.0, 10.0, 12.0 and 13.0 of this regulation. Any NO_x allowance that is held in a NATS account shall remain in such NATS account unless and until that NO_x allowance is deducted, transferred, or terminated.~~

~~5.1.4 A NO_x allowance does not constitute a property right.~~

~~5.2 Record Keeping. Except as provided for below, the NO_x authorized account representative of each NO_x Budget source shall keep on site at that source each of the following documents for, at a minimum, a period of five years from the date that document is created. This period of time may be extended for cause at any time prior to the end of that five year period upon written notification from either the Department or the Administrator.~~

~~5.2.1 The account certificate of representation submitted pursuant to 6.0 of this regulation, and all documents that demonstrate the truth of the statements in that account certificate of representation. The certificate and documents shall be retained on site at the source beyond that five year period until they are superseded by the submission of a new account certificate of representation.~~

~~5.2.2 The NO_x Budget permit application submitted pursuant to 7.0 of this regulation, and all documents used to complete that application. The application and documents shall be retained on site at the source beyond that five year period until they are superseded by the submission of a new application.~~

~~5.2.3 All emissions monitoring information pursuant to 8.0 of this regulation, except that to the extent 8.0 of this regulation provides for a three year period, that three year period shall apply.~~

~~5.2.4 Copies of any report, compliance certification, and any other submission or record made or required under the NO_x Budget Trading Program.~~

~~5.2.5 Records demonstrating that any unit exempted under 3.2 of this regulation is retired. The owner or owners and operator or operators of that unit bears the burden of proof that the unit is retired.~~

~~5.3 Computation of Time. Unless otherwise stated:~~

~~5.3.1 Any time period scheduled to begin on the occurrence of an act or event shall begin on the day that act or event occurs.~~

~~5.3.2 Any time period scheduled to begin before the occurrence of an act or event shall begin not later than the day before that act or event occurs.~~

~~5.3.3 If the final day of any time period falls on a weekend or a State of Delaware or Federal holiday, that time period shall be extended to the next business day.~~

~~5.4 Liability.~~

~~5.4.1 Each NO_x Budget source and each NO_x Budget unit shall comply with all of the requirements of the NO_x Budget Trading Program and any applicable NO_x Budget permit.~~

~~5.4.2 No permit revision shall excuse any violation of the requirements of the NO_x Budget Trading Program that occurs prior to the date that revision takes effect.~~

~~5.4.3~~

~~5.4.3.1 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 that NO_x Budget source) shall also apply to the owners and operators of that source and of the NO_x Budget units at that source.~~

~~5.4.3.2 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 that NO_x Budget unit) shall also apply to the owners and operators of that unit.~~

~~5.4.3.3 Except with regard to the requirements applicable to units with a common stack under 8.0 of this regulation, 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.~~

~~5.4.4 No provision of the NO_x Budget Trading Program, a NO_x Budget permit application, a NO_x Budget permit, or an exemption under 3.2 of this regulation shall be construed to exempt or exclude 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 applicable State or Federal requirement.~~

~~5.4.5 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 3.2 of this regulation shall be subject to enforcement pursuant to applicable State or Federal law.~~

~~5.4.6 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 criminal enforcement pursuant to the applicable State or Federal law.~~

~~12/11/2000~~

~~6.0 NO_x Authorized Account Representative for NO_x Budget Sources~~

~~6.1 On or before the later of November 1, 2001 or the date 18 months before the date on which any NO_x Budget unit commences operation, the NO_x authorized account representative and any alternate NO_x authorized account representative of any NO_x Budget source shall submit to the Administrator, with a copy to the Department, a complete account certificate of representation. Such account certificate of representation:~~

~~6.1.1 Shall designate one and only one NO_x authorized account representative, and may designate one and only one alternate NO_x authorized account representative. Such NO_x authorized account representative and any alternate NO_x authorized account representative shall be selected by an agreement between the owners and operators of the source and all NO_x Budget units at that source, binding on such owners and operators. Such agreement shall include a procedure for authorizing any alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.~~

~~6.1.2 Shall include all of the following information in a format specified by the Administrator:~~

~~6.1.2.1 Identification of the NO_x Budget source and each NO_x Budget unit at that source for which the account certificate of representation is submitted.~~

~~6.1.2.2 The name, mailing address, email 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.~~

~~6.1.2.3 A list of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source.~~

~~6.1.2.4 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 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 Department, the Administrator, or a court regarding the source or unit."~~

~~6.1.2.5 The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative, and the date(s) or dates the account certificate of representation was signed.~~

~~6.1.3 Shall not include, unless otherwise required by the Department or the Administrator, documents of agreement referred to in the account certificate of representation. If submitted, neither the Department nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents.~~

~~6.2 Upon receipt by the Administrator of a complete account certificate of representation under 6.1 of this regulation:~~

~~6.2.1 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 that 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 Department, the Administrator, or a court regarding the source or unit.~~

~~6.2.2 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.~~

~~6.2.3 The Department and the Administrator shall rely on the account certificate of representation submitted pursuant to 6.1 of this regulation unless and until the Administrator receives a superseding complete account certificate of representation changing the NO_x authorized account representative or alternate NO_x authorized account representative. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative or 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 NO_x authorized account representative and 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.~~

~~6.2.4 Except as provided in 6.2.3 of this regulation, no objection or other communication submitted to the Department or the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative or the alternate NO_x authorized account representative shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the alternate NO_x authorized account representative, or the finality of any decision or order by the Department or the Administrator under the NO_x Budget Trading Program.~~

~~6.2.5 Neither the Department nor the Administrator shall adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_x authorized account representative or the alternate NO_x authorized account representative.~~

~~6.3 Changes in the owners and operators~~

~~6.3.1 Within 30 days following any change in the owner or owners and operator or operators of a NO_x Budget source or a NO_x Budget unit at that source, including the addition of a new owner or~~

~~operator, the NO_x authorized account representative or the alternate NO_x authorized account representative shall submit to the Administrator, with a copy to the Department, a revised account certificate of representation amending the list of owners and operators to include that change.~~

~~6.3.2 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 inaction's of the Department or the Administrator, as if the new owner or operator were included in such list.~~

6.4 Submissions/Certifications

~~6.4.1 The NO_x authorized account representative or the alternate NO_x authorized account representative shall sign and certify all submissions under the NO_x Budget trading program with the following certification statement: "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."~~

~~6.4.2 The Department and the Administrator shall accept or act on any submission made under the NO_x Budget Trading program only if that submission has been made, signed, and certified in accordance with 6.4.1 of this regulation.~~

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7.0 Permits

~~7.1 Except as provided for in 3.2 of this regulation, on and after May 1, 2002 each NO_x Budget unit shall be covered by a NO_x Budget permit. Such NO_x Budget permit shall be a complete and segregable portion of, and made federally enforceable by, the permit issued pursuant to:~~

~~7.1.1 For any NO_x Budget unit required to be covered by a 7 **DE Admin. Code** 1130 permit, 7 **DE Admin Code** 1130 of the State of Delaware "Regulations Governing the Control of Air Pollution."~~

~~7.1.2 For any NO_x Budget unit not required to be covered by a 7 **DE Admin. Code** 1130 permit, 7 **DE Admin. Code** 1102 of the State of Delaware "Regulations Governing the Control of Air Pollution."~~

~~7.2 On or before the later of November 1, 2001, or the date 18 months before the date on which any NO_x Budget unit commences operation, the NO_x authorized account representative of each NO_x Budget source shall submit to the Department:~~

~~7.2.1 A complete NO_x Budget permit application that includes, at a minimum, all of the following information:~~

~~7.2.1.1 Identification of the NO_x Budget source, including the plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration of the United States Department of Energy, if applicable;~~

~~7.2.1.2 Identification of each NO_x Budget unit at that NO_x Budget source; and~~

~~7.2.1.3 Identification of each applicable requirement of this regulation, to include the requirements of 2.1, 5.1.2, 5.1.3, 5.2, 5.4, 6.4, 8.2, 8.3 and 10.0 of this regulation.~~

~~7.2.2 In a timely manner, any supplemental information that the Department determines is necessary in order to review a NO_x Budget permit application or issue or deny any NO_x Budget permit or permits.~~

~~7.3 Each NO_x Budget permit issued by the Department:~~

~~7.3.1 Shall specify the information submitted under 7.2.1 of this regulation, as approved by the Department.~~

~~7.3.2 Shall be deemed to incorporate automatically the definitions of terms under 4.0 of this regulation. Upon recordation by the Administrator, 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 shall be deemed to amend automatically, and become a part of the associated NO_x Budget permit by operation of law without any further review.~~

~~7.4 Any initial, revised, or renewed NO_x Budget permit shall become effective upon issuance by the Department of the corresponding ~~7 DE Admin. Code 1102~~ or ~~7 DE Admin. Code 1130~~ permit, as applicable, that administers that NO_x Budget permit.~~

12/11/2000

8.0 Monitoring and Reporting

~~8.1 The emissions measurements recorded and reported in accordance with 8.0 of this regulation shall be used to determine compliance by any NO_x Budget unit with its NO_x Budget emissions limitation.~~

~~8.2 Each NO_x Budget unit shall:~~

~~8.2.1 Comply with all of the requirements of Subpart H of 40 CFR Part 75 (7/1/99 edition), and all of the requirements of this regulation.~~

~~8.2.2 Monitor and record heat input at the unit level utilizing the procedures set forth in 40 CFR Part 75 (7/1/1999 edition).~~

~~8.3 For the purpose of complying with the requirements of this regulation and Subpart H of 40 CFR Part 75, the definitions in 4.0 of this regulation and in 40 CFR 72.2 (7/1/99 edition) shall apply,~~

except the terms “affected unit,” “designated representative,” and “continuous emission monitoring system” in 40 CFR Part 75 shall be replaced with “NO_x Budget unit,” “NO_x authorized account representative,” and “continuous emission monitoring system,” respectively, as defined in 4.0 of this regulation.

~~8.4 The compliance deadlines referred to in 40 CFR Part 75.70(b) shall be as follows:~~

~~8.4.1 Monitoring systems shall be installed and certification tests shall be completed, pursuant to the requirements of Subpart H of 40 CFR Part 75, not later than:~~

~~8.4.1.1 For any NO_x Budget unit identified in 3.1.1 of this regulation that commences operation before January 1, 2002, May 1, 2002.~~

~~8.4.1.2 For any NO_x Budget unit not covered by 8.4.1.1 of this regulation, the later of the following dates:~~

~~8.4.1.2.1 May 1, 2002; or~~

~~8.4.1.2.2 The earlier of:~~

~~8.4.1.2.2.1 180 days after the date on which that unit commences operation, or~~

~~8.4.1.2.2.2 For any unit identified in 3.1.1.1 of this regulation, 90 days after the date on which that unit commences commercial operation.~~

~~8.4.1.2.3 For any NO_x Budget unit that reports on a control season basis under 40 CFR 75.74(b)(2), where the applicable deadline under 8.4.1.2.2 of this regulation does not occur during a control period, May 1 immediately following the date determined in accordance with 8.4.1.2.2 of this regulation.~~

~~8.4.2 For any NO_x Budget unit with a new stack or flue for which construction is completed after the applicable deadline under 8.4.1 or 14.3 of this regulation:~~

~~8.4.2.1 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue, or~~

~~8.4.2.2 If that unit reports on a control season basis under 40 CFR 75.74(b)(2) and the applicable deadline under 8.4.2.1 of this regulation does not occur during the control period, May 1 immediately following the applicable deadline in 8.4.2.1 of this regulation.~~

~~8.4.3 Data shall be recorded and reported on and after the date specified in 8.4.1 of this regulation. The provisions of 40 CFR 75.70(g), concerning the reporting of data prior to initial certification, shall apply from the date and hour that any unit starts operating until all required certification tests are successfully completed.~~

~~8.5 The requirements of 40 CFR Part 75.70(d)(1), concerning initial certification and recertification procedures, shall be expanded to include the following additional requirements:~~

~~8.5.1 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 of this chapter, the NO_x authorized account representative shall resubmit the petition to the Administrator under 40 CFR 75.70(h)(1) and (2) to determine if the approval applies under the NO_x Budget Trading Program.~~

~~8.5.2 The NO_x authorized account representative of each unit applying to monitor using an alternative monitoring system under Subpart E of 40 CFR Part 75 shall apply for certification to the Department prior to use of the system under the NO_x Budget Trading Program. The NO_x authorized account representative shall comply with the notification and application requirements for certification, or for recertification following a replacement, modification or change, according to the procedures in 8.6 of this regulation.~~

~~8.6 Except as otherwise specified in 8.7 of this regulation (pertaining to the low mass emissions excepted methodology under 40 CFR 75.19), the initial certification and recertification procedures referred to in 40 CFR Part 75.70(d)(2) shall be as follows.~~

~~8.6.1 Each monitoring system required by Subpart H of 40 CFR Part 75 (which includes the automated data acquisition and handling system) shall complete all of the initial certification testing required under 40 CFR 75.20 not later than the deadlines specified in 8.4 of this regulation. In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this regulation in a location where no such monitoring system was previously installed, initial certification according to 40 CFR 75.20 is required.~~

~~8.6.2 Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the Administrator or the Department determines significantly affects the ability of the system to accurately measure or record NO_x mass emissions or heat input 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 according to 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 the Administrator or the Department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emission monitoring system according to 40 CFR 75.20(b). Examples of changes that require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or the changing of flow rate monitor polynomial coefficients.~~

~~8.6.3 Certification approval process for initial certifications and recertification.~~

~~8.6.3.1 The NO_x authorized account representative shall submit to the Department, with a copy to the EPA Region III Office, a written notice of the dates of certification testing in accordance with the requirements of 40 CFR Part 75.61. If the unit is not subject to an Acid Rain emissions limitation, the notification is required to be sent only to the Department.~~

~~8.6.3.2 The NO_x authorized account representative shall submit to the Department not later than 45 days after completing all initial certification or recertification tests a complete certification application for each monitoring system required under Subpart H of 40 CFR Part 75. Such~~

~~certification application shall be considered complete if it includes all of the information specified in 40 CFR 75.63. Any alternative monitoring system under Subpart E of 40 CFR Part 75 shall also be subject to the procedures of 40 CFR 75.20(f).~~

~~8.6.3.3 Except for units using the low mass emission excepted methodology under 40 CFR 75.19, a monitor shall be provisionally certified upon successful completion of the certification procedures of 8.6.3.1 and 8.6.3.2 of this regulation. 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 Department of the complete certification application for the monitoring system or component thereof under 8.6.3.2 of this regulation. 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 Department does not invalidate the provisional certification by issuing a notice of disapproval of certification status under 8.6.3.4.3 of this regulation.~~

~~8.6.3.4 The Department shall issue a written notice of approval or disapproval of the certification application to the NO_x authorized account representative within 120 days of receipt of the complete certification application under 8.6.3.2 of this regulation. In the event the Department 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 that is included in the certification application shall be deemed certified for use under the NO_x Budget Trading Program.~~

~~8.6.3.4.1 If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the Department shall issue a written notice of approval of the certification application within 120 days of receipt.~~

~~8.6.3.4.2 If the certification application is not complete, then the Department shall 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 Department may issue a notice of disapproval under 8.6.3.4.3 of this regulation.~~

~~8.6.3.4.3 If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this regulation, or if the certification application is incomplete and the requirement for disapproval under 8.6.3.4.2 of this regulation has been met, the Department may issue a written notice of disapproval of the certification application.~~

~~8.6.3.5 If the Department issues a notice of disapproval of a certification application under either 8.6.3.4.3 of this regulation or a notice of disapproval of certification status under 8.10 of this regulation, then the following shall apply to each monitoring system or component thereof which is disapproved for initial certification:~~

~~8.6.3.5.1 Upon issuance of such notice of disapproval, the provisional certification is invalidated 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.~~

~~8.6.3.5.2 The owner or operator shall substitute the following values for any hour (or fraction of an hour) during which the unit combusts any fuel during the period of invalid data, beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i).~~

~~8.6.3.5.2.1 For units using or intending to monitor for NO_x emission rate and heat input or for units 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.~~

~~Maximum potential NO_x emission rate means the emission rate of NO_x (in lb/MMBTU) calculated in accordance with section 3 of Appendix F of 40 CFR Part 75, using the maximum potential NO_x concentration as defined in section 2 of appendix A of 40 CFR Part 75, and either the maximum O₂ concentration (in % O₂) or the minimum CO₂ concentration (in % CO₂), under all operating conditions of the unit except for unit start up, shutdown, and upsets.~~

~~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 should 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 CO₂ concentration (in % CO₂) or the minimum O₂ concentration (in % O₂).~~

~~8.6.3.5.2.2 For units intending to monitor 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 2.1 of Appendix A of 40 CFR Part 75.~~

~~8.6.3.5.3 The NO_x authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with 8.6.3.1 and 8.6.3.2 of this regulation; and~~

~~8.6.3.5.4 The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Department's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval. A Unit operating day means a calendar day in which a unit combusts any fuel.~~

~~8.7 The initial certification and recertification procedures referred to in 40 CFR Part 75.70(d)(2) for any 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 limitation, shall be those applicable certification and recertification requirements of 40 CFR 75.19 and 8.6 of this regulation, except that the excepted methodology shall be deemed provisionally certified for use under the NO_x Budget Trading Program, as of the following dates:~~

~~8.7.1 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 that unit, starting on the date of such submission until the completion of the period for the Department's review.~~

~~8.7.2 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 that unit and that reports data on an annual basis under 40 CFR 75.74(b)(2), starting January 1 of the year after the year of such submission until the completion of the period for the Department's review.~~

~~8.7.3 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 that unit and that reports on a control season basis under 40 CFR 75.74(b)(2), starting May 1 of the control period after the year of such submission until the completion of the period for the Administrator's review.~~

~~8.8 Approval by the Department is required for approval of any alternative requirement under 40 CFR part 75.70(h)(3)(ii).~~

~~8.9 The NO_x authorized account representative shall submit quarterly reports required by 40 CFR Part 75.73(f) beginning with:~~

~~8.9.1 For any unit that commences operation prior to May 1, 2002, the earlier of the calendar quarter that includes the date of initial provisional certification under 8.6.3.3 of this regulation or, if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. 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, 2002.~~

~~8.9.2 Except as provided for in 8.9.3 of this regulation, for any unit that commenced operation on or after May 1, 2002, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.~~

~~8.9.3 For any unit that is subject to ozone season monitoring requirements under 40 CFR 75.74(b)(2), and that commenced operation after September 30, 2002, and that did not commence operations during a control period, the earlier of the calendar quarter that includes the date of initial provisional certification under 8.6.3.3 of this regulation or, if the certification tests are not completed by May 1 immediately following the date that the unit commenced operation, May 1 immediately following the date the unit commenced operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 immediately following the date that the unit commenced operation.~~

~~8.10 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 40 CFR 75.70(d) or any other applicable provision 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 Department~~

~~may issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Department or the Administrator. By issuing the notice of disapproval, the Department 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. The owner or operator shall follow the initial certification or recertification procedures in 40 CFR Part 75.70(d) for each disapproved system.~~

~~12/11/2000~~

~~9.0 NATS~~

~~9.1 Establishment of NATS Accounts:~~

~~9.1.1 Upon receipt of a complete account certificate of representation pursuant to 6.1 of this regulation, the Administrator shall establish a compliance account for each NO_x Budget unit identified in that account certificate of representation, and an overdraft account for each such NO_x Budget source that includes two or more NO_x Budget units.~~

~~9.1.2 Upon receipt of a complete application to establish a general account pursuant to 15.0 of this regulation, the Administrator shall establish a general account for the person or persons for whom the application is submitted.~~

~~9.1.3 The Administrator shall assign a unique identifying account number to each account established under 9.1.1 or 9.1.2 of this regulation, and a unique identifying number to each associated NO_x authorized account representative.~~

~~9.2 Recordation of Allocations and Deductions:~~

~~9.2.1 The Administrator shall record allocations for the 2003, 2004, and 2005 control periods, pursuant to 4.1 of **Appendix A** and 3.0 of **Appendix B** of this regulation. The Administrator shall record any allocations for the 2003 control period pursuant to 14.6.2 of this regulation.~~

