

**6/19/17**

**Minutes  
Environmental Management Commission Meeting  
Alabama Department of Environmental Management Building  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110-2400  
April 21, 2017**

**This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Alabama Environmental Management Commission on April 21, 2017.**

A handwritten signature in blue ink that reads "Terry D. Richardson". The signature is written in a cursive style and is positioned above a horizontal line.

**Terry D. Richardson, Vice Chair  
Alabama Environmental Management Commission**

**Certified this 16th day of June 2017.**

**Minutes**  
**Environmental Management Commission Meeting**  
**Alabama Department of Environmental Management Building**  
**1400 Coliseum Boulevard**  
**Montgomery, Alabama 36110-2400**  
**April 21, 2017**

**Convened: 11:00 a.m.**  
**Adjourned: 1:15 p.m.**

**Part A**

**Transcript**  
**Word Index**

**Part B**

**Attachment Index**  
**Attachment 1**  
**Attachment 2**  
**Attachment 3**  
**Attachment 4**

**Part A**

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2 \* \* \* \* \*  
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4  
5 ALABAMA ENVIRONMENTAL MANAGEMENT  
6 COMMISSION MEETING  
7  
8  
9 ALABAMA DEPARTMENT OF ENVIRONMENTAL  
10 MANAGEMENT  
11 Alabama Room  
12 1400 Coliseum Boulevard  
13 Montgomery, Alabama 36110-2400  
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21 Taken by: Bridgette W. Mitchell,  
22 ACCR 231  
23

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1 CHAIRMAN BROWN: Good morning. I  
2 call to order the April 21, 2017 meeting  
3 of the Alabama Environmental Management  
4 Commission. Acknowledge -- the Chair  
5 acknowledges that we have a quorum  
6 present.  
7 First item on the agenda is  
8 consideration of the minutes held on --  
9 of the meeting held on February 10, 2017.  
10 Minutes have been circulated to all  
11 Commission members. And the Chair will  
12 entertain a motion from the Commission  
13 regarding those minutes.  
14 DR. MILLER: I move that we  
15 accept the minutes as written.  
16 DR. LAIER: Second.  
17 CHAIRMAN BROWN: Call for the  
18 question all in favor?  
19 (Indicated.)  
20 CHAIRMAN BROWN: Passes. Second  
21 item on the agenda is the report from the  
22 ADEM Director. Good morning, Director  
23 LeFleur.

Page 2

1 \* \* \* \* \*  
2 APPEARANCES  
3  
4 COMMISSION MEMBERS PRESENT:  
5 H. Lanier Brown, II, Esquire,  
6 Chair  
7 W. Scott Phillips, Vice Chair  
8 Samuel L. Miller, M.D.  
9 Terry D. Richardson, Ph.D.  
10 Elliott Craig Martin, D.V.M.  
11 James E. Laier, Ph.D., P.E.  
12  
13 COMMISSION MEMBERS NOT PRESENT:  
14 Mary J. Merritt  
15  
16 ALSO PRESENT:  
17 Robert Tambling, EMC Legal Counsel  
18 Lance R. LeFleur, ADEM Director  
19 Debi Thomas, EMC Executive  
20 Assistant  
21  
22  
23

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1 MR. LEFLEUR: Good morning,  
2 Mr. Chairman, and to the rest of the  
3 Commission. And good morning to others  
4 who are present for the fourth meeting of  
5 the Alabama Environmental Management  
6 Commission for fiscal year '17. Today's  
7 report will update you on both the  
8 Department's state budget and federal  
9 budget status, report on the status of  
10 possible funding for the badly needed  
11 Mobile field office, review some recent  
12 work on innovations to improve  
13 efficiency, report on some legal  
14 developments, and report on recent  
15 activities at EPA.  
16 So with that, on the budget front,  
17 the Department is on target with its FY  
18 2017 funding and expenditures. The  
19 legislature came into session on  
20 February 6th. At this time, our only  
21 state budgetary issue will be the fiscal  
22 year 2018 CAFO allocation, which is the  
23 only anticipated general fund