~~9.2.2 Each year, starting in 2003, the Administrator shall:~~

~~9.2.2.1 Record in the appropriate compliance account or overdraft account all deductions made pursuant to 12.0 and 13.0 of this regulation.~~

~~9.2.2.2 After recording any deductions pursuant to 9.2.2.1 of this regulation:~~

~~9.2.2.2.1 Record allocations pursuant to 4.2 of **Appendix A** of this regulation.~~

~~9.2.2.2.2 Record allocations pursuant to 14.6.2 of this regulation.~~

~~9.2.3 When recording any allocation, the Administrator shall assign to the corresponding NO_x allowance a unique identification serial number that includes digits identifying the year for which that NO_x allowance is allocated.~~

9.3 Banking.

~~9.3.1 After recording any deductions pursuant to 9.2.2.1 of this regulation, the Administrator shall designate, as a “banked” NO_x allowance, any NO_x allowance that was eligible for deduction and that remains in any compliance account, overdraft account, or general account~~

~~9.3.2 Each year, starting in 2004, after completing the designation of banked NO_x allowances under 9.3.1 of this regulation and before May 1 of that year, the Administrator shall determine the extent to which any banked NO_x allowance may be used for compliance in the impending control period, as follows:~~

~~9.3.2.1 The Administrator shall determine the total number of banked NO_x allowances held in all of the NO_x Budget Trading program’s compliance accounts, overdraft accounts, and general accounts.~~

~~9.3.2.2 The Administrator shall determine the sum of the State trading program budgets for the impending control period of all of the States participating in the NO_x Budget trading program.~~

~~9.3.2.3 The Administrator shall determine the result of dividing the number determined under 9.3.2.1 of this regulation by the number determined under 9.3.2.2 of this regulation.~~

~~9.3.3 If the number determined under 9.3.2.3 of this regulation is equal to or less than 0.10, then any banked NO_x allowance may be deducted for compliance in accordance with 12.0 and 13.0 of this regulation.~~

~~9.3.4 If the number determined under 9.3.2.3 of this regulation is greater than 0.10, then:~~

~~9.3.4.1 The Administrator shall determine the following ratio: 0.10 multiplied by the number determined under 9.3.2.2 of this regulation and divided by the number determined under 9.3.2.1 of this regulation.~~

~~9.3.4.2 The Administrator shall, in implementing the provisions of 12.2 and 13.1 of this regulation for the impending control period, multiply the number of banked NO_x allowances in each compliance account or overdraft account by the ratio calculated under 9.3.4.1 of this regulation. The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with 12.0 and 13.0 of this regulation. Any banked NO_x allowances in excess of the resulting product may be deducted for compliance in accordance with 12.0 and 13.0 of this regulation, except that, if any such NO_x allowance is deducted, two such NO_x allowances shall be deducted for each one NO_x allowance required under 12.0 and 13.0 of this regulation.~~

~~9.4 The Administrator may, at his/her sole discretion and on his/her own motion, correct any error in any NATS account. Within 10 business days of making any such correction, the Administrator shall notify the NO_x-authorized account representative of the affected account of any correction made.~~

12/11/2000

10.0 NO_x Allowance Transfers

~~10.1 The NO_x-authorized account representative seeking recordation of a NO_x-allowance transfer shall submit to the Administrator a transfer request that includes all of the following information in a format specified by the Administrator:~~

~~10.1.1 The account number of both the transferor and transferee accounts;~~

~~10.1.2 The serial number of each NO_x-allowance to be transferred; and~~

~~10.1.3 The printed name and signature of the NO_x-authorized account representative of the transferor account, and the date the transfer request was signed.~~

~~10.2 Provided that the transfer request meets the requirements of 10.1 of this regulation, and the transferor account holds each NO_x-allowance identified by serial number in the transfer request, the Administrator shall record the NO_x-allowance transfer by moving each NO_x-allowance from the transferor account to the transferee account as specified by the request.~~

~~10.2.1 Any NO_x-allowance transfer request that is submitted for recordation after a NO_x-allowance transfer deadline, and that includes any NO_x-allowance that was allocated for a control period prior to or the same as the control period associated with that NO_x-allowance transfer deadline, shall be recorded after the recordation of allocations under 9.2.2 of this regulation for that control period.~~

~~10.2.2 Any transfer request not identified in 10.2.1 of this regulation shall be recorded within five business days of receiving such request.~~

~~10.2.3 Within five business days of recordation of any NO_x-allowance transfer, the Administrator shall notify the NO_x-authorized account representatives of both accounts subject to the transfer that the transfer was recorded.~~

~~10.3 Where a NO_x-allowance transfer request fails to meet the requirements of 10.2 of this regulation, the Administrator shall not record that transfer.~~

~~10.3.1 Within 10 business days of receipt of such a request, the Administrator shall notify the NO_x-authorized account representatives of both the transferor and transferee accounts of the reason or reasons why the transfer was not recorded.~~

~~10.3.2 Nothing in this regulation shall preclude the correction and resubmission of a NO_x-allowance transfer request following notification under 10.3.1 of this regulation.~~

~~12/11/2000~~

11.0 Compliance Certification

~~11.1 Not later than November 30 of each year, starting in 2003, the NO_x-authorized account representative of each NO_x-Budget source shall submit to the Department and the Administrator a compliance certification report that covers the control period for that year. Such report shall include all of the following information in a format specified by the Administrator:~~

~~11.1.1 Identification of the NO_x-Budget source and each NO_x-Budget unit at that source.~~

~~11.1.2 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 8.0 of this regulation, the percentage of the number of tons of NO_x emissions from the common stack to be attributed to each unit, for application under 12.2.2.1 of this regulation.~~

~~11.1.3 At the NO_x-authorized account representative's option, the serial numbers of the NO_x allowances that are to be deducted from each NO_x-Budget unit's compliance account, for application under 12.2.2.1 or 13.1.1 of this regulation.~~

~~11.1.4 Certification by the NO_x-authorized account representative of, 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 that unit, including:~~

~~11.1.4.1 Whether the unit was operated in compliance with its NO_x-Budget emissions limitation;~~

~~11.1.4.2 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 8.0 of this regulation;~~

~~11.1.4.3 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 8.0 of this regulation. If conditional data were reported, the NO_x-authorized account representative shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmission's have been made;~~

~~11.1.4.4 Whether the facts that form the basis for certification under 8.0 of this regulation 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 8.0 of this regulation, if any, has changed; and~~

~~11.1.4.5 If a change is required to be reported under 11.1.4.4 of this regulation, 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.~~

~~11.2 The Department 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.~~

~~11.3 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 11.2 of this regulation.~~

12/11/2000

12.0 End-of-Season Reconciliation

~~12.1 A NO_x allowance is available to be deducted for compliance with a unit's NO_x Budget emissions limitation for a particular control period only if that NO_x allowance:~~

~~12.1.1 Was allocated for that control period or for a control period in a prior year; and~~

~~12.1.2 Is held in that unit's compliance account or its associated overdraft account, as of the NO_x allowance transfer deadline for that control period; or~~

~~12.1.3 Is transferred into that unit's compliance account or its associated overdraft account by a NO_x allowance transfer request that was correctly submitted for recordation under 10.0 of this regulation on or before the NO_x allowance transfer deadline associated with that control period.~~

~~12.2 For each control period, following the recordation of NO_x Allowance transfer requests that were submitted for recordation under 10.0 of this regulation on or before the associated NO_x allowance transfer deadline, the Administrator shall deduct NO_x allowances that meet the requirements of 12.1 of this regulation from each NO_x Budget unit's account or accounts:~~

~~12.2.1 Until the number of NO_x allowances deducted equals the number of tons of NO_x emissions from that unit for that control period.~~

~~12.2.2 In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned under 8.0 of this regulation, the Administrator shall deduct NO_x allowances for each such unit until the number of NO_x allowances deducted equals:~~

~~12.2.2.1 Where the NO_x authorized account representative identified a percentage pursuant to 11.1.2 of this regulation, that percentage of the number of tons of NO_x emissions from the common stack, or,~~

~~12.2.2.2 If no percentage is identified, an equal percentage for each such unit.~~

~~12.2.3 Where there are not sufficient NO_x allowances available under 12.2.1 and 12.2.2 of this regulation, until no more NO_x allowances that meet the requirements of 12.1 of this regulation remain available for deduction.~~

~~12.3 The particular allowances that the Administrator shall delete shall be:~~

~~12.3.1 Where the NO_x authorized account representative identified by serial number the NO_x allowances to be deducted pursuant to 11.1.3 of this regulation, the Administrator shall deduct those particular allowances.~~

~~12.3.2 In the absence of an identification or in the case of a partial identification of NO_x allowances by serial number, the Administrator shall deduct NO_x allowances:~~

~~12.3.2.1 From the compliance account on a first in, first out (FIFO) accounting basis in the following order:~~

~~12.3.2.1.1 Those NO_x allowances that were allocated for that control period to that unit;~~

~~12.3.2.1.2 Those NO_x allowances that were allocated for that control period to any unit and transferred and recorded in that unit's account, in order of their date of recordation;~~

~~12.3.2.1.3 Those NO_x allowances that were allocated for a prior control period to that unit; and~~

~~12.3.2.1.4 Those NO_x allowances that were allocated for a prior control period to any unit and transferred and recorded in that unit's account, in order of their date of recordation.~~

~~12.3.2.2 Only after all NO_x allowances that meet the requirements of 12.1 of this regulation have been deducted from the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the Administrator shall begin with the NO_x Budget unit having the compliance account with the lowest NATS account number and end with the NO_x Budget unit having the compliance account with the highest NATS 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).~~

~~12/11/2000~~

13.0 Failure to Meet Compliance Requirements

~~13.1 For each unit under 12.2.3 of this regulation, the Administrator shall deduct from that unit's compliance account or the associated overdraft account a number of NO_x allowances equal to three times the number of that unit's excess emissions.~~

~~13.1.1 Where the NO_x authorized account representative identified by serial number the NO_x allowances to be deducted pursuant to 11.1.3 of this regulation, the Administrator shall deduct those particular allowances.~~

~~13.1.2 In the absence of an identification by serial number, or in the case of a partial identification, the Administrator shall deduct NO_x allowances that were allocated for any control period after the control period in which the unit has excess emissions, until the requirement of 13.1 of this regulation is satisfied.~~

~~13.1.3 If the compliance account or overdraft account does not contain sufficient NO_x allowances, the Administrator shall deduct NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account, until the requirement of 13.1 of this regulation is satisfied.~~

~~13.2 Any deduction required under 13.1 of this regulation 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 the CAA or applicable State law or regulation. The following guidelines shall be followed in assessing fines, penalties or other obligations:~~

~~13.2.1 For purposes of determining the number of days of violation, if a NO_x Budget unit has excess emissions for a control period, each day in the control period (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.~~

~~13.2.2 Each ton of excess emissions is a separate violation.~~

~~12/11/2000~~

14.0 Individual Unit Opt-Ins

~~14.1 Any unit located in Delaware that meets all of the following provisions may voluntarily opt into the NO_x Budget Trading program by submitting to the Department an opt in application.~~

~~14.1.1 The unit is not a NO_x Budget unit identified in 3.1.1 of this regulation; and~~

~~14.1.2 The unit is not exempted under 3.2 of this regulation; and~~

~~14.1.3 The unit can meet the emissions monitoring and reporting requirements of 8.0 of this regulation; and~~

~~14.1.4 The unit has documented heat input for more than 876 hours in the six months immediately preceding the submission of an application for an initial NO_x Budget permit under 14.2 of this regulation.~~

~~14.2 Each unit identified in 14.1 of this regulation shall submit:~~

~~14.2.1 To the Department and the Administrator a complete account certificate of representation that meets all of the requirements of 6.0 of this regulation.~~

~~14.2.2 To the Department a complete NO_x Budget permit application that meets all of the requirements of 7.2 of this regulation, with the following additional certification statement or statements made by the NO_x authorized account representative:~~

~~14.2.2.1 “I certify that each unit for which this permit application is submitted under 14.0 of 7 **DE Admin. Code** 1139 is not a NO_x Budget unit under 3.1.1 of 7 **DE Admin. Code** 1139, is not covered by a retired unit exemption under 3.2 of 7 **DE Admin. Code** 1139 that is in effect”~~

~~14.2.2.2 For any application for an initial NO_x Budget permit, “I certify that the unit meets the requirements of 14.1.4 of 7 **DE Admin. Code** 1139.”~~

~~14.2.3 To the Department a monitoring plan in accordance with 8.0 of this regulation.~~

~~14.3 The Department shall determine, on an interim basis, the sufficiency of the monitoring plan submitted pursuant to 14.2.3 of this regulation. A monitoring plan is sufficient, for purposes of this interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit are monitored and reported in accordance with 8.0 of this regulation. A determination of sufficiency shall not be construed as acceptance or approval of the unit’s monitoring plan.~~

~~14.3.1 If the Department determines that the unit's monitoring plan is sufficient the NO_x authorized account representative shall:~~

~~14.3.1.1 Install and certify all monitoring systems required under 8.0 of this regulation, pursuant to 8.0 of this regulation.~~

~~14.3.1.2 Monitor and report the NO_x emissions rate and the heat input of the unit in accordance with 8.0 of this regulation for one full control period during which the % monitoring data availability is not less than 90% and during which the unit is in full compliance with all applicable State or Federal emissions or emissions-related requirements. Solely for purposes of applying the requirements of the prior sentence, the unit shall be treated as a "NO_x Budget unit" prior to issuance of a NO_x Budget permit covering the unit.~~

~~14.3.1.3 Based on the information monitored and reported under 14.3.1.2 of this regulation, submit to the Department the unit's baseline heat input calculated as the unit's total heat input (in MMBTU) for the control period, and the unit's baseline NO_x emissions rate calculated as the unit's total NO_x mass emissions (in lb) for the control period divided by the unit's baseline heat input.~~

~~14.3.2 If the Department determines that the unit's monitoring plan is not sufficient the Department shall disapprove the opt in application.~~

~~14.4 After receipt of the baseline heat input and the baseline NO_x emissions rate for the unit under 14.3.1.3 of this regulation:~~

~~14.4.1 The Department shall issue a draft NO_x Budget permit on the NO_x authorized account representative of the unit. Such permit shall meet all of the requirements of 7.3 of this regulation.~~

~~14.4.2 Within 20 days after the issuance of the draft NO_x Budget permit, the NO_x authorized account representative of the unit shall either withdrawal its application or submit to the Department a confirmation of the intention to opt in the unit. The Department shall treat any failure to make a timely submission as a withdrawal of the NO_x Budget permit application.~~

~~14.4.3 For units where the NO_x authorized account representative confirms the intention to opt in the unit, and after considering any comments received on the draft permit, the Department shall issue a final NO_x Budget permit pursuant to **7 DE Admin. Code 1102** or **7 DE Admin. Code 1130**, as applicable. The unit shall be a NO_x Budget unit upon issuance of the NO_x Budget permit, and shall be subject to all of the requirements of this regulation.~~

~~14.5 Notwithstanding 14.1 through 14.4 of this regulation, at any time before the issuance of a final NO_x Budget permit:~~

~~14.5.1 The NO_x Budget Opt in application may be withdrawn.~~

~~14.5.2 If the Department determines that the unit does not qualify as an Opt in unit, the Department shall deny the request to opt in to the NO_x Budget Trading Program.~~

~~14.6 Allocations to opt in units.~~

~~14.6.1 Under no circumstances shall any allocation to any unit under 14.6 of this regulation necessitate adjustments to the allocation to any other NO_x Budget Unit.~~

~~14.6.2 By April 1 immediately before the first control period for which any NO_x Budget permit becomes effective, and April 1 of each year thereafter, the Department shall submit to the Administrator an allocation for the next control period in accordance with 14.6.3 of this regulation.~~

~~14.6.3 Except as provided for in 3.2.6 of this regulation (pertaining to retired units), each Opt in unit shall receive an annual allocation calculated as follows:~~

~~14.6.3.1 The Department shall determine the heat input (in MMBTU) as the lesser of:~~

~~14.6.3.1.1 The Opt in unit's baseline heat input determined pursuant to 14.3.1.2 of this regulation;
or~~

~~14.6.3.1.2 The Opt in unit's heat input for the control period in the year prior to the year of the control period for which the NO_x allocations are being calculated, as determined in accordance with 8.0 of this regulation.~~

~~14.6.3.2 The Department shall allocate NO_x allowances to the Opt in unit in an amount equaling the heat input (in MMBTU) determined under 14.6.3.1 of this regulation multiplied by the lesser of:~~

~~14.6.3.2.1 The Opt in unit's baseline NO_x emissions rate (in lb/MMBTU) calculated pursuant to 14.3.1.2 of this regulation; or~~

~~14.6.3.2.2 The lowest NO_x emissions limitation (in terms of lb/MMBTU) that is applicable during the control period to the Opt in unit under State or Federal law or regulation, regardless of the averaging period to which the emissions limitation applies.~~

~~14.7 In the event that a Opt in unit becomes a NO_x Budget unit under 3.1.1 of this regulation due to modification, reconstruction, or any other reason:~~

~~14.7.1 The NO_x authorized account representative shall, not later than 30 days after such change in the Opt in unit's regulatory status, notify in writing the Department and the Administrator of such change in the Opt in unit's regulatory status. This provision is in addition to, and does not exempt or exclude any other State or Federal requirement, including any requirement to secure or amend any construction or operation permit under 7 DE Admin. Code 1102, 1125, or 1130 of the State of Delaware "Regulations Governing the Control of Air Pollution."~~

~~14.7.2 The Administrator shall deduct from the NO_x Budget unit's compliance account, or the associated overdraft account, NO_x allowances equal in number to and allocated for the same or a prior control period as:~~

~~14.7.2.1 Any NO_x allowances allocated to the NO_x Budget unit under 14.7 of this regulation for any control period after the last control period during which the unit's NO_x Budget permit was effective; and~~

~~14.7.2.2 If the effective date the NO_x Budget unit becomes subject to 14.7 of this regulation is during a control period, the NO_x allowances allocated to the NO_x Budget unit under 14.6 of this~~

~~regulation for that control period multiplied by the ratio of the number of days remaining in the control period, starting with the date the NO_x Budget unit becomes subject to 14.7 of this regulation, divided by 153.~~

~~14.7.2.3 If the compliance account or overdraft account does not contain sufficient NO_x allowances, the Administrator shall deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.~~

~~12/11/2000~~

15.0 General Accounts

~~15.1 Any person may apply to open a general account for the purpose of holding and transferring NO_x allowances by submitting to the Administrator an application to establish a general account. Such application:~~

~~15.1.1 Shall designate one and only one NO_x authorized account representative, and may designate one and only one alternate NO_x authorized account representative. Such NO_x authorized account representative and any alternate NO_x authorized account representative shall be selected by an agreement between all of the persons who have an ownership interest with respect to allowances held in the general account, that is binding on such persons. Such agreement shall include a procedure for authorizing any alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.~~

~~15.1.2 Shall include all of the following information in a format specified by the Administrator:~~

~~15.1.2.1 At the option of the NO_x authorized account representative, the organization name and the type of organization;~~

~~15.1.2.2 The name, mailing address, email 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.~~

~~15.1.2.3 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.~~

~~15.1.2.4 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 alternate NO_x authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the 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."~~

~~15.1.2.5 The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative, and the date or dates the account certificate of representation was signed.~~

~~15.1.3 Shall not include, unless otherwise required by the Administrator, documents of agreement referred to in the application to establish a general account. If submitted, the Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents.~~

~~15.2 Upon receipt by the Administrator of a complete application for a general account under 15.1 of this regulation:~~

~~15.2.1 The 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 and such person. Any such person shall be bound by any order or decision issued to the NO_x authorized account representative by the Administrator or a court regarding the general account~~

~~15.2.2 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.~~

~~15.2.3 The Administrator shall rely on the application submitted pursuant to 15.1 of this regulation unless and until the Administrator receives a superseding complete application for a general account changing the NO_x authorized account representative or alternate NO_x authorized account representative. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative or 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 NO_x authorized account representative and alternate NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.~~

~~15.2.4 Except as provided in 15.2.3 of this regulation, 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 the 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 the alternate NO_x authorized account representative, or the finality of any decision or order by the Administrator under the NO_x Budget Trading Program.~~

~~15.2.5 The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_x authorized account representative or the alternate NO_x authorized account representative for a general account.~~

~~15.3 Changes in Persons having Ownership Interest in any General Account~~

~~15.3.1 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.~~

~~15.3.2 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.~~

~~15.4 Submissions/Certifications~~

~~15.4.1 The NO_x authorized account representative or the alternate NO_x authorized account representative shall sign and certify all submissions under the NO_x Budget trading program with the following certification statement: "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."~~

~~15.4.2 The Administrator shall accept or act on any submission made under the NO_x Budget Trading program only if that submission has been made, signed, and certified in accordance with 15.4.1 of this regulation.~~

~~15.5 Closing of general accounts~~

~~15.5.1 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 NATS and by correctly submitting for recordation under 10.0 of this regulation a request to transfer all NO_x allowances held in the account to one or more other NATS accounts.~~

~~15.5.2 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 NATS 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 10.0 of this regulation 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.~~

~~4 DE Reg. 1019 (12/01/00)~~

~~12 DE Reg. 347 (09/01/08)~~

Appendix A

Allowance Allocations to NO_x Budget Units under

3.1.1.1 and 3.1.1.2 of 7 DE Admin. Code 1139

~~1.0~~ The State trading program budget allocated by the Department to NO_x Budget units identified in 3.1.1 of 7 DE Admin. Code 1139 shall equal 5,227 tons of NO_x emissions for each NO_x control period, beginning with the year 2003 control period. Table A-1 of this appendix identifies the NO_x Budget units that receive an allocation, and the size of that allocation. NO_x Budget units identified in 3.1.1 of 7 DE Admin. Code 1139 that are not identified in Table A-1 do not receive an allocation.