<p style="text-align: right;">Page 5</p> <p>1 contribution to the Department. 2 In the past, it's been reported that 3 ADEM funding has consistently been 49th 4 in the nation on a per-capita basis. The 5 Department generally has three sources of 6 funding -- state-sourced funding from 7 fees, state-sourced general fund 8 appropriations, and federal funding 9 through EPA. While fees are somewhat low 10 compared to other states, the general 11 fund portion of the Department's budget 12 has been the primary reason for the low 13 ranking on total funding. The latest 14 numbers from the Environmental Council of 15 States, or ECOS, comparing funding for 16 the states have just come out covering 17 the years 2013, 2014, and 2015. Several 18 states that historically are well-funded 19 did not report this year. However, 20 Puerto Rico and the District of Columbia 21 are included in the comparison. 22 As has been the case since 2008, in 23 2013, when the general fund appropriation</p>	<p style="text-align: right;">Page 7</p> <p>1 information is to put in perspective what 2 is anticipated to occur with our 3 remaining nonstate source of funding; 4 namely, federal environmental funding to 5 states through EPA. Approximately 6 one-third of the Department's operating 7 budget is provided by EPA grants. 8 EPA has not directly provided the 9 states with any definitive indication of 10 what to expect regarding federal funding 11 for the remainder of FY 2017 or FY 2018. 12 Federal budget issues are still up in the 13 air. However, recent media reports 14 indicate the president is proposing a 15 10.6 percent cut for FY 2017 federal 16 environmental appropriations to states, 17 which would equate to a cut of more than 18 20 percent for the remaining months of 19 FY 2017. And, also, according to recent 20 media reports, the president's proposed 21 FY 2018 budget would cut federal 22 environmental funding to states by 23 approximately 45 percent and would cut</p>
<p style="text-align: right;">Page 6</p> <p>1 was approximately three million dollars, 2 Alabama continued to be next to the 3 bottom in total funding per capita. 4 This slide shows the Department's 5 general fund appropriations for 2013, 6 '14, and '15, which are the years in the 7 ECOS comparison. The Department is no 8 longer 49th. As of 2014 and continuing 9 in 2015, Alabama is dead last in funding. 10 To give you an idea of how low that is, 11 the next lowest funded state to Alabama 12 is funded at a level 14 percent higher 13 than Alabama. In terms of dollars, as of 14 2015, ADEM would require increased 15 funding of \$7.9 million to be second 16 lowest rather than lowest funded. 17 The general fund appropriations for 18 2016, '17, and the FY 2018 general fund 19 appropriation in the House version of the 20 budget, now shown on the slide, lead us 21 to believe that we will continue to be 22 the lowest funded program in the nation. 23 One reason for showing this</p>	<p style="text-align: right;">Page 8</p> <p>1 funding to EPA itself by 31 percent. 2 Since states also receive state-sourced 3 funding while EPA does not, EPA would 4 receive a much larger overall budget 5 reduction than the states. 6 The Department has been developing 7 contingency plans to deal with possible 8 reductions in its federal funding. Being 9 dead last in total funding means ADEM has 10 very little fat to cut. If the 11 reductions to our federal funding do 12 occur, it will hurt. The benefits from 13 previous efficiency innovations, such as 14 last year's deployment of tablets for 15 inspections and other field work which 16 will be fully realized in 2017, will 17 help. A planned innovative program to 18 more effectively utilize our inspection 19 personnel by focusing inspections on 20 those industries and permit holders where 21 the greatest risk of noncompliance exists 22 and where complaints occur will also 23 help.</p>