~~2.0~~ Individual unit allocations identified in Table A-1 of this appendix were determined as follows:

~~2.1~~ The unit's base heat input was determined as the average of the units two highest heat inputs for May through September of any of the four years 1995, 1996, 1997, and 1998. Where a unit had heat input during May through September in only one of the years 1995 through 1998, and had zero heat input during May through September of the other three years, that unit's base heat input was determined as the heat input during the non-zero year.

~~2.2~~ The unit's base heat input determined in 2.1 of this appendix was multiplied by a NO_x emissions rate factor, and divided by 2000 lb/ton. NO_x emissions rate factor's used were:

~~2.2.1~~ For any unit that serves a generator with a nameplate capacity of 15 MWe or greater, but less than 25 MWe, the unit's actual average 1996 ozone season NO_x emission rate, in lb/MMBTU.

~~2.2.2~~ For any unit that serves a generator with a nameplate capacity of 25 MWe or greater, 0.15 lb/MMBTU.

~~2.2.3~~ For any unit that does not serve a generator, 0.17 lb/MMBTU.

~~2.3~~ The tonnage determined in 2.2 of this appendix for all subject units were added together.

~~2.4~~ For each subject unit, the tonnage determined in 2.2 of this appendix was divided by the tonnage determined in 2.3 of this appendix.

~~2.5~~ The allocation to each subject unit was determined as the product of the factor determined in 2.4 of this appendix and the state trading program budget identified in 1.0 of this appendix, rounded to the nearest whole ton.

~~3.0~~ Any NO_x Budget unit that receives an allocation under this appendix shall continue to receive that allocation for each control period unless and until such time as the Department revises this appendix pursuant to 7 Del.C., Chapter 60, and submits that revision to the Administrator as a revision to Delaware's State Implementation Plan.

~~4.0 Timing requirements for allocations.~~

~~4.1 No later than 60 days after the effective date of 7 DE Admin. Code 1139, the Department shall submit to the Administrator allocations in accordance with this appendix for the 2003, 2004, and 2005 control periods.~~

~~4.2 By April 1, 2003 and April 1 of each year thereafter, the Department shall submit to the Administrator allocations in accordance with this appendix for the control period in the year that is three years after the year of the applicable deadline for submission under 4.2 of this appendix. If the Department fails to submit to the Administrator the allocations in accordance with this 4.2 of this appendix, the Administrator shall allocate, for the applicable control period, the same number of allocations as were allocated for the preceding control period.~~

~~**Table A-1 – Individual Unit Allocations**~~

OPERATOR	PLANT	UNIT	1995	1996	1997	1998	NOx	Allocation
			Heat Input (MMBTU)	Heat Input (MMBTU)	Heat Input (MMBTU)	Heat Input (MMBTU)	Emission Rate (lb/MMBTU)	
D-FD	MCKEE RUN	1	0	50446	87701	100459	0.368	19
D-FD	MCKEE RUN	2	386706	59928	94926	128866	0.368	53
D-FD	MCKEE RUN	3	1336784	957093	975350	1479802	0.15	119
D-FD	VAN SANT	1	61900	45590	51702	93782	0.15	7
FIRST STATE	FIRST STATE	127	642482	331239	802817	703689	0.614	259
CONECTIV	CHRISTIANASUB	11	54550	15889	36385	56658	0.15	5
CONECTIV	CHRISTIANASUB	14	54067	18804	30481	78256	0.15	6
CONECTIV	DELAWARE CITY	10	10962	3389	14401	1721	0.698	5
CONECTIV	EDGE MOOR	3	2620203	2545577	2930860	2409740	0.15	234
CONECTIV	EDGE MOOR	4	3716664	4772838	4069197	4731992	0.15	400
CONECTIV	EDGE MOOR	5	6395496	6634821	5502246	7638136	0.15	601
CONECTIV	EDGE MOOR	10	12039	7550	8953	4330	0.698	4
CONECTIV	MADISON STREET	10	8239	9830	5787	5328	0.698	4
CONECTIV	WEST SUBSTATION	10	21026	5094	11599	16191	0.698	7
CONECTIV	HAY ROAD	1	2841727	2563987	1491606	1665519	0.15	227
CONECTIV	HAY ROAD	2	2229278	2877121	831204	1829101	0.15	215
CONECTIV	HAY ROAD	3	596599	2684517	1343486	1684822	0.15	184
MOTIVA	DELAWARE CITY	2	1022582	1248427	1298731	1286865	0.17	123
MOTIVA	DELAWARE CITY	105	0	661482	939273	1100754	0.17	97
MOTIVA	DELAWARE CITY	12	1563456	1364509	1401081	1501642	0.17	146
MOTIVA	DELAWARE CITY	19	158563	215049	0	0	0.17	18
MOTIVA	DELAWARE CITY	34	1008710	1177668	1263378	1151553	0.17	116
MOTIVA	DELAWARE CITY	67	492647	1120816	1465546	1960436	0.15	144
MOTIVA	DELAWARE CITY	68	1827653	1834264	1963920	1577947	0.15	160
MOTIVA	DELAWARE CITY	69	1878837	1865021	1891042	1660522	0.15	159
MOTIVA	DELAWARE CITY	70	1825849	1933117	1905578	1806235	0.15	162
MOTIVA	DELAWARE CITY	72	1249817	0	0	0	0.17	119
MOTIVA	DELAWARE CITY	74	1340710	1340142	1507433	1524650	0.17	145
MOTIVA	DELAWARE CITY	CT	0	0	0	0	0.15	0
MOTIVA	DELAWARE CITY	CT	0	0	0	0	0.15	0
CONECTIV	INDIAN RIVER	1	2346108	1891753	1862828	2095177	0.15	187
CONECTIV	INDIAN RIVER	2	1738093	2176161	2226615	2371839	0.15	193
CONECTIV	INDIAN RIVER	3	3789624	3827660	4216963	4520919	0.15	368
CONECTIV	INDIAN RIVER	4	8304494	8250941	6635691	8975537	0.15	727
CONECTIV	INDIAN RIVER	10	29472	11931	28745	43603	0.698	14
							Total	5227

Appendix B

~~7 DE Admin. Code 1137 – 7 DE Admin. Code 1139 Program Transition~~

~~1.0 Individual Unit Opt ins. The Department may require any unit that is an opt in unit under 7 DE Admin. Code 1137 of Delaware’s “Regulations Governing the Control of Air Pollution” to be an opt in unit under 14.0 of 7 DE Admin. Code 1139 of Delaware’s “Regulations Governing the Control of Air Pollution.”~~

~~2.0 Penalties. For any NO_x Budget unit under 7 DE Admin. Code 1137 of Delaware's "Regulations Governing the Control of Air Pollution" that has excess emissions following the year 2002 control period, the Administrator shall 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 the 2003 or subsequent control periods, equal to three times the number of the unit's excess emissions in the 2002 control period.~~

~~3.0 7 DE Admin. Code 1137 transition allocation. Any Delaware source that holds, in its 7 DE Admin. Code 1137 compliance account, NO_x allowances that were allocated for the year 2000, 2001, or 2002 control periods under the OTC NO_x Budget program (i.e., 7 DE Admin. Code 1137 of Delaware's "Regulations Governing the Control of Air Pollution") and that were not used or required to be used for compliance with the requirements of 7 DE Admin. Code 1137 for the 2002 or prior control period, may be eligible for a special, one time "transition allocation."~~

~~3.1 An application for a transition allocation under 3.0 of this appendix shall be submitted to the Department no later than March 1, 2003, and shall include all of the following information:~~

~~3.1.1 Identification of the affected NO_x Budget source and NO_x Budget unit;~~

~~3.1.2 Identification of the quantity of NO_x allowances remaining in the unit's 7 DE Admin. Code 1137 compliance account as of February 1, 2003;~~

~~3.1.3 Identification by serial number of all NO_x allowances remaining in the unit's 7 DE Admin. Code 1137 compliance account as of February 1, 2003; and~~

~~3.1.4 Certification by the NO_x authorized account representative consistent with 6.4 of 7 DE Admin. Code 1139.~~

~~3.2 Not later than April 1, 2003, the Department shall approve or deny any request received under 3.1 of this appendix.~~

~~3.2.1 For any request that is approved, the Department shall notify the NO_x authorized account representative, and shall submit to the Administrator an allocation to the NO_x Budget unit's compliance account in accordance with the provisions of 3.3 of this appendix.~~

~~3.2.2 For any request that is not accurate or submitted in accordance with 3.1 of this appendix, the Department shall notify the NO_x authorized account representative that the request is denied, including the reason or reasons for any denial.~~

~~3.3 Any NO_x authorized account representative whose request is approved under 3.2.1 of this appendix shall receive a transition allocation as follows:~~

~~3.3.1 If the total number of allocations requested, and as approved by the Department, totaled among all Delaware NO_x Budget units is 168 or less the Department shall allocate to each subject unit their requested allocation.~~

~~3.3.2 If the total number of allocations requested, and as approved by the Department, totaled among all Delaware NO_x Budget units is greater than 168, the Department shall allocate to each subject unit according to the following formula:~~

~~Unit's allocation = [(Unit's requested and approved allocation) / (Total number of requested and approved allocations among all Delaware sources)]_x (168)~~

~~where: "Unit's requested and approved allocation" is the number allocations requested by the unit's NO_x authorized account representative and approved by the Department in accordance 3.2.1 of this appendix.~~

~~"Total number of requested and approved allocations among all Delaware sources" is the sum total of all allocations requested in accordance with 3.1 of this appendix, and approved by the Department in accordance with 3.2.1 of this appendix, among all Delaware sources.~~

~~"Unit's allocation" shall be whole number, with all fractional allocations rounded down to the next whole number.~~

~~3.4 No later than May 1, 2003, the Department shall submit to the Administrator for recordation the allocations determined under 3.0 of this appendix.~~

~~3.5 Allocations recorded under 3.4 of this appendix may be deducted for compliance under 12.0 of this regulation for the control periods in 2003 or 2004. The Administrator shall deduct as retired any NO_x allowance that is recorded under 3.4 of this appendix and is not deducted for compliance in accordance with 12.0 of 7 **DE Admin. Code** 1139 for the 2003 or 2004 control period.~~

~~3.6 NO_x allowances recorded under 3.4 of this appendix shall be treated as banked allowances in 2004.~~

~~4.0 To provide for the transition from the program established under 7 **DE Admin. Code** 1137 to the program established under 7 **DE Admin. Code** 1139; for any NO_x Budget unit that is subject to both 7 **DE Admin. Code** 1137 and 7 **DE Admin. Code** 1139, the Department may allow that unit to comply with any requirement of 7 **DE Admin. Code** 1139 in lieu of any substantially equivalent requirement of 7 **DE Admin. Code** 1137. Such requirements may include, but are not limited to permitting, record keeping, monitoring, and reporting requirements.~~

Repeal of all regulatory language is proposed.

~~Title 7 Natural Resources and Environmental Control~~

~~1100 Air Quality Management Section~~

~~1143 Heavy Duty Diesel Engine Standards~~

~~02/11/2005~~

~~1.0 On Road Heavy Duty Diesel Requirements for Model Years 2005 and 2006~~

~~1.1 Applicability~~

~~The provisions of this regulation apply to heavy duty diesel engines produced for the 2005 and 2006 model years, and to new motor vehicles with a gross vehicle weight rating (GVWR) of greater than 14,000 pounds containing such engines that are sold, leased, offered for sale or lease, imported, delivered, rented acquired, or received in the State of Delaware.~~

~~1.2 Definitions~~

~~The following definitions are applicable to 1.0 of this regulation:~~

~~“Department” means the Delaware Department of Natural Resources and Environmental Control.~~

~~“Division” means the Delaware Division of Motor Vehicles of the Delaware Department of Transportation.~~

~~“Emergency vehicle” means any publicly owned and operated ambulance, lifeguard, or lifesaving equipment or any privately owned or operated vehicle which is responding to an emergency call. Any publicly owned vehicle operated by the following persons, agencies, or organizations:~~

~~(1) Any federal, state, or local agency, department, or district employing peace officers for use by those officers in the performance of their duties.~~

~~(2) Any forestry or fire department of any public agency or fire department.~~

~~(3) Any vehicle owned by the state, or any bridge and highway district, and equipped and used either for fighting fires, or towing or servicing other vehicles, caring for injured persons, or repairing damaged lighting or electrical equipment.~~

~~(4) Any state-owned vehicle used in responding to emergency fire, rescue or communications calls and operated either by the Delaware Emergency Management Agency or by any public agency or industrial fire department to which the Delaware Emergency Management Agency has assigned the vehicle.~~

~~(5) Any vehicle owned or operated by any department or agency of the United States government when the vehicle is used in responding to emergency fire, ambulance, or lifesaving calls or is actively engaged in law enforcement work.~~

~~(6) Any vehicle for which an authorized emergency vehicle permit has been issued by the Superintendent of the Delaware State Police.~~

~~“Executive Order” means a document issued by the California Air Resources Board (CARB) certifying that a specified engine family or model year vehicle has met all applicable Title 13 CCR (California Code of Regulations) requirements for certification and sale in California.~~

~~“Heavy duty diesel engine” means a diesel engine that is used to propel a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater.~~

~~“Heavy duty motor vehicle” means a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater.~~

~~“Model year” means the manufacturer's annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.~~

~~“New motor vehicle” means a motor vehicle, the equitable or legal title to which has never been transferred to an ultimate purchaser.~~

~~“New motor vehicle engine” means a new engine in a motor vehicle.~~

~~“Ultimate purchaser” means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.~~

~~“Ultra small volume manufacturer” means any manufacturer with Delaware sales less than or equal to 300 new passenger cars, light duty trucks, medium duty vehicles, heavy duty vehicles, and heavy duty engines per model year based on the average number of vehicles and engines sold by the manufacturer in the previous three consecutive model years.~~

~~“Urban bus” means a passenger carrying vehicle powered by a heavy heavy duty diesel engine, or of a type normally powered by a heavy heavy duty diesel engine, with a load capacity of 15 or more passengers and intended primarily for intra city operation, i.e., within the confines of a city or greater metropolitan area. Urban bus operation is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick operating entrance and exit doors would normally be installed. Since fares are usually paid in cash or token, rather than purchased in advance in the form of tickets, urban buses would normally have equipment installed for the collection of fares. Urban buses are also typically characterized by the absence of equipment and facilities for long distance travel, e.g., restrooms, large luggage compartments, and facilities for stowing carry on luggage.~~

~~1.3 Severability~~

~~Each provision of 1.0 of this regulation shall be deemed severable. If any provision of this regulation is held to be invalid, the remainder shall continue in full force and effect.~~

1.4 Reporting Requirements

~~All manufacturers of 2005 and 2006 model year heavy duty diesel vehicles with a GVWR of 14,001 pounds or greater shall provide certification that the engine used in the manufacturer's vehicle comply with the applicable exhaust emissions standards under Title 13, Section 1956.8 of the California Code of Regulations, and shall be consistent with the Executive Order issued by CARB for the appropriate engine family or model year. This certification shall be sent to the Department 30 days prior to the date of the first vehicle being potentially available for sale.~~

1.5 Dealer Compliance

~~No person who is a resident of this state, or who operates an established place of business within this state, shall sell, lease, rent, import, deliver, lease, purchase, acquire, or receive in the State of Delaware, or offer for sale, lease, or rental in this state (or attempt or assist in any such prohibited action) any of the following types of motor vehicles or engines that are intended primarily for use or for registration in the State of Delaware, unless the manufacturer has certified on the Certificate of Origin that the engine in the vehicle complies with Title 13, Section 1956.8 of the California Code of Regulations last amended on July 25, 2001 or complies with other documentation approved and provided by the Department:~~

~~1.5.1 A 2005 or 2006 model year heavy duty diesel engine;~~

~~1.5.2 A new motor vehicle equipped with a 2005 or 2006 model year heavy duty diesel engine; or~~

~~1.5.3 A motor vehicle with a new 2005 or 2006 model year heavy duty diesel engine.~~

1.6 Exemptions and Technology Review

~~Notwithstanding 1.4 of this regulation, the requirements of 1.0 of this regulation shall not apply to:~~

~~1.6.1 A model year 2005 or 2006 heavy duty diesel engine manufactured by an ultra-small volume manufacturer or intended for use in an urban bus;~~

~~1.6.2 An engine if, following a technology review, the California Air Resources Board determines that it is inappropriate to require compliance for heavy duty diesel engines of that particular model year and engine family;~~

~~1.6.3 A vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this state; provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen;~~

~~1.6.4 A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;~~

~~1.6.5 A motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42 U.S.C. §7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this state and who, upon registration of the vehicle in this state provides satisfactory evidence to the Division of the previous residence and registration;~~

~~1.6.6 An emergency vehicle;~~

~~1.6.7 A military tactical vehicle or equipment; or~~

~~1.6.8 Any other vehicles exempted by the California Health and Safety Code, section 43656 as of March 20, 2001.~~

~~1.7 Manufacturer Compliance with California Orders and Voluntary Recalls~~

~~1.7.1 Any order or enforcement action taken by the California Air Resources Board to correct noncompliance with any heavy-duty diesel engine requirements adopted by such Board on December 8, 2000 shall be applicable to all such engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for sale, lease, or rental, or registered in Delaware, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of issuance of such CARB action, that this action is not applicable to such engines or vehicles in Delaware.~~

~~1.7.2 Any voluntary or influenced emission-related recall campaign initiated by any manufacturer pursuant to Title 13, sections 2113 through 2121 of the California Code of Regulations shall extend to all applicable engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for sale, lease, or rental, or registered in Delaware, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of approval of the campaign by the CARB, that this campaign is not applicable to such engines or vehicles in Delaware.~~

~~1.8 Adoption and Incorporation by Reference of California Rules~~

~~The Department hereby adopts and incorporates by reference the exhaust emission standards (and associated performance test procedures) for model year 2005 and 2006 heavy-duty diesel engines adopted by the California Air Resources Board on December 8, 2000, and any future amendments to these provisions that the CARB may promulgate. These standards are found in section 1956.8 of Title 13 of the California Code of Regulations, which incorporates by reference the test procedures for determining compliance with the standards.~~

~~1.9 Requirements for Vehicle Registration and Transactions~~

~~1.9.1 No new motor vehicle equipped with a 2005 or 2006 model year heavy-duty diesel engine may be registered with the Division unless the applicant provides a copy of the Certificate of Origin which complies with 1.5 of this regulation or the Department provides notification to the Division that all vehicles from a specific manufacturer are in compliance with 1.5 of this regulation or other documentation approved by the Department.~~

~~1.9.2 No person who is a resident of this state, or who operates an established place of business within this state, shall sell, lease, rent, import, deliver, lease, purchase, acquire, or receive in this state, or offer for sale, lease, or rental in this state (or attempt or assist in any such prohibited action) any of the following types of motor vehicles or engines that are intended primarily for use or for registration in this state, unless the manufacturer of the engine has received such a Certificate of Origin which complies with the standards adopted in 1.4 of this regulation or the manufacturer provides other Department approved documents certifying compliance with Title 13, Section 1956.8 of the California Code of Regulations, last amended July 25, 2001:~~

~~1.9.2.1 A 2005 or 2006 model year heavy duty diesel engine;~~

~~1.9.2.2 A new motor vehicle equipped with a 2005 or 2006 model year heavy duty diesel engine; or~~

~~1.9.2.3 A motor vehicle with a new 2005 or 2006 model year heavy duty diesel engine.~~

~~1.10 Exemptions and Technology Review~~

~~Notwithstanding 1.8 of this regulation, the requirements of 1.0 of this regulation shall not apply to:~~

~~1.10.1 A model year 2005 or 2006 heavy duty diesel engine manufactured by an ultra small volume manufacturer or intended for use in an urban bus;~~

~~1.10.2 An engine if, following a technology review, the CARB determines, and is subsequently approved by the Department, that it is inappropriate to require compliance for heavy duty diesel engines of that particular model year and engine family;~~

~~1.10.3 A vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this state; provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen;~~

~~1.10.4 A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;~~

~~1.10.5 A motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42 U.S.C. §7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this state and who, upon registration of the vehicle in this state provides satisfactory evidence to the Division of the previous residence and registration;~~

~~1.10.6 An emergency vehicle;~~

~~1.10.7 A military tactical vehicle or equipment; or~~

~~1.10.8 Any other vehicles exempted by the California Health and Safety Code, section 43656 as of March 20, 2001.~~

~~1.11 Manufacturer Compliance with California Orders and Voluntary Recalls~~

~~1.11.1 Any order or enforcement action taken by the CARB to correct noncompliance with any heavy duty diesel engine requirements adopted by such Board on December 8, 2000 shall be applicable to all such engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for sale, lease, or rental, or registered in State of Delaware, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of issuance of such CARB action, that this action is not applicable to such engines or vehicles in Delaware.~~

~~1.11.2 Any voluntary or influenced emission-related recall campaign initiated by any manufacturer pursuant to Title 13, sections 2113 through 2121 of the California Code of Regulations shall extend to all applicable engines and motor vehicles subject to this regulation;~~

~~1.11.2.1 Sold, leased, or rented;~~

~~1.11.2.2 Offered for sale, lease, or rental; or~~

~~1.11.2.3 Registered in Delaware, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of approval of the campaign by the CARB, that this campaign is not applicable to such engines or vehicles in Delaware.~~

02/11/2005

2.0 On Road Heavy Duty Diesel Requirements for Model Year 2007 and Later

2.1 Applicability

~~Except as specifically provided in 2.2 of this regulation, 2.0 of this regulation applies to all heavy-duty diesel vehicles sold, leased or registered for use in Delaware where;~~

~~2.1.1 Such vehicle is equipped with a 2007 Model Year or later diesel engine, and~~

~~2.1.2 The engine family for the installed engine was first certified by CARB at least two years after the effective date of 2.0 of this regulation.~~

2.2 Exemptions

~~Notwithstanding 2.1 of this regulation, the requirements set forth in 2.0 of this regulation do not apply to:~~

~~2.2.1 A heavy duty diesel engine intended for use in an urban bus;~~

~~2.2.2 A heavy duty diesel engine of a model year and engine family for which CARB has determined, based upon its technology review, that compliance with its heavy duty diesel engine standards is not required;~~

~~2.2.3 A vehicle acquired outside of Delaware by a resident of Delaware for the purpose of replacing a vehicle registered to the resident which, while out of Delaware, was stolen, or was damaged, or became inoperative, beyond reasonable repair; provided that such replacement vehicle is acquired within a reasonable amount of time following the time the previously owned vehicle was either stolen, damaged, or became inoperative;~~

~~2.2.4 A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;~~

~~2.2.5 An emergency vehicle; or~~

~~2.2.6 A military tactical vehicle or equipment.~~

2.3 Definitions

~~For the purpose of 2.0 of this regulation, the following definitions apply:~~

~~“CARB” means the California Air Resources Board, as set out in section 39003, California Health and Safety Code (1999).~~

~~“The terms certification; diesel cycle; emergency vehicle; engine family; heavy duty vehicle; heavy duty diesel engine; medium duty vehicle; military tactical vehicles and equipment; model year; urban bus; and ultimate purchaser” each shall have the meaning set out in Title 13, California Code of Regulations (“CCR”) and section 165 of the California Vehicle Code.~~

~~“Division” means The Delaware Division of Motor Vehicles of the Delaware Department of Transportation.~~

~~“Emergency vehicle” means any publicly owned and operated ambulance, lifeguard, or lifesaving equipment or any privately owned or operated vehicle which is responding to an emergency call. Any publicly owned vehicle operated by the following persons, agencies, or organizations:~~

~~(1) Any federal, state, or local agency, department, or district employing peace officers for use by those officers in the performance of their duties.~~

~~(2) Any forestry or fire department of any public agency or fire department~~

~~(3) Any vehicle owned by the state, or any bridge and highway district, and equipped and used either for fighting fires, or towing or servicing other vehicles, caring for injured persons, or repairing damaged lighting or electrical equipment.~~

~~(4) Any state owned vehicle used in responding to emergency fire, rescue or communications calls and operated either by the Delaware Emergency Management Agency or by any public agency or industrial fire department to which the Delaware Emergency Management Agency has assigned the vehicle.~~

~~(5) Any vehicle owned or operated by any department or agency of the United States government when the vehicle is used in responding to emergency fire, ambulance, or lifesaving calls or is actively engaged in law enforcement work.~~

~~(6) Any vehicle for which an authorized emergency vehicle permit has been issued by the Superintendent of the Delaware State Police.~~

~~“Heavy duty diesel engine” means a diesel engine that is used to propel a motor vehicle with a Gross Vehicle Weight Rating (GVWR) of 14,001 pounds or greater.~~

~~“Heavy duty motor vehicle” means a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater~~

~~“Lease” means any commercial transaction recognized under the laws of this State as a means of creating a right to use a good and includes renting. It also includes offering to rent or lease.~~

~~“Model year” means the manufacturer's annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.~~

~~“Sell” means any commercial transaction recognized under the laws of this State as a means of transferring ownership of a good and includes barter. It also includes offering for sale.~~

~~“Urban bus” means a passenger carrying vehicle powered by a heavy heavy duty diesel engine, or of a type normally powered by a heavy heavy duty diesel engine, with a load capacity of 15 or more passengers and intended primarily for intra-city operation, i.e., within the confines of a city or greater metropolitan area. Urban bus operation is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick operating entrance and exit doors would normally be installed. Since fares are usually paid in cash or token, rather than purchased in advance in the form of tickets, urban buses would normally have equipment installed for the collection of fares. Urban buses are also typically characterized by the absence of equipment and facilities for long distance travel, e.g., restrooms, large luggage compartments, and facilities for stowing carry on luggage.~~

~~2.4 Prohibition Against Sale or Registration of Non-complying Vehicles~~

~~No person shall sell, lease or register a heavy duty vehicle for use in Delaware if:~~

~~2.4.1 Such vehicle is equipped with a 2007 Model Year or later diesel engine, and~~

~~2.4.2 The engine family for the installed engine was first certified by CARB at least two years after the effective date of 2.0 of this regulation, unless the heavy duty engine installed in such vehicle has been certified by CARB as meeting all requirements of Title 13, CCR, section 1956.8, and the test procedures incorporated by reference therein that apply to Model Year 2007 and subsequent engines.~~

~~2.5 Recall of Vehicles~~

~~If, for any reason, the manufacturer of any vehicle or engine subject to 2.0 of this regulation conducts a recall, whether required or voluntary, or a service campaign in any other state that involves any emissions related component or element of design that is incorporated in vehicles sold, leased or registered in Delaware, such manufacturer shall notify the Division no later than five days after initiating such recall or service campaign and, unless the Division determines that the recall or service campaign is unwarranted given the facts of the matter, shall conduct such recall or service campaign on vehicles registered in Delaware in accordance with a schedule determined by the Division.~~

~~2.6 Prohibition Against Sale or Registration of Recalled Vehicles~~

~~No person shall sell, lease or register a heavy duty vehicle subject to the requirements of 2.0 of this regulation if such vehicle has been the subject of an emissions-related recall, unless the vehicle has been corrected in accordance with a recall plan pursuant to 2.0 of this regulation.~~

~~2.7 Prohibition Against Stockpiling~~

~~The purchase of engines or vehicles in excess of normal business needs for the purpose of evading the requirements of 2.0 of this regulation shall be unlawful. No heavy duty vehicle that is manufactured after January 1, 2007, may be sold, leased or registered in Delaware unless it contains~~

~~an engine certified by CARB as meeting all requirements of Title 13, CCR, section 1956.8 that apply to Model Year 2007 and subsequent engines.~~

7 DE Admin. Code 1352: Regulations Governing Aboveground Storage Tanks

PART A

4.6 Retrofitting/Upgrade of ASTs

4.6.1 AST Owners and Operators shall notify the Department of all Retrofits or Upgrades of an AST on a form provided by the Department at least ten (10) days prior to beginning the Retrofit or Upgrade work.

4.6.2 If within the ten (10) day period, the required notification to the Department is completely satisfied, the Retrofit or Upgrade construction may proceed without waiting for the expiration of the 10 days.

4.6.3 If within ~~sixty (60) days~~ one (1) year after initial notification to the Department work has not commenced, a new registration form must be submitted to the Department.

5.0 Alternative Procedures Approval Requirements

5.1 The Owner and Operator of an AST subject to the provisions of these Regulations may request in writing a determination from the Department that any requirement of these Regulations shall not apply to such AST, and shall request approval of an alternative procedure as required.

5.2 The Department in its discretion may approve alternative procedures or technology or a combination of alternative procedures or technologies not specified in the Regulations if the following requirements are met. The requirements must be submitted in writing and shall set forth as a minimum the following information:

5.2.1 Name and location of the Facility and the specific AST(s) for which an alternative procedure is sought;

5.2.2 The specific provision of the Regulations for which an alternative procedure is sought;

5.2.3 The contents of the AST;

5.2.4 The basis for the alternative procedure, including but not limited to the technical difficulties that would result from compliance with the established provision;

5.2.5 The alternative procedure or technology for which approval is sought; and

5.2.6 Documentation that demonstrates that the alternative procedure or technology meets or exceeds the performance standard for approved technologies and that the alternative procedure or technology offers a no less stringent degree of protection for human health, safety or the environment as would the requirements specifically established in these Regulations.

5.3 The Department will provide a written response within ninety (90) days to all requests for alternative technology approvals. The request may be denied, approved or approved with conditions. If the technology or procedure or a combination of technologies or procedures is approved, the Owner and Operator must comply with any conditions imposed by the Department on its use to ensure the protection of human health, safety or the environment.

5.4 In the case of a denial of a request under this Section the Department will respond to the request stating the justification for the denial.

PART B

INSTALLATION AND UPGRADE REQUIREMENTS FOR NEW AND EXISTING ABOVEGROUND STORAGE TANKS

1.0 General Requirements For All New Aboveground Storage Tanks and AST Relocations

1.1 AST Owners and Operators shall notify the Department at least sixty (60) days prior to installation of all proposed New ASTs or Relocated ASTs used for storing Regulated Substances.

1.1.1 the date of installation;

1.1.2 location including the address and a plan view dimensioned drawings of the facility of sufficient detail to locate the AST's with respect to the property lines and buildings or other structures located on the property and showing the relation of the AST to the site and the site to the surrounding area;

1.1.3 type of AST and piping Leak Detection system;

1.1.4 description of the Regulated Substance to be stored including CAS registry number or numbers if available;

1.1.5 type of overfill protection device;

1.1.6 detail showing the proposed method of Secondary Containment;

1.1.7 the design of the proposed Cathodic Protection System, if applicable;

1.1.8 description of the AST(s) to be installed, including dimensions, capacity, material of construction, manufacturer's name and address, model number, supplier's name and address, and any other information that completely describes the AST;

1.1.9 description of piping to be used, including Pipe diameters, materials, connections, and piping diagrams, as applicable;

1.1.10 any other information that will accurately convey the intended AST configuration.

1.2 No new ASTs shall be constructed of wood or concrete after the effective date of these Regulations.

1.3 Upon notification by the AST Owner and Operator, a review by the Department of the notification and accompanying documents must be made for compliance with the requirements for new ASTs or Relocate ASTs.

1.3.1 A formal letter of approval or denial of the installation shall be issued by the Department to the Owner and Operator within sixty (60) days of the Department's receipt of the installation notification and supporting documentation as specified in § 1.1 of this Part.

1.3.2 If a denial is issued, all required corrections and compliance with the new AST requirements or Relocated AST must be met before the installation can be approved.

1.3.3 If within the sixty (60) day notification period, the Department or its designee issued a formal letter of approval, the installation of the AST may begin.

1.4 Approval letters must be posted at the construction site at the facility where the new AST installation or AST Relocation is in progress.

1.5 During construction, an Owner and Operator shall not cause or allow a substantial design change which is not in accordance with the approved plans and all terms and conditions of the Department's approval.

1.6 The design engineer of record must approve in writing any and all substantial design changes and resubmit to the Department for formal approval.

1.7 A formal approval of installation shall be valid for one year from the date of approval. If construction of the AST is not initiated within one year of issuance of the Department's letter of approval, the Owner or Operator must request an extension in writing, including the cause for the delay and the expected date of construction initiation, or the approval shall lapse. For the purpose of this rule, initiated shall mean construction equipment commonly used in Facility or system construction has been mobilized to the site and that materials used in the construction of the Facility or AST have been delivered to the site and construction has begun.

The DAQ recommends that the following changes to Section 3.0 of 1101 be made as a result of this comment:

- 3.4 If any part of 7 DE Admin. Code 1100 ~~these regulations~~, or the application of any part thereof, is held invalid or unconstitutional, the application of such part to other persons or circumstances, and the remainder of 7 DE Admin. Code 1100 ~~these Regulations~~ shall not be affected thereby and shall be deemed valid and effective.

Amendments To
Delaware's *Regulations Governing Solid Waste*

Executive Order 36
Proposed Amendments

Delaware Department of Natural Resources and Environmental Control
Division of Waste and Hazardous Substance
Solid and Hazardous Waste Management Section
89 Kings Highway
Dover, DE 19901
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ID #	Description	Page
1	Infectious Waste Packaging	2
2	Infectious Waste Labeling	3
3	Landfill Cover	4

NOTE: For the purposes of this amendment package only those sections of the hazardous waste regulations shown herein are affected. The remaining sections of the DRGHW are not affected and are unchanged. Proposed additions are indicated with underlines, and deletions are indicated with ~~strikethroughs~~.

DRGSW AMENDMENT 1:

Infectious Waste - Packaging

Packaging Requirements - The amendment supports the use of alternative packaging for infectious waste provided the packaging is consistent with federal DOT and OSHA requirements and has received prior approval from the Department of Natural Resources and Environmental Control.

11.8.2 Packaging Requirements

All infectious waste shall be packaged as follows: set forth below, unless an alternative packaging protocol has been approved in writing by the Department.

11.8.2.1 All infectious wastes, other than sharps, shall be packaged as follows:

11.8.2.1.1 Waste shall be contained in two (one bag inside the other) RED BAGS. The bags shall be individually tied or sealed. As a bag or other container becomes full, it must be immediately sealed, packaged, labeled and managed as described in this part.

11.8.2.1.2 All bags containing infectious waste shall be red in color. Waste contained in red bags shall be considered infectious waste and managed as infectious waste.

11.8.2.1.3 Bags shall be sealed by lapping the gathered open end and binding with tape or closing device such that no liquid can leak.

11.8.2.1.4 In addition to the plastic bag containers described in this section, all infectious wastes must be enclosed in a double-walled corrugated fiberboard box or equivalent rigid container before it is transported beyond the site of generation.

11.8.2.2 Sharps shall be contained in leakproof, rigid, puncture resistant containers that are tightly lidded. As soon as the first sharp is placed in an empty container, the container shall be labeled with the word "SHARPS", and the Biological Hazard Symbol.

* * * * *

11.8.4 All infectious substances that are transported must be packaged as described in the most current edition of 49 CFR 173.196, even when that transport is wholly within the boundaries of the State.

DRGSW AMENDMENT 2:

Infectious Waste - Labeling

Labeling Requirements - The amendment provides for the use of alternative labeling for infectious waste, provided such labeling is consistent with federal DOT requirements and has received prior approval from the Department of Natural Resources and Environmental Control.

11.8.3 Labeling requirements. All infectious waste shall be labeled immediately after packaging. A label shall be securely attached to the outer layer of packaging and be clearly legible. The label may be a tag securely affixed to the package. Indelible ink shall be used to complete the information on the labels, and the labels shall be at least three inches by five inches in size. Labeling shall be performed as set forth below, unless an alternative labeling protocol has been approved in writing by the Department.

11.8.3.1 The following information shall be included on label one:

11.8.3.1.1 The name, address and business telephone number of the generator,

11.8.3.1.2 "Infectious" or "Regulated Medical Waste" in large print,

11.8.3.1.3 "Pathological Waste," if pathological waste is included in the contents, and

11.8.3.1.4 The name, address and business telephone number of the hauler or other persons to whose control the infectious waste will be transferred.

11.8.3.2 The following shall be included on label two: the Biological Hazard Symbol. The label ~~shall be not less than three by five inches.~~ size and color shall meet the requirements set forth in 49 CFR 172 Subpart E.

DRGSW AMENDMENT 3:

Landfill Cover

Landfill Cover – The amendment allows greater flexibility in the use of soil-equivalent and alternative material as the final grading layer cover, provided prior approval is obtained from the Department of Natural Resources and Environmental Control.

6.0 Industrial Landfills

* * * * *

6.8 Capping System

* * * * *

6.8.2 Composition of the capping system

The capping system shall consist of at least the following components:

6.8.2.1 A final grading layer on the waste, consisting of at least six (6) inches of soil or equivalent material, to attain the final slope and provide a stable base for subsequent system components. Daily and intermediate cover may be used for this purpose. Alternative materials may be used for the grading layer with prior written approval by the Department.

6.8.2.2 An impermeable layer, consisting of at least:

6.8.2.2.1 A 30 mil geomembrane underlain by a geotextile, or

6.8.2.2.2 24 inches of clay at a hydraulic conductivity of 1×10^{-7} cm/sec or depth of equivalent material having a hydraulic conductivity less than 1×10^{-7} cm/sec, such depth to be determined based on the hydraulic conductivity of 24 inches of clay at a hydraulic

conductivity of 1×10^{-7} cm/sec. Alternative materials may be used for the impermeable layer with prior written approval of the Department.

6.8.2.3 A final cover consisting of:

6.8.2.3.1 Eighteen (18) inches of soil to provide rooting depth and moisture for plant growth, and

6.8.2.3.2 Six (6) inches of topsoil or other material approved by the Department to support the proposed vegetation; or

6.8.2.3.3 A suitable layer of alternative material or combination thereof to assure adequate rooting and moisture retention to support the proposed vegetation. The permittee shall propose a suitable vegetation dependent upon the quality and characteristics of the topsoil and compatible with the intended final use of the facility. Maintenance schedules and application rates for fertilizer and mulch shall also be submitted for approval.

7 DE Admin. Code 7502: Wetlands

6.0 Administrative Principles

6.1 Permit Required

- 6.1.1 Except for those activities that are listed as exempt in Section 6.1.4, no activity may take place in the wetlands without a permit.
- 6.1.2 No person may commence or conduct work for which a permit is required until the proper permit has been issued.
- 6.1.3 These regulations shall not apply to any segment of a project for which prior to the effective date of the Wetlands Act (July 17, 1973), on-site construction was begun and has not been voluntarily discontinued, as determined by: any aerial photos, the limits of the project as described on any applicable permits, and other evidence.
- 6.1.4 The following activities are exempt from these regulations: Mosquito control activities authorized by the Department, construction of directional aids to navigation, duck blinds, foot bridges, the placing of boundary stakes, wildlife nesting structures, grazing of domestic animals, haying, hunting, fishing, and trapping.
- 6.1.5 A permit obtained under these regulations does not exempt the applicant from obtaining any other required permits.
- 6.1.6 If any part of these regulations or their application is held invalid or unconstitutional, the application of the part to other persons or circumstances and the remainder of these regulations shall not be affected.