<p style="text-align: right;">Page 9</p> <p>1 Likewise, previously-announced 2 initiatives to increase e-applications 3 and return a greater portion of emergency 4 response activities to local communities 5 will help. Although these and past 6 innovations are reducing our costs, they 7 are unlikely to produce enough savings to 8 compensate for a reduction in resources 9 of the magnitude indicated in recent 10 media reports. 11 A number of additional actions will 12 likely be required that many of us would 13 prefer to avoid, including: Reducing 14 certain background monitoring and 15 testing, such as some fine-particle 16 monitors and some elements of the fish 17 tissue suite of tests where there is a 18 history of nondetection; reducing 19 monitoring of emerging contaminants until 20 environmental standards are developed; 21 delaying underground storage tank 22 inspections, TMD- -- total maximum daily 23 load, TMDL, development, and permit</p>	<p style="text-align: right;">Page 11</p> <p>1 house our field office and Coastal 2 Program. It has previously been reported 3 that the building housing the field -- 4 the field office was not designed for the 5 purpose it's being used. It was built in 6 the 1970s and modified by one of our 7 predecessor agencies. It is well beyond 8 its useful life and is requiring rapidly 9 increasing expenditures for repairs. The 10 space is unable to house approximately 11 30 percent of the personnel who are 12 currently being housed in commercial 13 rental space about seven miles away. 14 Having two separate facilities requires 15 duplicate communications, utilities, IT, 16 and other expenditures, not to mention 17 the inefficiency of managers having 18 responsibilities at two locations. 19 In early January, a proposal to fund 20 a new facility to house the Mobile field 21 office and Coastal Program was submitted 22 to the Alabama Gulf Coast Recovery 23 Council. The council will be</p>
<p style="text-align: right;">Page 10</p> <p>1 renewals; scaling back or eliminating 2 optional programs that are not self- 3 funded, which may include some community 4 outreach activities; and renegotiating 5 EPA work plans to reflect reduced federal 6 funding. 7 The extent to which any of these 8 actions may need to occur will depend on 9 the final outcome of the federal 10 budgeting process. At this time, it 11 appears that a reduction in the use of 12 outside contractors and normal attrition 13 will make it unnecessary to have any 14 Departmental layoffs. 15 In the past, by virtually every 16 objective measure, the Department has 17 consistently been a high performer. The 18 Department has been and will continue 19 taking the necessary steps to be a top 20 performer using whatever resources are 21 available. 22 Another budget-related matter 23 concerns physical facilities in Mobile to</p>	<p style="text-align: right;">Page 12</p> <p>1 distributing approximately \$700 million 2 of funds resulting from the 2010 BP oil 3 spill pursuant to the RESTORE Act 4 legislation. 5 It is -- there is considerable 6 pushback in the Mobile/Baldwin County 7 area about how Alabama's portion of the 8 proceeds from the BP settlement was 9 allocated between the state general fund 10 and the Mobile/Baldwin area. As a 11 result, obtaining RESTORE Act funds for 12 state agency projects such as ours is 13 more challenging. 14 Current facilities make dealing with 15 ADEM's existing workload tenuous and 16 seriously call into question the 17 Department's ability to deal with the 18 anticipated increased workload in the 19 area, which works to the detriment of 20 Mobile and Baldwin County. The objective 21 with the new facility is to improve 22 effectiveness, reduce costs, improve 23 service to the public, and better</p>