6.2 Waiver: The Secretary may waive any provision of the regulations when warranted under the following circumstances:

6.2.1 Life-threatening emergencies.

6.2.2 Actions are required for public safety for which sufficient time is not available to follow the regulations.

6.2.3 When imminent or catastrophic damage or loss of major infrastructure is likely if all provisions of the regulations are adhered to.

6.2.4 Where the authority of the Department under 7 Del.C. Ch. 66 overlaps with another statute, including but not limited to Shellfish Grounds, 7 Del.C. Ch. 19; Beach Preservation, 7 Del.C. Ch. 68; or Subaqueous Lands, 7 Del.C. Ch. 72, provided that the following criteria are met:

6.2.4.1 If, in the opinion of the Secretary, equal environmental impact review and regulation of the activity would be provided by either statute; and

6.2.4.2 Waiver of these regulations would not be contrary to the purposes of this chapter.

7.0 Condition for Permits

7.1 No permit will be issued to:

- 7.1.1 Dredge any channel through the wetlands deeper than the existing depth or the controlled channel depth specified by the Corps of Engineers at the point of connection to the adjacent navigable waterway to which the dredge channel is

directly connected. A lesser depth may be specified by the Secretary in furtherance of the purposes of the Act.

- 7.1.2 Dredge any channel through the wetlands that has only one outlet to navigable water through which the normal tide ebbs and flows unless the channel is equipped, by aerators or other means, to maintain the Water Quality Standards for Streams that are issued from time to time by the Department.
- 7.1.3 Dredge channels through the wetlands with sides more nearly vertical than a slope that rises one foot vertically for each three feet of horizontal distance except where conditions of soil composition prevent slope stabilization, so that bulkheading must be used.
- 7.1.4 Utilize wetlands for any activity unless it:
 - 7.1.4.1 Requires water access or water for the central purpose of the activity; and
 - 7.1.4.2 Has no practicable alternative on adjoining non-wetland property of the owner.
- 7.1.5 Building bulkheads on wetlands higher in elevation than the surface of the natural land. Navigational aids that do not prevent the ebb and flow of the tide may be higher.

8.0 Procedures for Applications

8.1 An application for a permit shall be filed with the Division of ~~Water~~Environmental Control.

~~8.2 Type I Permits (Abbreviated Procedure) are required for:~~

~~8.2.1 Projects for which a total of one (1) acre or less of wetlands is involved, and no building of structures is included.~~

~~8.2.2 The maintenance or repair of bridges, roads, highways, or the facilities of any municipality or public utility including the construction and maintenance of lines for the transmission of electrical energy that do not require the construction of permanent access roads or other fixed works related thereto, and which will permit the unobstructed flow of the tide and preserve the natural contour of the wetlands.~~

~~8.2.2.1 This provision shall not apply in emergencies; in which cases, written notification shall be made to the Division within seven (7) days after initiation.~~

~~8.2.3 Maintenance dredging that does not result in deposit of spoils on wetlands.~~

~~8.2.4 Maintenance work on existing wildlife management impoundments.~~

~~8.3 Application Procedure: To obtain a Type 1 Permit, a person shall apply in writing to the Division on forms provided for that purpose. The application shall contain the following:~~

~~8.3.1 The names and address of the applicant.~~

~~8.3.2 A written explanation of the proposed activity and the reasons for undertaking it, including a plan of the entire project of which the proposed activity is a part.~~

~~8.3.3 Evidence of local zoning approval.~~

~~8.3.4 Two (2) copies of a detailed plan of the proposed activity which shall include:~~

~~8.3.4.1 A map showing the location and boundaries of the proposed activity in relation to adjoining property and to the nearest existing street or~~

~~road intersection and the specific location of all proposed activity, particularly filling, dumping and excavation.~~

~~8.3.4.2 — A detailed description of all proposed activity, particularly filling, dumping and excavation.~~

~~8.3.4.3 — A detailed description of measures to be taken during and after the completion of the proposed activity to reduce detrimental effects.~~

~~8.3.4.4 — Evidence of applicant's ownership of the lands or permission from the owner for the project.~~

~~8.3.4.5 — A list of the names and addresses of the owners, as listed with the County Board of Assessment, of neighboring lands within 1,000 feet of the project and any claimants of such ownership rights that are known to the applicant, with their last known address.~~

8.2 Permits or Letters of Authorization (Full Procedure) are required for any activity occurring in wetlands with the exception of those activities listed as exempt in Section 6.1.4:

~~8.4.1 — Projects involving more than one (1) acre of wetlands.~~

~~8.4.2 — Projects involving the building of structures.~~

~~8.4.3 — The construction and maintenance of lines for the transmission of electrical energy that require artificially solidified bases, and/or the construction of permanent access roads or other fixed works related thereto, which alter the flow of the tide or the natural contour of the wetlands.~~

~~8.4.4 — The construction and maintenance of water, gas or petroleum lines.~~

8.35 Application Procedure: To obtain a Type II Permit or Letter of Authorization a person shall apply in writing to the Division on forms provided for that purpose. The application shall be submitted in duplicate and shall contain the following:

8.35.1 The name and address of the applicant.

8.35.2 A written explanation of the proposed activity and its need, including a plan of the entire project of which the proposed activity is a part.

8.35.3 A list of the name and addresses of the owners, as listed with the County Board of Assessment, of neighboring lands within 1,000 feet of the project and any claimants of such ownership rights that are known to the applicant, with their last known addresses.

8.35.4 Evidence of local zoning approval.

8.35.5 A map showing the location and boundaries of the area of the proposed activity and the specific location of all proposed structures, filling, dumping and excavation.

8.35.6 A detailed plan of the proposed activity, drawn to an appropriate and uniform scale, indicating the procedures to be used and the area(s) of existing and proposed fill and excavation, of any; existing and proposed finished elevations; all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, parking areas, and other related facilities, and the type of equipment to be used, and the means of equipment access to the activity site.

8.35.7 Evidence of ownership of the property on which the proposed activity will be conducted, and, if the applicant is not the owner, written permission from the owner to conduct the activity.

8.35.8 An Environmental Summary which includes an evaluation of the project in relation to the factors listed in

Section 12.0

subheadings

and:

- 8.35.8.1 The reasons that structures cannot feasibly be located on adjacent property of the owner other than wetlands.
 - 8.35.8.2 Temporary and permanent changes which would be caused by the proposed project and the impact of these changes on the project area and adjacent areas.
 - 8.35.8.3 Alternatives to the proposed action which would reduce or avoid environmental damage.
 - 8.35.8.4 All measures to be taken during and after the completion of the proposed project to reduce detrimental effects.
 - 8.35.8.5 Adverse environmental impact which cannot be avoided.
 - 8.35.8.6 The Secretary may require more detailed evaluations in proposed activities that have a major impact on wetlands.
- 8.4 Application Review: Within thirty (30) days following receipt of an application, the Division shall notify the applicant in writing regarding its completeness. The Division may declare the application to be complete for filing or may notify the applicant of specific deficiencies. The Division, within fifteen (15) days following the receipt of additional information to correct deficiencies, shall notify the applicant of the completeness of the amended application. The application shall not be considered to be filed in proper form until it has been declared complete by the Division.
- 8.5 Statewide Activity Approvals. The Department may adopt statewide activity approvals for certain specified activities with limiting dimensions and criteria which are considered to have minimal impacts on wetlands, water quality, habitats, etc. The qualification of a project for a statewide activity approval may require no review or will invoke an abbreviated review process for a decision by the Department.

Repeal of all regulatory language is proposed.

~~Title 7 Natural Resources and Environmental Control~~

~~7500 Wetlands and Subaqueous Lands~~

~~7503 Oil Gas and Mineral Exploration Regulations~~

~~Adopted by the Water and Air Resources Commission 27 September 1971~~

~~Effective 1 November 1971~~

~~1.0 Authority~~

~~The Delaware Water and Air Resources Commission establishes and adopts the following Rules and Regulations, pursuant to the authority granted by Section 6001 of the Delaware Water and Air Resources Act. (Delaware Code, Title 7, Part VII, Chapter 64).~~

~~2.0 Statement of Policy~~

~~2.1 It is declared to be the policy of the State of Delaware that: (1) the development, utilization, and control of all oil, gas and other mineral resources shall be directed to make the maximum contribution to the public benefit, and (2) the State, in the exercise of its sovereign power, acting through the Water and Air Resources Commission, should control the development and use of said resources of the State so as to effectuate full utilization, conservation, and protection of the same.~~

~~2.2 These Rules and Regulations are based upon the best information presently available. It is anticipated that they will be subject to review and revision periodically as additional information and methods become available.~~

~~2.3 The terms "shall" and "will," where used herein, are intended to indicate a mandatory requirement. The terms "regulation," "requirement" and "rule" are used interchangeably. If any part of these Rules and Regulations, or the application of any part thereof, is held invalid or unconstitutional, the application of such part to other persons or circumstances, and the remainder of these Rules and Regulations, shall not be affected thereby and shall be deemed valid and effective.~~

~~2.4 The failure of the State to enforce any of these Rules and Regulations shall not constitute a waiver by the State of any such Rule or Regulation.~~

~~3.0 Scope and Applicability~~

~~3.1 The Regulations herein shall apply to all projects and the aspects thereof dealing with:~~

~~3.1.1 the exploration and exploitation of gas, oil and other minerals occurring within the boundaries of Delaware; and~~

~~3.1.2 the exploration for and operation of gas storage reservoirs.~~

~~4.0 General Definitions~~

~~“Applicant” Any person who files an application under these Rules.~~

- “Barrel of Oil”** Forty two (42) United States gallons of oil at a temperature of sixty (60) degrees Fahrenheit, with deductions for the full percent of basic sediment, water and other impurities present, ascertained by centrifugal or other recognized and customary test.
- “Blowout”** A sudden or violent escape of oil and/or gas from a drilling well, when high formation pressure is encountered.
- “Blowout Preventer”** A heavy casinghead control fitted with special gates or discs which may be closed around the drill pipe, or which completely closes the top of the casing if the pipe is withdrawn.
- “Bottom Hole Pressure”** The pressure in pounds per square inch at or near the bottom of an oil or gas well determined at the face of the producing horizon by means of a pressure recording instrument, adopted and recognized by the oil and gas industry.
- “Casing Pressure”** The pressure built up between the casing and the tubing when the casing and tubing are packed off at the top of the well.
- “Casinghead Gas”** Any gas or vapor, or both gas and vapor, indigenous to an oil stratum and produced from such stratum with oil.
- “Christmas Tree”** An assembly of valves and fittings at the head of the casing of a well to control the flow. Also spoken of as "wellhead connections."
- “Circulation”** The passing of an approved fluid down through the drill stem and up to the surface in the processes of rotary drilling, setting casing, cleaning, treatment or stimulation.
- “Commission”** The Delaware Water and Air Resources Commission or, if so designated pursuant to Section 6440, the State Geologist. May refer to Commission only or to the Commission and the Governor.
- “Condensate”** The liquid produced by the condensation of a vapor or gas either after it leaves the reservoir or while still in the reservoir. Condensate is often called "distillate," "drips," "white oil," etc.
- “Conservation”** The conserving, preserving, guarding or protecting of the oil and gas resources of the State by obtaining the maximum efficiency with minimum waste in the production of oil and gas.
- “Controlled Deviations”** Controlled directional deviation shall mean the intentional deviation of a well from vertical in a predetermined compass direction; and controlled random deviation shall mean the intentional deviation of a well from the vertical without regard to compass direction for one of the following reasons:
- to straighten a hole which has become crooked in the normal course of drilling;
 - or
 - to sidetrack a portion of a hole because of mechanical difficulty in drilling.
- “Cubic Foot of Gas”** The amount of gaseous hydrocarbons contained in a cubic foot of space at a base temperature of sixty (60) degrees Fahrenheit and an absolute pressure of 14.4 pounds per square inch plus four (4) ounces per square inch, which temperature and pressure are referred to as the base temperature and pressure, respectively.
- “Day”** A period of twenty four (24) consecutive hours from 7:00 a.m. one day to 7:00 a.m. the following day.
- “Dry Gas”** Natural gas obtained from reservoirs that produce gas only; or natural gas which does not contain the heavier fractions which may easily condense under normal atmospheric conditions; not casinghead gas.

- ~~“**Exploration**” Geological, geophysical and other surveys and investigations including seismic methods.~~
- ~~“**Exploratory Well**” Any well drilled to a depth greater than the existing freshwater strata for the purpose of securing geological or other information which may be obtained by penetrating the earth with a drill bit, coring equipment and similar tools.~~
- ~~“**Field**” The general area which is underlaid, or appears to be underlaid, by at least one pool; and “field” shall include the underground reservoir, or reservoirs containing oil or gas, or both. The words “field” and “pool” mean the same thing when only one underground reservoir is involved; however, “field” unlike “pool,” may relate to two or more pools.~~
- ~~“**Gas**” All natural hydrocarbon gas, including casinghead gas, and all other fluid hydrocarbons not defined as oil, including condensate originally in the gaseous phase in the reservoir.~~
- ~~“**Gas Lift**” The lifting of liquids from a well by use of extraneously introduced gas.~~
- ~~“**Gas Well**” Any well producing natural gas not associated with crude petroleum at the time of production, or any well completed in the gas cap of an associated reservoir.~~
- ~~“**Illegal Gas**” Gas which has been produced within the State from any well or wells in excess of the amount allowed by any rule, regulation or order of the Commission as distinguished from gas produced within the State from a well not producing in excess of the amount so allowed, which is “legal gas.”~~
- ~~“**Illegal Oil**” Oil which has been produced within the State from any well or wells in excess of the amount allowed by any rule, regulation or order of the Commission as distinguished from oil produced within the State from a well not producing in excess of the amount so allowed, which is “legal oil.”~~
- ~~“**Inspector**” Any employee of the State duly authorized to act in that capacity.~~
- ~~“**Lease Tank**” The tank or other receptacle into which oil is produced either directly from a well or from a well through a gas separator, gun barrel or other similar equipment.~~
- ~~“**Maximum Efficiency Rate**” Commonly referred to as “MER,” is the highest daily rate of production which can be sustained economically from a particular pool for a reasonable period without loss of economically recoverable ultimate production of oil from such pool.~~
- ~~“**Mineral**” Any natural inorganic substance with definite chemical and physical properties which is present in or at the bottom of a body of water, or anywhere within the earth's crust.~~
- ~~“**Month and Calendar Month**” The period or interval of time from 7:00 a.m. on the first day of any month of the calendar to 7:00 a.m. on the first day of the next succeeding month of the calendar.~~
- ~~“**Mud-Laden Fluid**” A mixture of water and clay or other material which will effectively seal the formation to which it is applied.~~
- ~~“**Oil**” Crude petroleum oil and all other liquid hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods; but does not include liquid hydrocarbons that were originally in a gaseous phase in the reservoir.~~
- ~~“**Oil Well**” Any well which produces crude petroleum oil as the term is commonly used in the industry.~~

“Owner” The person who has the right to drill into and to produce from any pool, and to appropriate the production either for himself or for himself and another, or others.

“Person” Any individual, firm, co partnership, company, business trust, association, private corporation, municipal corporation, public or quasi public operation, county, city and county, district, political subdivision, department or other instrumentality of government, receiver, tutor, curator, executor, administrator, fiduciary, trustee, guardian, or representative of any kind.

“Pool” An underground reservoir containing or appearing to contain a common accumulation of oil or gas or both.

“Pressure Base” An absolute pressure agreed upon or set as a base, or converting volume of gas metered to a correct volume.

“Pressure Maintenance” (1) The reintroduction (in the early stages of field development) of gas or liquid produced from an oil or gas well to maintain the pressure of the reservoir. (2) The introduction of gas or fluid for the same purpose but obtained from an outside source.

“Producer” The owner or operator of a well or wells capable of producing oil or gas, or both:

“Reasonable Market Demand” The amount of oil reasonably needed for current consumption, together with a reasonable amount of oil for storage and working stocks.

“Recovered Load Oil” Any oil or liquid hydrocarbons used in any operation in an oil or gas well and which has been recovered as a merchantable product.

“Seismic Explorations” Any geophysical exploration method which involves the use of explosives or other energy sources.

“Separator” An apparatus for separating oil, gas, water, etc., with relative efficiency, as it is produced.

“Shot” The use and detonation of powder, dynamite, nitroglycerine or other explosives.

“Shut-In Surface Pressure” The pressure noted at the wellhead when the well is completely shut-in. Not to be confused with "bottom hole or reservoir pressure."

“Sour Gas” Any natural gas containing more than one and one half (1 1/2) grains of hydrogen sulfide per one hundred (100) cubic feet or more than thirty (30) grains of total sulphur per one hundred (100) cubic feet or gas which, in its natural state, is found by the Commission to be unfit for domestic or industrial purposes.

“State” The State of Delaware.

“Sweet Gas” All natural gas except "sour gas."

“Underground Water” Any supply of water which may be developed by any type of well or spring from beneath the surface of the ground whether the water flows there from by natural force or is withdrawn by pumping or other mechanical device or artificial process.

“Waste” In addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood in the oil and gas industry. Waste shall include: the inefficient, excessive or improper use or dissipation of reservoir energy, and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which results, or tends to result, in reducing the quantity of oil or gas ultimately to be recovered from any pool in this State; and

~~the inefficient storing of oil, and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner causing, or tending to cause, unnecessary or excessive surface loss or destruction of oil or gas.~~

~~“Watercourse” Any lake, river, creek, cut or other natural body of water or channel.~~

~~“Well Log” The written record progressively describing the strata, water, oil or gas encountered in drilling a well with such additional information as to gas volume, pressures, rate or fill up, water depths, casing strata, casing record, etc., as is usually recorded in the normal procedure of drilling.~~

5.0 — Exploratory Permits and Leasing Procedures

5.1 — General Rules Applying to Permits and Leases

~~5.1.1 — The issuance of permits and leases is subject to any future rules and regulations which may be adopted by the Commission. When such changes or additions are proposed, all permittees and lessees shall be given due written notice.~~

~~5.1.2 — No permit or lease, or any portion thereof, shall be assignable without the prior written consent of the Commission~~

~~5.1.3 — The State reserves the right to permit reasonable nonconflicting use (including seismic surveys but excluding core hole drilling of lands under lease) so long as: (1) such uses do not unreasonably impair or interfere with operations of the lessee, and (2) requirement is made that the permittee indemnify the lessee against any damage caused by such use.~~

~~5.1.4 — No permit or lease shall be granted to any person then in violation of any laws or regulations applicable to such operations.~~

~~5.1.5 — Avoidable pollution of the ocean, the waters covering submerged lands, the beaches, land underlying the ocean or other ground or surface waters or any substantial impairment of and interference with the enjoyment and use thereof, including but not limited to bathing, boating, fishing, fish and wildlife production, and navigation, shall be prohibited, and the permittee or lessee shall exercise a high degree of care to provide that no oil, tar, residuary product of oil or any refuse of any kind from any well or works shall be permitted to be deposited on or pass into the waters of the ocean, any bay or inlet thereof, or any other waters of the State; provided, however, that this Section does not apply to the deposit on or passing into such waters of water not containing any hydrocarbons, or vegetable or animal matter. Avoidable pollution means pollution arising from:~~

~~5.1.5.1 — the acts or omissions of the lessee or permittee or its officers, employees or agents; or~~

~~5.1.5.2 — events that could have been prevented by the lessee or permittee or its officers, employees or agents through the exercise of a high degree of care. — Methods acceptable to and approved by the Commission must be used for the containment and release of any and all wastes generated by members of the working crew and from the operations.~~

~~5.1.6 — The lessee or permittee shall be held responsible for any damages resulting from avoidable pollution caused by the exploration and shall immediately notify the Commission of such damages or pollution and move immediately to correct, alleviate or eliminate such damages or pollution. All such actions shall be subject to the direction of the Commission representative.~~

- ~~5.1.7— All permits or leases granted pursuant to this Regulation shall be subject to prior approval by the Department of Defense of the United States and shall be subject to any restriction or limitation imposed by the Department of Defense.~~
- ~~5.1.8— The Commission may require, as a condition to the issuance of any permit or lease, that the permittee or lessee make available to the Commission or the State Geologist upon request, all factual and physical exploration results, logs and records for the upper 2,000 feet resulting from the operations under the permit or lease. Any such factual or physical exploration results, logs or records which are required shall not be open to inspection by any other person or agency without the written consent of the lessee or permittee.~~
- ~~5.1.9— The Commission may promulgate reasonable rules, regulations and orders necessary to regulate the activities accounted for herein.~~
- ~~5.2— Permits for Exploratory Surveys~~
- ~~5.2.1— The Commission, upon application by any person, may issue a permit for the geological, geophysical or seismic survey, including the taking of cores and other samples, of any State owned or private onshore or offshore lands. Such permits shall be nonexclusive and shall not give any preferential rights to any oil, gas and sulphur or other mineral lease.~~
- ~~5.2.2— Applications for permits to conduct such work shall be filed in triplicate on Form DGO-1 at least sixty (60) days prior to the desired approval date, and be accompanied by an application fee of \$250.00.~~
- ~~5.2.3— Having received a complete application, the Commission shall publish legal notice of same. A public hearing on the application will not be required unless requested by the applicant, called by the Commission in the public interest, or an objection is filed within ten (10) days following legal notice. The cost of hearings shall be charged in advance to the applicant and any overpayment returned to same.~~
- ~~5.2.4— After notification and consultation with those State agencies and other parties having an interest in such matters, the Commission shall include such conditions in the permit as it deems necessary to protect the fish, game, wildlife, natural resources and private interests within the State.~~
- ~~5.2.5— Permits are issued only for exploratory surveys.~~
- ~~5.2.6— The Commission may prohibit exploration surveys on any area if it determines that a lease, if applied for, should not be granted as to such areas.~~
- ~~5.2.7— The Commission shall require the permittee to provide the Board of Game and Fish Commissioners and the Delaware Commission of Shell Fisheries with complete information with respect to the underwater area or areas of proposed operations, type of exploration, and a schedule showing the period or periods during which such explorations will be conducted. Such information shall be treated as confidential unless released by the permittee.~~
- ~~5.2.8— Permits issued under this Section shall not exceed two (2) years, and may be renewed for like periods upon application to the Commission.~~
- ~~5.2.9— There shall be no restriction as to the maximum area of public lands open for exploration.~~
- ~~5.2.10— Seismic explorations involving the use of explosives shall not be permitted unless it can be substantiated to the satisfaction of the Commission that the use of~~

~~explosives is essential to the nature of the exploration and there will be no resultant damages. Where explosives are permitted, the exploration shall be carried out in the following manner:~~

- ~~5.2.10.1 — No shots in excess of fifty (50) pounds are to be used.~~
- ~~5.2.10.2 — No shots shall be discharged within five hundred (500) feet of any dock, pier, causeway, other structure, marked fishery bed or dredged channel, within one (1) mile of any pass, jetty, mouth of river or fishing boat, nor within two (2) miles of any resort beach during the months of May through September.~~
- ~~5.2.10.3 — Shot point location maps shall be maintained by the permittee and be made available upon request by the Commission.~~
- ~~5.2.10.4 — The permittee shall notify the Commission at least twenty four (24) hours in advance of any shots in order that the Commission, if it so desires, may assign a Commission representative to the exploration party.~~
 - ~~5.2.10.4.1 The exploration party shall furnish the Commission representative transportation to and from any offshore working area and provide meals and sanitary living quarters aboard exploration ships when said ships are equipped to do so and when it is necessary for the representative to remain for any substantial period of time. A fee of \$1,500.00 per month will be charged to pay the expenses of each Commission representative. One half of this amount will be charged for any portion of a month less than fifteen (15) days, and the full amount charged for any portion of a month exceeding fifteen (15) days. Payments are to be made directly to the Commission.~~
 - ~~5.2.10.4.2 The representative has the right to stop any particular shooting, if in his opinion it will violate the Rules and Regulations contained herein, but does not have the authority to shut down the entire exploration work. If such operations continue, he will immediately contact the Commission, and the members of the exploration party will assist him to do this with all the facilities at their disposal.~~
 - ~~5.2.10.4.3 No representative shall have the right to release any operator in the exploration party from the obligations imposed by these Rules and Regulations. Exceptions may be granted by the Commission only after written application setting forth reasons for exceptions. The release will designate the particular area and rule affected and the procedure to be followed in lieu of the established rule.~~
 - ~~5.2.10.4.4 No more than two (2) Commission representatives shall be assigned to each party. More than two (2) representatives, however, may be present.~~
- ~~5.2.10.5 — Before any shot is discharged in offshore areas, the exploration party shall install a fish finder, fathometer or other fish locating device. The shooting pattern shall be done in such away as to avoid excessive fish kills. The permittee shall employ any method approved by the Commission to frighten and drive away the fish and marine life which may be in the area. Operations must be suspended in that area until the schools of fish have been driven away.~~

- ~~5.2.10.6 All explosives shall be distinctly and permanently marked for identification by the permittee.~~
- ~~5.2.10.7 The permittee may be required to police nearby beaches and furnish a crew to bury or dispose of excessive fish kills, where these occur and threaten to become a health hazard or limit the use of the beach.~~
- ~~5.2.10.8 All motor vessels and ships used in seismic explorations shall be clearly marked as to identity and shall fly such warning signals as required by Coast Guard regulations for ships engaged in dangerous operations. All explosives, caps and primers will be handled and stored in accordance with the regulations of the U. S. Coast Guard Service.~~
- ~~5.2.10.9 Any undischarged suspended shot shall be detonated before the exploration party abandons the working area.~~
- ~~5.2.11 For each exploratory well to be drilled in search of minerals, a prior written permit from the Commission is required. Applications for test well permits (Form DG0-2) should be submitted in triplicate at least seven (7) days prior to any anticipated drilling and must be accompanied by a fee of \$500.00 for each well. The written approval shall be valid for a period of six (6) months from the date of issuance. If a well is not started during that period, two (2) successive renewals of three (3) months duration each may be granted at a cost of \$150.00 each. If after the two (2) renewal periods the well has not been started, a new permit must be obtained at a cost of \$500.00. For each drilling permit that must be altered, amended or changed after its initial issuance, an additional fee of \$200.00 shall be required. If public hearing is required, additional costs shall be paid by the applicant.~~
- ~~5.2.12 If a permittee should drill a hole, said hole or holes shall be drilled in such a manner so as to interfere as little as possible with the fishing industry and be constructed in such a manner as to comply with all regulations concerning the drilling, safety, casing, abandoning and plugging of wells. All operations in connection therewith shall be carried out in a manner that will not create pollution of any surface or underground water due to the escape, release or injection of oil, gas, salt water or other mineralized waters from any well. Upon abandonment of any hole, all rigging and material shall be removed and the bottom restored to its former condition as nearly as possible.~~
- ~~5.2.13 The permittee is to have with it, at all times, a copy of the permit granted and to display on all boats and structures a readable permit number as issued by the Commission.~~
- ~~5.2.14 The person directing field operations shall submit monthly reports summarizing exploration activities and providing a detailed inventory of all explosives loaded, used and returned for explorations conducted under each permit.~~
- ~~5.2.15 Within thirty (30) days after the expiration date of a permit the permittee shall file a report with the Commission designating all days on which operations necessary or incident to the exploration were conducted in any area or period covered by the permit.~~
- ~~5.2.16 The Commission may require any data deemed necessary to assist in correcting a water pollution problem.~~

~~5.3 Leasing Procedures~~

- ~~5.3.1 — Before any person shall remove any oil, gas or other mineral from the public lands of the State of Delaware (Form DGO 3), or store any oil or gas in underground reservoirs within the State of Delaware (Form DGO 4), said person shall submit an application in triplicate to the Commission requesting that such lands be leased and/or such actions be approved. The application shall be submitted at least ninety (90) days prior to any anticipated final authorization, and shall be accompanied by a certified check for \$2,000.00. Any additional necessary expenses shall be paid by the applicant prior to issuance of a lease.~~
- ~~5.3.2 — Before offering lands for leasing, or whenever any person files an application, the Commission shall hold a public hearing as provided in this Section, the cost of such hearing to be assessed to the successful bidder for any lands put tip for lease.~~
- ~~5.3.3 — Before granting a lease or inviting bids, the Commission shall cause written notice describing the area under consideration and other pertinent information to be transmitted to:~~
- ~~5.3.3.1 — Department of Highways and Transportation~~
 - ~~5.3.3.2 — State Planning Office~~
 - ~~5.3.3.3 — Department of Natural Resources and Environmental Control~~
 - ~~5.3.3.4 — Department of Health and Social Services~~
 - ~~5.3.3.5 — State Geologist~~
 - ~~5.3.3.6 — The applicant~~
 - ~~5.3.3.7 — Prospective applicants or bidders, by publication thereof in two or more publications of general circulation in the pertinent industry~~
 - ~~5.3.3.8 — The public, by publication thereof once each week for not less than two (2) weeks in a newspaper of general circulation throughout the State and, in addition, in a newspaper of general circulation in the county in which the lands lie or the county or counties contiguous to the area under consideration for bidding. The notice shall set forth the place of hearing and shall set its time at not less than twenty (20) days following date of the last newspaper publication.~~
- ~~5.3.4 — The Commission may appoint one of its officers or employees to conduct hearings. An officer or employee of each interested State agency, board, or commission named in Section 3.03 of this Regulation may question any witnesses appearing on behalf of the Commission or applicant, and any interested person may offer evidence and otherwise be heard.~~
- ~~5.3.5 — After the public hearing the Commission shall determine whether an invitation for bidding to lease the area under consideration would be in the public interest. In such determination the Commission shall consider whether a lease or leases of the area under consideration would:~~
- ~~5.3.5.1 — be detrimental to the health, safety, or welfare of persons residing, owning real property, or working in the neighborhood of such areas;~~
 - ~~5.3.5.2 — interfere with the residential or recreational areas to an extent that would render such areas unfit for recreational or residential uses or unfit for park purposes;~~
 - ~~5.3.5.3 — destroy, impair or interfere with the esthetic and scenic values of the Delaware coast, or other affected area;~~
 - ~~5.3.5.4 — create any air, water or other pollution;~~

- ~~5.3.5.5 — substantially endanger marine life or wildlife;~~
- ~~5.3.5.6 — substantially interfere with commerce or navigation;~~
and
- ~~5.3.5.7 — protect State land from drainage of oil, gas or other minerals or objectionable substances.~~
- ~~5.3.6 — The Commission may offer to lease all State lands, including tide and submerged lands by publication of a notice of its intention to do so, pursuant to the provisions of Section 3.3 of this Regulation. The notice shall describe the lands so offered, and shall specify the minimum rate of royalty and rental, the manner in which bids may be filed with the Commission, the amount of deposit required with the bid, and the time and place for filing bids, which time shall not be less than thirty (30) days after the date of last publication of such notice. Further, the notice shall state that the lease will be awarded to the bidder offering the highest cash bonus, that the form of lease, conditions for bidding and bid forms may be obtained from the Commission upon request, and that the lease is subject to approval by the United States Defense Department.~~
- ~~5.3.7 — Bids may be for the whole or any particularly described portion of the land advertised.~~
- ~~5.3.8 — The bid for each tract shall be enclosed in a sealed envelope, shall be on the form provided by the Commission and shall be accompanied by duplicate lease forms executed by the bidder, and by a certified or cashier's check or checks payable to the State of Delaware in the amount fixed by the Commission which sum shall be deposited as evidence of good faith and, except in the case of the successful bidder, shall be returned to the bidder promptly. If the successful bidder fails to pay the balance of the cash bonus bid and the annual rental for the first year within fifteen (15) days after the award of the lease, or fails to post any bond required by the lease or the regulations in effect at the date of the invitation for bids within the time prescribed, the amount of the deposit shall be forfeited to the State.~~
- ~~5.3.9 — At the time and place specified in the notice, the Commission shall publicly open the sealed bids and shall within thirty (30) days reject all bids or award the lease for each parcel to a responsible bidder who, in addition to complying with all of the conditions for bidding, offers the highest cash bonus. The Commission may reject any or all bids.~~
- ~~5.3.10 — Following the award of the lease, the payment by the successful bidder of the balance of the cash bonus, the annual rental for the first year, the fees specified in this Section, and the posting of any required bonds, the Commission and the Governor shall execute the lease in duplicate on behalf of the State and transmit one counterpart thereof to the lessee. The lease shall become effective as of the date of such execution.~~
- ~~5.3.11 — The lease shall grant the exclusive right to remove oil, gas, sulphur or other mineral deposits in the leased land and be for a primary term of ten (10) years and for so long thereafter as oil, gas, sulphur or other minerals are produced in paying quantities from the leased land, or the lessee is diligently conducting, producing, deepening, repairing, redrilling or other necessary lease or well maintenance operations on the leased land, or is excused from conducting such operations under the terms of the lease.~~

- ~~5.3.12 The State shall have a lien upon all production for unpaid royalties.~~
- ~~5.3.13 In the event production on the Leasehold shall cease at any time or from time to time, after the expiration of the primary term of the lease, the lease shall nevertheless continue in full force and effect if the lessee shall, within six (6) months after the cessation of production or within such longer period of time as the Commission may authorize, commence and thereafter prosecute with reasonable diligence drilling, deepening, repairing, redrilling or other operations for the restoration of production of oil, gas, sulphur or other minerals.~~
- ~~5.3.14 Subject to the lessee's right to surrender, the lessee shall commence operations for the drilling of well within five (5) years from date of the lease and commence production within three (3) years of discovery of oil, gas, sulphur or other minerals in paying quantities, unless the Commission shall have, for cause, granted an extension of time for such act. In addition, the lease shall have such exploratory, drilling and producing requirements as the Commission deems necessary to encourage the exercise of due diligence on the part of the lessee.~~
- ~~5.3.15 In leasing tide and submerged lands, the Commission may not discriminate between bidders by requiring drilling from:~~
- ~~5.3.15.1 upland or littoral drill sites;~~
 - ~~5.3.15.2 sites on filled land, whether contiguous or noncontiguous to the littoral lands or uplands; or~~
 - ~~5.3.15.3 any pier, platform or other fixed or floating structure in, on or over tide and submerged lands with respect to which this State or any other owner thereof has consented to use.~~
- ~~5.3.16 In addition to the cost of processing all documents relative to the leasing of lands, the successful bidder shall also pay for the public hearing held pursuant to Section 3 of this Regulation.~~
- ~~5.3.17 The minimum royalties to be stipulated in any lease shall be:~~
- ~~5.3.17.1 twelve and one half (12 1/2) percent of the gross production, or the value thereof, of all oil and gas produced and saved from leased lands and not used by the lessee for operations. Such royalty shall, at the Commission's option, be paid in kind or value, and be computed after an allowance for the actual cost of oil treatment or dehydration of not more, than \$0.05 per barrel of royalty oil so treated or dehydrated.~~
 - ~~5.3.17.2 \$1.00 per long ton of sulphur produced and saved~~
 - ~~5.3.17.3 \$0.10 per ton of potash produced and saved~~
 - ~~5.3.17.4 twelve and one half (12 1/2) percent, or the value thereof, of all other minerals produced and saved~~
- ~~5.3.18 The minimum rental payable annually in advance shall be \$0.25 per acre of leased land.~~
- ~~After production has been established, rent shall be deducted from any royalty due under the terms of a lease during the year for which such rent has been paid.~~
- ~~5.3.19 The maximum area which shall be included in any single lease to any person shall be six~~
- ~~(6) square miles or three thousand eight hundred forty (3,840) acres.~~
- ~~5.3.20 Sufficient bonding or insurance requirements, as determined by the Commission, shall be specified to secure to the State performance and the faithful compliance by the lessee with the terms of the lease, and further to secure adjacent~~

~~landowners and the public generally as to all proper claims for damages arising from operations thereunder.~~

- ~~5.3.21 Upon any partial or total termination, surrender or forfeiture of its lease, the Commission may require that the lessee, within a reasonable time, restore that visible portion of the premises to substantially its original condition.~~
- ~~5.3.22 The lessee shall at all time proceed with due diligence to protect the leasehold from drainage by wells on lands not owned by the State.~~
- ~~5.3.23 If the lessee, as disclosed by information submitted with his bid, proposes to drill one or more wells from filled lands, whether contiguous or noncontiguous to the littoral lands or uplands, or from any pier or from platforms or other fixed or floating structures to be constructed for such purpose, and if permission from any federal or state agency is legally required in order to construct any such filled lands or structures, the lessee shall be allowed a reasonable time following the execution of the lease within which to secure the necessary permission from such federal and state agencies as shall be legally required, and, upon the securing of such permission, a further reasonable time, determined with regard to the nature of the filled lands or structure or structures to be constructed within which to commence operations for the drilling of such well or wells, and if necessary, the drilling term provided for in Section 3.14 of this title shall be extended by the Commission to the date to which the time to commence operations for the drilling of such well or wells has been extended.~~
- ~~5.3.24 The lessee may at any time file with the Commission a written surrender of all rights under the lease or any portion thereof or any separate or distinct zone or geological horizon or any portion thereof. Such surrender shall be effective as of the date of its filing subject to the continuing obligation of the lessee to pay all rentals and royalties theretofore accrued and to place all wells on the lands or in the zones or horizons surrendered in condition for suspension or abandonment in accordance with the applicable lease terms, regulations and law. Thereupon the lessee shall be released from all obligations under such lease with respect to the lands, zones or horizons surrendered, but no such surrender shall release such lessee from any liability for breach of any monetary obligation of the lease with respect to which such lessee is in default at the time of the filing of such surrender.~~
- ~~5.3.25 The Commission shall reserve and may exercise the authority to cancel any lease upon which oil, gas, sulphur or other minerals have not been discovered in paying quantities, upon failure of the lessee after thirty (30) days' written notice and demand for performance to exercise due diligence and care in the prosecution of the prospecting of development or work in accordance with the terms of the lease. After discovery of oil, gas, sulphur or other minerals in paying quantities, on lands subject to any lease, such lease maybe forfeited and cancelled only by appropriate judicial proceedings upon failure of the lessee after ninety (90) days' written notice and demand for performance to comply with any of the provisions of the lease or of laws or regulations applicable thereto and in force at the date of the invitation for bids in pursuance of which the lease was awarded; provided, however, that in the event of any such cancellation the lessee shall have the right to retain under such lease any and all drilling or producing wells as to which no default exists, together with a parcel of land surrounding each such well and such rights of way through the leased lands as maybe reasonably necessary to enable such lessee to drill and operate such retained well or wells. In the event of~~

~~the cancellation of any lease, the lessee shall have a reasonable time within which to remove all property, equipment, and facilities owned or used by the lessee in connection with operations under the lease.~~

~~5.3.26 It shall be a continuing condition of such lease that the lessee shall conform to all applicable laws of the State and all duly promulgated rules and regulations pursuant hereto in effect at the date of the invitation for bids in pursuance of which the lease was awarded. Periodic mutual negotiations between lessee and lessor may be carried out to make conditions, rules and regulations current as warranted by changes in environment or operational methods.~~

~~5.3.27 All leases and other instruments required in carrying out this Regulation shall be executed by the Commission and the Governor. All bonds, contracts and other instruments required by this Regulation for the protection of the interests of this State and its political subdivisions, persons and property therein shall be executed and delivered to the Commission.~~

~~5.3.28 The proceeds from all leases under this Regulation, including rents and royalties, after payment of the necessary expenses incurred by the Commission in carrying out this Regulation, shall be turned over to the State Treasurer and deposited by him in the General Fund of the State.~~

~~5.3.29 Under a lease entered into by the Commission pursuant to this Regulation, the fill constituting filled lands may be retained in place or protected by bulkheads, seawalls, revetments or similar enclosures and may be placed at any location approved by the Commission in consultation with interested agencies, boards and commissions.~~

~~5.3.30 Any interests in lands, or lands in fee simple, acquired by the Commission by purchase, donation, lease, condemnation or otherwise, may be made available to any lessee of the State for the purposes contained in this Regulation and upon such terms and conditions as may be determined by the Commission.~~