<p style="text-align: right;">Page 13</p> <p>1 position ourselves for both the current 2 and an anticipated increased workload. 3 Our message has been that the proposed 4 ADEM investment primarily benefits the 5 coastal Alabama area environmentally and 6 economically. 7 As a first step in allocating the 8 \$700 million of available RESTORE Act 9 funds, the council selected for further 10 evaluation 30 projects from the more than 11 300 projects submitted, which totaled 12 more than \$2.5 billion. Despite local 13 resistance to funding a state agency and 14 worthy competition, our facilities 15 project was selected as one of those for 16 further evaluation. The next step will 17 be to respond to information requests 18 from subject-matter experts hired by the 19 Alabama Gulf Coast Recovery Council. 20 That will be followed by deliberation and 21 final project selection by the ten-member 22 council. The last step will be for the 23 council to submit its multiyear</p>	<p style="text-align: right;">Page 15</p> <p>1 cuts, increased efficiency is even more 2 important. 3 This portion of today's report will 4 highlight another of these innovation 5 efforts. It involves a familiar theme of 6 performing tasks electronically to reduce 7 workload, speed up turnaround time, and 8 improve service to the public. In this 9 case, it deals with sanitary sewer 10 overflows, or SSOs. This is not the most 11 glamorous topic, but it's an important 12 one in protecting the health of our 13 citizens and our environment. There are 14 many sources of the E. coli and other 15 pathogens constantly present in the 16 environment, including everything from 17 pet manure, to water fowl and other 18 wildlife, to pastureland runoff, to 19 failing septic systems, to SSOs. The 20 discussion -- this discussion addresses 21 SSOs and public notification of 22 notifiable SSOs, which functions to 23 minimize public exposure to these</p>
<p style="text-align: right;">Page 14</p> <p>1 implementation plan to the US Treasury 2 for final determination that the proposed 3 projects meet federal statutory 4 requirements. It is anticipated that the 5 process will not be completed before 6 year-end. 7 If given the basic tools such as a 8 functional facility from which to 9 operate, the Department can and will 10 accomplish its mission. RESTORE Act 11 funding for the new facility in Mobile is 12 the number one financial objective for 13 the Department. 14 Innovations will continue to play an 15 important role in our efforts to deal 16 with budget challenges. Periodically in 17 reports to the Commission recent 18 innovations are highlighted. If the 19 Department is to operate at peak 20 efficiency, it is necessary to regularly 21 assess current methods and work plans to 22 find better ways to accomplish our 23 mission. With anticipated federal budget</p>	<p style="text-align: right;">Page 16</p> <p>1 pollutants. 2 Based on EPA estimates, nearly 3 three-fourths of the volume of SSO 4 discharges occurs during rain events when 5 storm water flows into sanitary sewer 6 systems rather than the storm water 7 conveyance system. The best defense 8 against these SSO discharges is to 9 eliminate breaches in the sanitary sewer 10 systems that allows storm water in. It 11 is a well-known fact that many of the 12 sanitary sewer systems throughout the 13 nation are old and deteriorating, which 14 leads to SSOs. SSOs occur even in the 15 best systems. 16 Typically, SSOs are for short 17 durations and the effects are temporary. 18 One challenge in dealing with SSOs is how 19 to provide quick, targeted notification 20 to potentially impacted individuals 21 during the time possible impacts exist. 22 Notifications to citizens can serve 23 several purposes. They can warn citizens</p>

<p style="text-align: right;">Page 17</p> <p>1 of conditions potentially impacting the  2 individual's health if exposed. The  3 notifications can also serve to make  4 citizens as well as the Department aware  5 of a potential water-quality issue or a  6 potentially problematic operating issue  7 for the sanitary sewer collection and/or  8 treatment system. The Department also  9 utilizes the reported information to  10 determine compliance and the appropriate  11 enforcement action if needed.  12 Under existing ADEM rules, NPDES  13 permit holders that discharge treated  14 municipal sanitary wastewater are  15 required to immediately report notifiable  16 SSOs to the Department, the public, the  17 county health department, and any other  18 affected entity such as a public water --  19 as public water systems as soon as  20 possible upon becoming aware of the  21 notifiable SSO. A notifiable SSO is any  22 release of wastewater that reaches a  23 surface water of the state or that may</p>	<p style="text-align: right;">Page 19</p> <p>1 the left, and leaves the initial  2 notification as a voice message that is  3 then manually transcribed by an ADEM  4 employee, as represented by the blue box  5 on the left, and then entered into the  6 database shown in gray. Likewise, the  7 final report, represented by the yellow  8 box on the right, is submitted and  9 manually entered into a -- by an ADEM  10 employee into the database as represented  11 by the center blue box as well as the  12 eFile public records, represented by the  13 blue box on the right.  14 In 2012, the Department began  15 testing an electronic system to eliminate  16 the manual-entry components as  17 represented by this chart where all the  18 blue boxes have been eliminated.  19 Beginning in its FY 2015 operating plan,  20 the Department highlighted a concerted  21 focus on training stakeholders in  22 electronic reporting of sanitary sewer  23 overflows, or eSSOs. Sanitary sewer</p>
<p style="text-align: right;">Page 18</p> <p>1 imminently and substantially endanger  2 human health based on potential for  3 public exposure such as one in close  4 proximity to water supply wells or in  5 areas where human contact would likely --  6 be likely to occur. In addition to the  7 initial report of the notifiable SSO  8 event, the permit holder is required to  9 provide complete details of the SSO to  10 the Department within five days of  11 becoming aware of the SSO.  12 This slide is a visual  13 representation of the steps in the  14 process as it involves the Department,  15 which are: discovery of the SSO by the  16 utility; initial notification to ADEM;  17 complete report to ADEM; and entry of the  18 final report to eFile, which is located  19 on the ADEM website.  20 Historically, the notification  21 process has been manual as shown on this  22 slide where the permit holder calls a  23 hotline, represented by the yellow box on</p>	<p style="text-align: right;">Page 20</p> <p>1 systems were encouraged to voluntarily  2 use eSSO. Systems where the Department  3 took enforcement actions, including  4 actions for timely notification failures,  5 were required to use eSSO. The benefits  6 of reduced workload, speeding up  7 turnaround time, and improving service to  8 the public have been increasing as a  9 result.  10 As you see on this next slide, more  11 and more SSO reports are being submitted  12 through the eSSO program. From just over  13 three percent in 2012, we are now running  14 at more than 74 percent electronic  15 submissions. Now that the eSSO  16 application has been tested and proven,  17 as NPDES permits are renewed, there will  18 be an NPDES permit requirement that all  19 sanitary sewer systems must use eSSO.  20 The next step is underway to put an  21 eSSO mapping tool -- excuse me -- an SSO  22 mapping tool, represented by the orange  23 box, on the Department's website, which</p>