~~5.3.31 The leasing procedures and royalties specified herein pertain to activities on State owned lands. Applications for such activities on private lands will be subjected to Commission review for the purpose of issuing a permit to conduct the stated operations. No rentals or royalties shall be paid to the State for operations on private lands, if it can be substantiated by the applicant that no public rights are affected.~~

6.0 — Operational Rules for Oil and Gas Drilling

6.1 — Drilling, Deepening and Plugging Back Wells

~~6.1.1 No operations shall be commenced on the drilling, deepening, or plugging back of a well, without first applying for and receiving approval from the Commission.~~

~~6.1.2 Applications for such activities shall be filed on Form DG0-5 and be accompanied by a check for \$200.00.~~

6.2 — Drilling and Completion

~~6.2.1 Suitable and sufficient surface casing shall be run and cemented to a depth not less than fifty (50) feet below all freshwater strata encountered in the well and in a manner that will protect such strata from contamination. Sufficient cement shall be added to fill the annular space from the base of the surface casing to the surface.~~

~~6.2.2 If and when it becomes necessary to run a flow string, such flow string shall be cemented by the pump and plug method, shall be properly tested by the pressure~~

~~method, and shall set a minimum of eight (8) hours before cement plugs are drilled. Before drilling the cement plug the casing shall be tested by the pressure method. If the pressure method is used, the pressure within the casing at the surface shall be raised to a pressure in pounds per square inch equivalent to the value obtained by multiplying the feet of casing by two tenths (0.2), except that such pressure need not exceed one thousand five hundred (1,500) psi. If the pressure shows a drop of ten (10) percent or more after thirty (30) minutes have passed since the pressure ceased to be applied, the casing will have failed the test. Such casing shall be repaired and retested.~~

~~6.2.3 Form DGO 6 shall be filed within thirty (30) days following the completion of a well, the recompletion of a well into a different supply source, as the changing of a producing interval.~~

~~6.3 Deviations~~

~~6.3.1 The maximum point at which a well penetrates the producing formation shall not vary unreasonably from the vertical drawn from the center of the hole. Random deviations are permitted, without approval, for short distances to straighten the hole, sidetrack, or correct other mechanical difficulties.~~

~~6.3.2 No well hereafter drilled shall be intentionally directionally deviated from the vertical unless the operator shall first file Form DGO 7 and obtain Commission approval.~~

~~6.3.3 If it becomes necessary to directionally deviate a well after normal straight drilling has commenced, the operator may continue drilling operations, at his own risk, provided, the Commission is notified of the changed drilling conditions. The final bottom hole location and/or producing interval shall be considered on its merits.~~

~~6.3.4 Upon completion, a complete angular deviation and directional survey of the well must be run by an approved well surveying company and must be filed with the Commission, together with other required reports. After processing such survey reports, the Commission may set the allowable of the well, or take such other action as the facts may require.~~

~~6.3.5 In event the proposed, or final, location of the producing interval of the directionally deviated well is not in accord with spacing or other rules of the Commission applicable to the reservoir, proper applications shall be made to obtain approval of exceptions to such rules. Such approval shall be granted, or denied, at the discretion of the Commission, and shall be accorded the same consideration and treatment as if the well had been drilled vertically to the producing interval.~~

~~6.4 Pulling Outside Strings of Casing~~

~~6.4.1 Freshwater sands are to be protected with casing which has been cemented, and such casing shall not be removed from the well at abandonment. This applies to wells drilled by cable tool and rotary rigs alike.~~

~~6.4.2 Exceptions to the above apply only if a short string of surface casing is set and cemented with the intention of using a multistage tool below freshwater sands, or if it is intended to cement the entire long or intermediate string of casing from casing seat to the ground surface. If the well is a dry hole, the short string of surface casing must be cemented in its entirety, and the deepest freshwater zone~~

must be protected by a cement plug covering the deepest water zone and at least fifty (50) feet above and below the zone.

~~6.5 Multiple Completion of Wells~~

~~6.5.1 Permission may be granted to multicomplete a well in separate reservoirs that are not in communication upon receipt of Form DGO-8.~~

~~6.5.2 In the event a written protest is received, the application shall be set for hearing, at the expense of the applicant.~~

~~6.5.3 Every multiple completed well shall be so equipped, operated, produced and maintained that there will be no commingling of the production from said formations. Upon request of the Commission, any multiple completed well shall be tested at any time to demonstrate the effectiveness of the separation of sources of supply, such tests to be witnessed by representatives of the Commission and by offset operators if desired.~~

~~6.6 Well Plugging~~

~~6.6.1 The operator or owner shall not permit any well drilled for oil, gas, saltwater disposal or any other purpose in connection with the production of oil and gas, to remain unplugged after such well is no longer used for the purpose for which it was drilled or converted, or the lease is finally abandoned, unless exception is granted.~~

~~6.6.2 Before any work is commenced to plug any well drilled for the discovery of oil or gas, including any well drilled below the freshwater level, the owner or operator thereof shall file Form DGO-9.~~

~~6.6.3 Upon receipt of Form DGO-9, the Commission shall send a duly authorized representative to the location specified, to be present at the time indicated in the Form, to supervise the plugging of such well.~~

~~6.6.4 The methods and procedure for plugging a well shall be as follows:~~

~~6.6.4.1 The bottom of the hole shall be filled with mud weighing nine (9.0) pounds per gallon, with not less than thirty six (36) viscosity API full funnel method, to the top of the hole. At the top of each producing formation a cement plug shall be placed which extends either from the bottom of the hole or from a point twenty five (25) feet below the top of each producing formation upward to a point at least fifty (50) feet above each producing formation.~~

~~6.6.4.2 A cement plug not less than fifty (50) feet in length shall be placed below all fresh water bearing strata, and such plug shall extend upward to a point at least twenty five (25) feet above the base of the surface string of casing.~~

~~6.6.4.3 A thirty (30) feet cement plug shall be placed at the surface of the ground in each hole plugged in such a manner as not to interfere with soil cultivation.~~

~~6.6.4.4 The interval between plugs shall be filled with an approved heavy mud-laden fluid.~~

~~Approved heavy mud-laden fluid is defined as mud weighing nine (9.0) pounds per gallon of not less than thirty six (36) viscosity ("API Full Funnel Method").~~

- ~~6.6.4.5~~—An uncased rotary drilled hole shall be plugged with approved heavy mud laden fluid up to the base of the surface string. If the surface string of casing is set below the deepest fresh water bearing formation, a cement plug shall be placed in the hole extending from a point at least fifty (50) feet below the base of the surface string upward to a point at least twenty-five (25) feet above the base of a surface string. The hole shall also be capped as provided in "c" above.
- ~~6.6.4.6~~—The operator shall have the option as to the method of placing cement in the hole by (1) pumping through tubing, (2) pump and plug displacement, or (3) any other method approved by the Commission.
- ~~6.6.5~~—Within thirty (30) days after the plugging of any well has been accomplished, the owner or operator thereof shall file Form DGO-10.
- ~~6.6.6~~—Before any hole drilled for seismic, core, or other exploratory purposes and which said hole penetrates below the freshwater formation is abandoned, it shall be the duty of the owner or driller of any such hole to plug the same in such manner as to properly protect all water-bearing formations; and within ninety (90) days after such plugging, file Form DGO-10.
- ~~6.6.7~~—When the well to be plugged may safely be used as a freshwater well, and such utilization is desired by the landowner, the well need not be filled above the required fifty (50) foot sealing plug set below fresh water; provided, that written agreement for such use is secured from the landowner and filed with the Commission.
- ~~6.6.8~~—No person shall engage in the business of pulling casing and plugging oil or gas wells, or contracting to salvage casing therefrom, until a license has been secured from the Commission. To obtain a license, Form DGO-11 shall be filed with the Commission stating the name and address of applicant, (if a firm or partnership, the names and addresses of the partners; and if a corporation, the names of the chief officers and directors); experience of applicant, and financial responsibility. Upon notice given as required by the procedural rules of the Commission, the Commission may issue a license if it deems the applicant possesses sufficient technical and scientific information and is financially responsible. Such license may at any time be cancelled by the Commission upon a complaint filed on motion of the Commission, or by any person interested in oil or gas production in this State. When such complaint is filed, the Commission shall serve upon the licensee notice of hearing and a copy of the complaint at least ten (10) days prior to the hearing, and if the evidence at said hearing justifies, the license may be cancelled.
- ~~6.7~~—Safety Precautions
- ~~6.7.1~~—All drilling wells shall be equipped with a mastergate, or its equivalent, of at least four (4) blowout preventers, together with a flow line valve of the proper size and working pressure. The entire control equipment shall be in good working condition at all times.
- ~~6.7.2~~—Upon completion, wells shall be equipped with a christmas tree and down hole storm choke.
- ~~6.7.3~~—All well, tank, oil heating, treating and booster pump installations shall be kept free of any rubbish, debris, dead grass, brush, weeds, other vegetation or any other inflammable material and so maintained at all times. All waste oil shall be

~~disposed of in a manner consistent with the State water and air pollution regulations and fire prevention methods.~~

~~6.7.4 — When it is deemed necessary by the Commission to protect life, health, or property, the Commission may require any lease or oil storage tanks to be surrounded by an earthen dike which shall have a capacity of one and one-half (1 1/2) times the capacity of the tank or tanks it surrounds, which dike shall be continually maintained; and the reservoir within shall be kept free from vegetation, water or oil.~~

~~6.7.5 — Salt water and other waste liquids may not be impounded and collected or disposed of by evaporation in excavated earthen pits.~~

~~6.7.6 — All procedures of saltwater disposal shall be approved by the Commission.~~

7.0 — Field Rules Under Leases

7.1 — Location and Spacing of Exploratory Wells

~~7.1.1 — The drilling unit for exploratory wells shall be one hundred sixty (160) acres. The length of any unit shall not exceed twice its width.~~

~~7.1.2 — An exploratory well shall be located at a point lying within the center square forty (40) acre tract within a one hundred sixty (160) acre drilling unit, but in no case be closer than six hundred sixty (660) feet from an outer boundary of the one hundred sixty (160) acre drilling unit.~~

7.2 — Special Rules

~~7.2.1 — Upon completion of a discovery well in a new reservoir the Commission shall promulgate, if necessary, temporary special well spacing and drilling unit rules. Such rules are to be designed to result in providing, with the fewest number of wells and within the shortest possible time, all necessary information pertaining to the reservoir and its contained fluids, in order that a proper plan of drilling wells and production allocation be established.~~

~~7.2.2 — When such information has been obtained, the Commission shall adopt permanent rules and regulations with respect to the plan of drilling wells on and the allocation of production between each separate leasehold or pooled unit within the said reservoir. Such permanent rules shall provide the minimum size unit on which one well may be drilled, a method of determining the total allowable for the pool, and a method of allocating and distributing the total allowable among the various separate leaseholds or pooled units within said pool so that correlative rights and equity will be protected. Such permanent order shall also provide that there may be permitted to be drilled on each separate~~

~~leasehold or pooled unit within said reservoir up to a certain maximum number of wells (being the number of wells required to economically and efficiently drain the area of the reservoir included within said separate leasehold or pooled unit). Such permanent rule shall provide appropriate required minimum distances from separate leasehold or pooled unit lines and between wells to the same reservoir on the same separate leasehold or pooled unit.~~

~~7.3 — Well Spacing, for Wells Drilled for Purposes Other Than the Production of Oil, Gas or Condensate~~

~~7.3.1 Section 1 of this Regulation shall not apply to wells drilled for geological information (core holes), stratigraphic testing, fluid injection or disposal in conjunction with operations for oil and gas, or for storage or withdrawal from storage of natural gas or other hydrocarbons. An operator, desiring to drill one or more of such wells, shall file application on Form DGO 12 for a permit to drill. In event other parties may be affected thereby, notice shall be required to be given to such parties, who shall have an opportunity to protest, at a formal hearing if requested, or if such hearing is deemed necessary by the Commission.~~

~~7.4 Exceptions to Well Spacing Rule~~

~~7.4.1 For the purpose of affording an operator the opportunity of recovering the hydrocarbons under his separate leasehold or pooled unit, an exception to the requirements of well spacing may be granted upon application (Form DGO 13) by the operator of the well for which a location exception is requested. Notice of said application shall be given by mail to all operators of all drilling or production units of which the ownership is not the same as the unit on which the proposed well is to be drilled and which offsets, either directly or diagonally, the drilling unit on which the proposed well is to be located. Such notice to offset operators shall be mailed on the date the application is filed. Waivers from operators of offsetting drilling units having alien ownership may be procured and filed with the application. If waivers from all such parties are furnished, the Commission, if it has no objection, may approve the application forthwith. If waivers are not furnished, the Commission will hold the application in abeyance for fifteen (15) days. If no protest is received within said fifteen (15) day period, the Commission may approve the application. If a protest is timely received, or if the Commission objects to the application, notice shall be given to all affected parties and the application shall be set down for formal hearing at an early date.~~

~~7.4.2 An exception to the prescribed location may be granted for good cause. Whenever it shall appear that the drilling unit on which the proposed well is to be located may not be reasonably considered productive in the specific reservoir, or when for some other reason the location of the well at the off pattern location will result in the exception well being permitted to produce more than the just and equitable share of the hydrocarbons in the reservoir to which such drilling unit should be entitled by virtue of its underlying hydrocarbons in place, the Commission shall restrict the allowable of such off pattern well so as to protect the correlative rights of offsetting and other operators of drilling units in the reservoir of which the ownership is different, or alien. Such can be accomplished by eliminating nonproductive acreage from the unit.~~

~~7.4.3 Whenever it shall appear that the volume of hydrocarbons in place underlying any drilling unit is one half or less than the average volume of hydrocarbons to place under all the drilling units in the reservoir the Commission may, if in its judgement a well on such deficient drilling unit would not be economically justifiable, refuse to grant the requested exception. In lieu thereof, the Commission shall entertain a new application to incorporate the deficient drilling unit into an adjoining property, of either similar or alien ownership. After notice, hearing, and the issuance of an order approving such combination of units, the property to which such deficient unit is to be added shall be granted an increased allowable in proportion to the share of in place hydrocarbons under the deficient drilling unit, and must have the capacity to produce the increased allowable. If~~

~~the ownerships of the combined properties are different, the owners of the deficient drilling unit shall acquire, under the terms of such a pooling order, as to the royalty owners, an interest in the royalty under the enlarged property in proportion to the hydrocarbons in place, and, as to the working interest owners, an interest in the working interest share of the production from~~

~~the enlarged tract, and in the wells and other equipment on such enlarged tract, in the same proportion. The working interest owner of the deficient drilling unit shall be required to pay, either in cash, or out of production, his proportionate share of the cost of such wells and equipment, on the following basis: the intangible portion of the cost of such wells, reduced by the percentage of the recoverable hydrocarbons under the theretofore producing property produced prior to the date of the administrative order; and the tangible portion of the cost of such wells valued at the market value at the time of the issuance of the order. In event payment is not made in cash at the time of the adjustment, reasonable interest shall be allowed to the creditor on all deferred payments.~~

~~7.5— Pooling of Ownerships or Interest Within a Drilling or Production Unit~~

~~7.5.1— When two (2) or more separately owned tracts are embraced within a drilling or production unit, or when there are separately owned interests in all or a part of the drilling or production unit, then the persons owning such interests may pool their interests for the development and operation of the drilling or production unit. In the absence of voluntary pooling within the drilling or production unit, the Commission, upon the application of any interested person (Form DGO-14), may enter an order pooling all interests in the drilling or production unit for the development and operation thereof. Each such pooling order shall be made after hearing, and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the drilling or production unit the opportunity to recover or receive, without unnecessary expense, his just and equitable share of the oil and gas produced and saved from such drilling or production unit covered by a pooling order and shall be deemed, for all purposes, the conduct of such operations upon each separately owned tract in the drilling or production unit by the several owners thereof. That portion of the production allocated to each tract included in a drilling or production unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.~~

~~7.5.2— Each such pooling order shall make provision for the drilling and operating of a well on the drilling or production unit, and for the payment of the cost thereof, which cost may include a reasonable charge for supervision, handling, storage, and interest on money advanced. As to each owner who refuses to pay his share of the costs of drilling and operating the well, the order shall provide for payment of his share of the cost out of, and only out of, production from the well allocable to his interest in the drilling or production unit, excluding royalty or other interest not obligated to pay any part of the cost thereof. In the event of any dispute as to such cost, the Commission shall determine the proper cost. The order may provide in substance that the owners who agree to share in the cost of drilling and operating the well shall, unless they agree otherwise, be entitled to receive, subject to royalty or similar obligations, all of the production of the well until they have recovered all of such costs out of production, and thereafter all of the owners in such drilling or production unit shall be entitled to receive their respective shares~~

of the production of such wells as their interests may appear after deducting their respective shares of current operating costs.

~~7.6 — Unitization of All or Part of a Reservoir~~

~~7.6.1 — A unit operation, covering all or a part of a reservoir, in which all interests have been combined and the ownership is the same throughout the unit, shall be considered in the same category as a single property or ownership, for the purposes of well spacing. When the operator of a unit desires to drill wells thereon in some configuration other than that provided by the well spacing rules applicable to the reservoir, he shall first submit and obtain approval from the Commission of a plan of development for the specific unit (Form DGO-13).~~

~~7.6.2 — The Commission may require the unitization of all or part of a reservoir when it determines after notice and hearing, that:~~

~~7.6.2.1 — the ultimate recovery from the reservoir is expected to be increased by unitized operations.~~

~~7.6.2.2 — 75% or more in interest of both working interest owners and royalty owners in the unitized area have agreed to a plan of unit operation and a contract to effectuate same; and~~

~~7.6.2.3 — the plan is economically feasible and will protect the correlative rights of all owners therein.~~

8.0 — Rules of Allocation

~~8.1 — Naming and Classification of Fields and Pools~~

~~8.1.1 — The Commission shall assign a name to each newly discovered field and pool. This name shall consist of some logical, recognizable designation, along with the geologic name of the producing reservoir.~~

~~8.1.2 — The Commission shall classify the pools in the following categories:~~

~~8.1.2.1 — Oil Pools~~

~~8.1.2.1.1 — Pools on Discovery Allowable~~

~~8.1.2.1.2 — Prorated Pools (Subject to Market Demand Restriction)~~

~~8.1.2.1.3 — Unprorated (Marginal) Pools~~

~~8.1.2.1.4 — Pools under Pressure Maintenance or Secondary Recovery (Unit Operations)~~

~~8.1.2.2 — Gas Pools~~

~~8.1.2.2.1 — Dry Gas Pools~~

~~8.1.2.2.2 — Gas Condensate Pools~~

~~8.1.2.2.3 — Gas Condensate Pools Under Cycling~~

~~8.2 — Oil and Gas Production From Oil Pools~~

~~8.2.1 — On all new wells, and on all recompleted wells, an initial production test shall be taken and reported on Form DGO-15. Such tests shall be carried out in accordance with instruction on the Form, and shall show oil, gas and water production, gas-oil ratio, and API gravity of the oil. The measurement of oil shall be in terms of barrels of clean oil on the basis of properly calibrated meter or tank measurements. The measurement shall be corrected and reported in terms of barrels of forty-two (42) standard gallons of two hundred thirty-one (231) cubic inches each at a temperature of sixty (60) degrees Fahrenheit.~~

~~8.2.2 — The determination of allowables shall be as follows:~~

~~8.2.2.1 — Pools on Discovery Allowable. Each well completed which discovers a new pool may, upon approval by the Commission, be classified as a discovery well and assigned a daily oil allowable, not subject to market demand restriction, based upon the depth allowable schedule of Section 2.3. The operator of such well shall furnish to the Commission geologic and engineering data by which it may be determined if a new reservoir has in fact been discovered. If a new discovery is approved, then the discovery allowable, or the capacity to produce oil, whichever is less, shall be the allowable assigned to the discovery well and all subsequent wells completed in said pool until the tenth well is completed or until a period of twenty four (24) months has elapsed from the date of completion of the discovery well, whichever occurs first. Subsequently, the pool shall enter the classification of prorated pools. At the same time as a discovery allowable is assigned to any well, the Commission shall issue an order promulgating temporary pool rules for such new pool, including a rule providing for temporary drilling units and well spacing so that in the early stage of development of such pool no unnecessary wells maybe drilled, and the limits and characteristics of the reservoir and its fluid content maybe determined with the least number of wells in the shortest possible time.~~