<p style="text-align: right;">Page 21</p> <p>1 will provide an even more user friendly, 2 timely, and efficient method to inform 3 the public of the exact location of SSOs 4 in all areas of the state. The eFile 5 application on the ADEM website is the 6 authoritative, comprehensive source for 7 historical information on SSOs. While 8 historical data and after-the-fact 9 historical mapping of SSOs are readily 10 available now, completing the conversion 11 of sanitary sewer systems to eSSO will 12 allow ADEM mapping to be used as an 13 authoritative comprehensive real-time 14 public notification tool. 15 In addition to notifying ADEM, the 16 local department of public health, and 17 all other affected entities, existing 18 NPDES rules require that sanitary sewer 19 systems also notify the public of SSOs. 20 The most effective type of public notice 21 can vary depending on circumstances. For 22 example, a small rural system might use 23 flyers to notify the public in the area,</p>	<p style="text-align: right;">Page 23</p> <p>1 ongoing budget issues that require 2 innovative approaches to stretch our 3 limited resources. Another reason for 4 reporting on this innovation is that 5 later in this meeting you will be 6 considering a rulemaking petition to SSO 7 public -- related to SSO public 8 notification. The question at hand is 9 not should the public be notified but 10 rather how should the public be notified. 11 The petition calls for permittees to 12 focus extensive efforts away from the 13 crucial task of stopping and correcting 14 an SSO and instead diverting efforts 15 toward a costly, mandatory rigid 16 checklist of notifications, whether or 17 not those notifications -- those 18 notification methods would be effective 19 in that instance. 20 Regarding the petition's proposed 21 signage requirement, SSOs are extremely 22 variable in nature, and in many cases the 23 window during which the public should</p>
<p style="text-align: right;">Page 22</p> <p>1 while a large metropolitan system might 2 use local broadcast media. The new eSSO 3 program and mapping tool in development 4 do not relieve the local sanitary sewer 5 systems of their obligation to notify the 6 public but rather provide the public 7 additional means to be informed by either 8 going directly to the ADEM website or by 9 being connected with a link to the ADEM 10 website through their local system. 11 Local health departments as well as any 12 other interested organization or 13 individual will easily be able to link to 14 real-time SSO information on the ADEM 15 website. 16 Of necessity, many of our innovative 17 efforts, such as eSSO, are targeted to 18 reduce costs. An added benefit is often 19 that service to the public, in this case 20 public notification of SSOs, is also 21 improved. 22 One reason for highlighting this 23 innovation today is that it relates to</p>	<p style="text-align: right;">Page 24</p> <p>1 avoid the SSO area may have already 2 passed by the time signage could be 3 posted. The presence of a -- of the 4 signage after the need has passed is 5 counterproductive in that it creates 6 unnecessary public inconvenience and 7 cause for concern. A modern electronic 8 reporting system which requires reporting 9 to the regulatory agency, such as the one 10 being implemented by the Department now, 11 is federally mandated to be in place by 12 2020. Diverting scarce resources to 13 implementing and enforcing a mandatory 14 manual signage system wastes the 15 resources of both the Department and the 16 already financially strapped local 17 sanitary sewer systems. 18 You have received the Department's 19 recommendation to deny the rulemaking 20 petition based on these and a number of 21 other factors. When you take up Item 5 22 on today's Commission agenda, I will 23 provide a more complete summary of the</p>