~~8.2.2.2 — Prorated Pools. Prior to termination of the discovery allowable status of a pool, the Commission may require the submission of all reservoir data obtained and will hold a hearing to secure further evidence and the recommendations of operators for the future operation of such pool. The Commission shall determine the areal extent of said pool and the size of a drilling unit in said pool as soon as possible, based upon the best information available at that time. The Commission shall then assign to such pool a total pool allowable. The pool allowable may be determined from technical evidence pertaining to the maximum efficient producing rate of the pool, or from the number of productive acres divided by the acres in the applicable drilling unit times the applicable oil well allowable or equal to the total number of drilling units in said pool multiplied by the applicable daily well oil allowable as shown on the Commission's depth-acreage yardstick allowable table for wells throughout the State. The total pool oil allowable, as determined above, shall then be distributed to each separate leasehold or pooled unit so as to allow each tract an opportunity to produce ultimately the liquid hydrocarbons which underlie it. These allowables shall be subject to the monthly market demand factor, if any. In event no Statewide death-acreage allowable yardstick is in use, or where the operators in a pool may hold that the applicable yardstick allowable is too low or too high, and that a higher or lower allowable should be granted to the specific pool because of the unusual thickness or character of the producing formation, or the unusual efficiency of the drive mechanism, operators shall, upon notice and hearing, present to the Commission evidence to support a request for a higher or lower allowable, or MER (Maximum Efficient Rate of Production). Upon consideration of the evidence, if the Commission finds that a higher or lower daily per well allowable or MER for the pool is justified, and that the pool is capable of~~

~~producing at such MER without avoidable waste, then such higher or lower allowable or MER may be authorized and used in determining the separate leasehold or pooled unit allowables provided for above.~~

~~8.2.2.3 Unprorated (Marginal Pools). The Commission may classify a pool as unprorated and not subject to market demand proration when, upon hearing, it is found that further specific regulation and control is unnecessary, will not aid in the prevention of waste or tend to increase the ultimate recovery from the reservoir, will not adversely affect correlative rights, where well capacities are below normal market demand allowable rates for wells of that depth, and where further regulation and control would not materially affect the market demand function and might result in premature abandonment of wells. Allowables in such pools may be assigned on the basis of each separate leasehold or pooled unit, and shall be equal to the producing capacity of each such property.~~

~~8.2.2.4 Pools Under Pressure Maintenance or Secondary Recovery (Unit Operations):~~

~~The daily oil allowables, in barrels, of a pressure maintenance project covering part or all of a pool, shall be equivalent to either: (1) the MER of such project, as determined by the Commission; or (2) the number of drilling units within such project multiplied by the yardstick allowable applicable to the size of such drilling units and the depth of the pool, such daily oil allowable being subject further to the State market demand factor, if any, for each month. Pools under secondary recovery, whether unit operations or not, will be granted allowables established by special order of the Commission, upon application, notice and hearing.~~

~~8.2.3 The daily per well allowables, not subject to market demand restrictions, shall be as follows:~~

INTERVAL OF DEPTH (FEET) — DAILYWELL ALLOWABLE (BARRELS)

0 — 1,000	20
1,000 — 2,000	40
2,000 — 3,000	60
3,000 — 4,000	80
4,000 — 5,000	100
5,000 — 6,000	120
6,000 — 7,000	140
7,000 — 8,000	160
8,000 — 9,000	180

9,000—10,000	200
10,000—10,500	210
10,500—11,000	225
11,000—11,500	255
11,500—12,000	290
12,000—12,500	330
12,500—13,000	375
13,000—13,500	425
13,500—14,000	480
14,000—14,500	540

8.3—Classification of Wells as Oil Wells or Gas Wells

8.3.1—By special order affecting a single well, or all of the wells in a pool, the Commission may declare the criteria for classification of wells as gas wells or oil wells.

8.4—Associated Gas Well Allowables

8.4.1—A gas well producing from a reservoir from which oil is also produced is known as an associated gas well. If an associated gas well is completed in an oil pool currently on discovery allowable status, such gas well shall be allowed to produce daily that volume of gas which occupied the same volume in the reservoir as an oil well producing the daily discovery oil allowable with a producing gas oil ratio of two thousand (2,000) cubic feet of gas per barrel of oil. No gas from a gas well shall be permitted to escape into the atmosphere, and all gas produced therefrom shall be utilized without waste, except by special permission of the Commission, which may be given for good cause shown, including well tests of short duration.

8.4.2—If an associated gas well is completed in a prorated pool, the separate leasehold or pooled unit on which such well is located shall be allowed to produce daily, provided gas from such leasehold is utilized without waste, that volume of gas which occupied the same volume in the reservoir as an oil well which produced oil at the same rate as the yardstick or MER daily per well allowable which was used in determining the pool allowable of said pool, producing with a gas oil ratio of two thousand (2,000) cubic feet of gas per barrel of oil, multiplied by a factor, the numerator of which is the number of acres, which may reasonably be considered productive, within the gas area of such separate leasehold or pooled unit available for attribution to such well, not attributed to any other well, and the denominator of which is the number of acres in an oil drilling unit in said pool as determined by the agency.

8.5—Gas Oil Ratio Penalty and Prevention of Waste of Casinghead Gas

8.5.1—In pools on discovery allowable, any oil well producing with a gas oil ratio in excess of two thousand (2,000) cubic feet of gas per barrel of oil produced shall be allowed to produce daily only that volume of gas obtained by multiplying the top daily oil allowable which could have been assigned to such well, prior to application of this Regulation, by two thousand (2,000). In all

~~other pools, any separate leasehold or pooled unit producing with a gas-oil ratio in excess of two thousand (2,000) cubic feet of gas per barrel of oil produced shall be allowed to produce daily only that volume of gas obtained by multiplying the top daily oil allowable which could have been assigned to such separate leasehold or pooled unit, prior to the application of this Regulation, by two thousand (2,000). The gas volume thus obtained shall be known as the daily gas limit of the well, or of the separate leasehold or pooled unit. The daily penalized oil allowable of the well, or of the separate leasehold or pooled unit, shall then be determined by dividing its daily gas limit, obtained as herein provided, by its producing gas-oil ratio in cubic feet per barrel of oil produced. The well or leasehold or pooled unit shall be permitted to produce the oil allowable or gas limit whichever comes first.~~

~~8.5.2 — If gas produced from an oil reservoir is returned to the same reservoir from which it was produced, only the volume of gas not returned to the reservoir shall be considered in applying the rule stated.~~

~~8.5.3 — When a majority of the oil wells in a pool are producing with gas-oil ratios in excess of two thousand (2,000) cubic feet per barrel, and when all the gas produced from such wells is utilized without waste, and when it shall appear that the efficiency of the oil recovery mechanism of the reservoir will not thereby be substantially diminished, the Commission, upon application (Form DGO 16), notice, and hearing, may permit all or a part of the gas so utilized without waste to be deducted from the total volume produced before calculating the producing gas-oil ratio of such well, or such separate leasehold or pooled unit.~~

~~8.5.4 — When it is shown that no avoidable waste or violation of correlative rights will result, the Commission may authorize the operation of a pool under a limiting gas-oil ratio in excess of two thousand (2,000) cubic feet of gas per barrel of oil produced.~~

~~8.5.5 — If necessary to prevent undue waste of gas and/or dissipation of reservoir energy, the Commission may limit or prevent the production of oil and related venting of gas from an oil well pending:~~

~~8.5.5.1 — the availability of a suitable gas pipeline connection for marketing gas or other means of utilizing gas without waste, or~~

~~8.5.5.2 — a determination after public hearing that the volume, pressure, quality, or location with respect to a pipeline of vented gas renders the saving of such gas economically infeasible and that the public interest or correlative rights will not be unduly harmed by gas venting incident to such oil production.~~

~~8.6 — Allowable Adjustments for Exceptions to Locations~~

~~8.6.1 — Whenever the Commission has granted an exception to the location of a well on a drilling unit, which was required by the terms of these Regulations or of a special pool rule; promulgated by the Commission, and it appears that such exception location gives the applicant more than his just and equitable share of the hydrocarbons in the reservoir, the Commission shall take such action, by~~

~~allowable penalty or otherwise, as to offset the advantage over other owners in the pool occasioned by the granting of the exception location.~~

~~8.7 Proration Schedules~~

~~8.7.1 The Commission will publish schedules on which are tabulated the daily oil allowables of each well on discovery allowable, and of each prorated and each marginal separate leasehold or pooled unit, and of each pressure maintenance or secondary' recovery project. Schedules shall show the name of pool, name of operator, lease name and number of well, if on discovery allowable, and lease or project name if in one of the other categories of pools. Schedules shall also show such pertinent information as depth of pool, size of drilling unit, and, in a prorated pool, percent of hydrocarbons in place assigned to each separate leasehold or pooled unit, gas-oil ratios and penalties, if any.~~

~~8.8 Nominations to Purchase Crude Oil - Market Demand~~

~~8.8.1 On or before the tenth of each month, each purchaser of oil in this State shall render to the Commission, on Form DGO-17, a tabulation showing the names of the pools from which such purchaser intends to purchase crude oil, and the total and daily average volumes of such crude oil desired, for the next succeeding calendar month.~~

~~8.8.2 Between the fifteenth and the twenty-fifth of each month, the Commission shall, upon notice, hold a public hearing to obtain testimony relating to the market demand for crude oil for the next succeeding calendar month. Following such hearing, and after considering the nominations, the testimony elicited at the hearing, and other pertinent facts, the Commission shall issue an order establishing the market demand for crude oil in the State for the next succeeding calendar month, and prescribing the method whereby the demand will be distributed to the various pools and wells throughout the State.~~

~~8.9 Gas and Condensate Production from Gas Pools~~

~~8.9.1 Open flow capacity of gas wells to be used as a basis for proration of gas production and/ or the establishment of maximum allowable withdrawal rates shall be determined by use of appropriate procedures of the Interstate Oil Compact Commission's "Manual of Back Pressure Testing of Gas Wells" or Commission approved improvements, modifications, or substitutes. Well owners and/or operators shall cause such open flow capacity tests to be conducted annually, unless provided otherwise by the Commission. Tests of gas wells may be witnessed or observed by representatives of any operator or producer in the pool, and the producers and/or operators of adjoining or offset separate leasehold or pooled units must be notified of the testing schedule.~~

~~8.9.2 Upon completion of an exploratory well as the discovery well of a new gas reservoir, the Commission shall issue an order establishing temporary well spacing and drilling or production units designed to reveal the extent and characteristics of the new pool with the least number of wells drilled, and at the earliest possible date. Whenever such pool data is available, the Commission shall give notice and call a hearing to obtain testimony and recommendations~~

~~of the operators in the new pool concerning permanent drilling or production units, well spacing, and other rules. The Commission shall then issue an order providing permanent rules for such pool.~~

~~8.9.3—All natural gas and liquid hydrocarbons produced from a gas well, or from a separate leasehold or pooled unit, shall be separated and measured by approved recording meters, tanks, or other measuring devices, before these products shall leave the separate lease or pooled unit, and be reported to the Commission. Exceptions to this rule may be granted by the Commission where gas from two or more leaseholds is measured and liquids separated at a common measuring and separation facility, provided there are proper safeguards to enable equitable distribution of the proceeds to the owners of the hydrocarbons so measured. Meter charts and records shall be kept in a permanent file for a period of at least two (2) years and such information shall be made available to the Commission on request. Bypasses shall not be connected around meters in such manner as to permit the illegal taking of gas or liquid hydrocarbons.~~

~~8.9.4—Whenever the available production of gas from a pool is in excess of market demand from such pool, or whenever necessary to assure the equitable taking of gas from a pool, or to prevent waste, the Commission shall regulate the taking of gas from such pool by establishing a reasonable and equitable proration formula with which to allocate production among wells and by issuing monthly proration schedules based on such formula. Prior to the adoption of permanent special rules for a pool, and provided that no waste will be caused thereby, gas allowables shall be assigned to each gas well in the proportion that the productive acres attributed to such well is to the total productive acreage attributed to all of the gas wells in the pool. Permanent rules adopted for such pool shall provide that the total gas allowable of the pool shall be distributed among the separate leaseholds or pooled units in said pool so as to allow each tract an opportunity to produce ultimately the gaseous hydrocarbons which underlie it.~~

~~8.9.5—All initial purchasers of gas produced from gas wells throughout the State shall file by the tenth day of each month, nominations, on Form DGO 18 of requirements for gas to be used by them from each associated or nonassociated pool during the following month. An operator using gas well gas for his own operations, either on leases or in a fuel system, shall also file gas nominations. Operators of gas processing plants who operate field gathering systems and who are the purchasers of gas well gas at the wellhead, or on the lease, shall file gas nominations.~~

~~8.9.6—The allocation of allowables to all wells, or to separate leaseholds or pooled units, in nonassociated prorated gas pools will be determined from the nominations submitted. However, in order to ascertain the reasonable market demand for the gas, nominations for gas shall be adjusted to actual production of prorated wells or separate leasehold or pooled units, by applying the difference between the latest total monthly production of~~

~~prorated wells or leaseholds and the total nominations for gas from prorated wells or leaseholds for that month to the total nominations for gas for all wells, or separate leaseholds or pooled units, that have been submitted for the month of the proration schedule which is in preparation. The total nominations for gas from prorated wells, or separate leaseholds or pooled units, for any month shall be determined by subtracting the total allowable assigned to nonprorated wells, or separate leaseholds or pooled units, during the month from the total nominations for gas from all wells, or separate leaseholds or pooled units, in the pool for that month. Nothing herein shall prevent the Commission from making such further adjustments affecting gas allowables as in its judgement may be necessary for prevention of waste or protection of correlative rights. A prorated well or~~

~~leasehold is a well or leasehold whose allowable is determined by the pool allocation formula. A nonprorated well or leasehold is a well or leasehold which is incapable of producing its allowable as calculated by the pool allocation formula.~~

~~8.9.7 — For the purpose of computing and balancing overproduction and underproduction in a gas field in which the distribution of allowables to the several wells or leaseholds completed in a common reservoir is governed by special operating rules, the dates 7:00 a.m., February 1, and 7:00 a.m., August 1, are to be known as "balancing dates": and the six (6) months' periods beginning 7:00 a.m., February 1, and ending 7:00 a.m., August 1, and beginning 7:00 a.m., August 1, and ending 7:00 a.m., February 1, will be considered as separate entities and will be known as "balancing periods."~~

~~8.9.8 — If a gas well or leasehold during the balancing period does not produce as much gas as is allocated to it by the order of the Commission, the operator of the well or leasehold shall be permitted to carry such underproduction forward to the next succeeding balancing period, as future allowable credit to be produced during that period. The amount of underproduction to be carried forward into any new balancing period as allowed production during, such new balancing period shall consist of the actual underproduction that accrued in the balancing period immediately preceding such new balancing period, and the accumulative well or leasehold status, as to underproduction, will be adusted on each balancing date accordingly. If a producing well or leasehold has been accumulatively underproduced on each of two successive balancing dates, the well or leasehold shall not be assigned a monthly allowable greater than the maximum monthly production from the well or leasehold during the immediately preceding balancing period; provided, however, the limited allowable assigned to the well or leasehold may be adjusted to a value not to exceed the allowable applicable to the well or leasehold under the allocation formula, upon certification to the Commission from the operator that such well or leasehold is producing gas in excess of the limited allowable assigned it.~~

- ~~8.9.9 — Each operator of each gas well or leasehold subject to the hereinafter prescribed conditions, may produce the well or leasehold in excess of the monthly allowable allocated to it. Provided, that no well or leasehold shall in any one month produce at a rate in excess of one hundred twenty five (125) percent the daily average required to produce its normal current monthly allowable. Any well or leasehold overproduced as of a balancing date, which was also over-produced on the balancing date immediately preceding and remained overproduced for the entire period between the two balancing dates, shall be shut in until the overproduction, existent as of the later of such two balancing dates, is made up, unless exception is granted. The operator of a well or leasehold required to be shut in, may request a hearing before the Commission to determine whether shutting in the well or leasehold would damage it. Notice of the hearing will be given to all operators in the field. If, after consideration of the evidence submitted at the hearing, the Commission finds that the well would be damaged if shut in, or that the leasehold thereunder would be jeopardized, the Commission may allow the overproduction charged against it to be made up at a lesser rate than it would be made up if the well or leasehold were shut in. Except where a well or leasehold is shut in to make up overproduction, overproduction existent as of any balancing date shall be made up during the balancing period immediately following, and may be made up at any time during such period; i.e., a specified fractional part of such overproduction need not be made up during each month of such balancing period, so long as all of such overproduction is made up during such balancing period.~~
- ~~8.9.10 — The Commission shall publish schedules showing the allowable gas production for each well, or separate leasehold or pooled unit. Such schedules shall identify the well or leasehold and shall indicate the status (volume by which such well or leasehold is under or overproduced as of the first date of the second preceding month). Schedules shall be issued and mailed to interested operators as soon as possible each month, showing the current month's allowable.~~
- ~~8.9.11 — The rules provided herein for proration of gas shall not apply to withdrawals of gas from gas storage reservoirs.~~
- ~~8.9.12 — Before gas from a nonassociated gas pool may be utilized for production of carbon black, a special permit must be obtained for such use from the Commission (Form DGO-19).~~
- ~~8.9.13 — Operators of wells and pools capable of producing carbon dioxide, nitrogen, hydrogen sulphide, or other gases, or combinations thereof, may and shall be required to secure approval of operating practices from the Commission (Form DGO-20).~~
- ~~8.9.14 — Monthly volumes of gas and condensate produced from each well, or each separate leasehold or pooled unit, shall be reported to the Commission on Form DGO-21 on or before the last day of the month following the month of~~

~~production. It shall be the duty of each producer to file such reports, unless the Commission rules otherwise.~~

Title 7 Natural Resources and Environmental Control
7500 Wetlands and Subaqueous Lands
7504 Regulations Governing the Use of Subaqueous Lands

- 2.9 Waivers. The ~~Secretary~~Department may waive any provision of these regulations when warranted under the following circumstances:
- 2.9.1 Life-threatening emergencies.
 - 2.9.2 Actions are required for public safety for which sufficient time is not available to follow the Regulations.
 - 2.9.3 When imminent or catastrophic damage or loss of major infrastructure is likely if all provisions of the regulations are adhered to.
 - 2.9.4~~3~~ Where the authority of the Department under 7 **Del.C.** Ch. 72 overlaps with another statute, including but not limited to Shellfish Grounds, 7 **Del.C.** Ch. 19; Beach Preservation, 7 **Del.C.** Ch. 68; or Wetlands, 7 **Del.C.** Ch. 66, provided that the following criteria are met:
 - 2.9.4~~3~~.1 If, in the opinion of the Secretary, equal environmental impact review and regulation of the activity would be provided by either statute; and
 - 2.9.4~~3~~.2 Waiver of these regulations would not be contrary to the purposes of 7 **Del.C.** Ch. 72.
 - 2.9.5~~4~~ For facilities or activities which require a permit pursuant to the Department Marina Regulations, the Department will waive the provisions of Sections 3.O1.B and 3.O1.C of these Regulations.
 - 2.9.6~~5~~ The failure of the Department to enforce any of the provisions of these Regulations, however, shall not constitute a waiver by the Department of any such provisions.

Title 7 Natural Resources and Environmental Control

3500 Tidal Finfish

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred to an eligible transferee as defined in 7 Del.C. §2903, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 ~~and who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001. pertaining to black sea bass and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the pot fishery in any year will not exceed six.~~

6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). and submitted landings reports in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001. The number of black sea bass landings permits issued by the Department for the commercial hook and line fishery in any year will not exceed thirteen.

1 DE Reg.1767 (5/1/98)

2 DE Reg. 1900 (4/1/99)

3 DE Reg. 1088 (2/1/00)

4 DE Reg. 1665 (4/1/01)

4 DE Reg. 1859 (5/1/01)

5 DE Reg. 2142 (5/1/02)

6 DE Reg. 348 (9/1/02)

6 DE Reg. 1230 (3/1/03)