<p style="text-align: right;">Page 25</p> <p>1 Department's recommendation and will be  2 prepared to answer any questions you may  3 have on the matter. Although the  4 recommendation is to deny the petition,  5 the Department has been working with the  6 petitioners and will continue to do so.  7 Some good ideas dealing with public  8 notification of SSOs have been presented  9 that can be incorporated in permits  10 without rulemaking and we will be moving  11 forward with them.  12 The Department has also been working  13 on initiatives to educate the public on  14 environmental matters with the goal of  15 helping them become better environmental  16 stewards, which ultimately helps us  17 achieve our mission. Earth Day  18 activities, water festivals, coordinating  19 resources with other environmental  20 organizations and the like have been part  21 of ADEM efforts for many years. Just  22 yesterday the Department hosted 80  23 students and eight teachers from five</p>	<p style="text-align: right;">Page 27</p> <p>1 Tallassee High School with nearly 4200  2 pounds of recycled materials, which  3 earned them a check for \$620.53.  4 Congratulations to all four schools.  5 Another Earth Day program took place  6 at Pike County High School and was  7 attended by students from three  8 additional schools on April 13th. That  9 program was also well received by more  10 than 300 who attended. A total of 55  11 ADEM employees who took place -- took  12 part in these two events.  13 If any of you are here, please raise  14 your hand.  15 (Brief pause.)  16 Okay. They're all back at work.  17 The Department has a number of legal  18 and related matters currently pending.  19 Since they often require material demands  20 on the Department's scarce resources, I  21 would like to make the Commission aware  22 of some of the more noteworthy matters.  23 On August 18, 2016, a group -- a</p>
<p style="text-align: right;">Page 26</p> <p>1 area middle schools and high schools plus  2 nine college students for Earth Day  3 activities. ADEM employees educated the  4 students with various environmental  5 displays and hand-on -- hands-on  6 demonstrations at 15 stations.  7 Everything from showing how to collect  8 macro-invertebrates to how air quality is  9 measured to how to remotely open  10 potentially hazardous waste containing  11 drums and many other presentations were  12 made.  13 As you can see from these  14 photographs, the students were fully  15 engaged. At the Earth Day festivities,  16 four checks were presented to the four  17 schools participating in the annual  18 recycling challenge. Holtville High  19 School won first place with more than  20 4700 pounds of recycled material  21 collected in the two-week challenge  22 period, which earned the school a check  23 for \$803.90. A close second was</p>	<p style="text-align: right;">Page 28</p> <p>1 group known as the Environmental Defense  2 Alliance filed a petition with EPA to  3 withdraw its Determination of Adequacy of  4 the Department's Municipal Solid Waste  5 Landfill permit program. About a month  6 later, on September 26, 2016, EPA denied  7 that petition.  8 Following the Commission's  9 December 16 denial of a petition to set  10 water quality standards outside the  11 established triennial review process, the  12 petitioners, the Environmental Defense  13 Alliance and others, filed a similar  14 petition with EPA on February 3, 2017.  15 EPA has acknowledged the receipt of that  16 petition and it is unknown when or if  17 they will act.  18 There are currently three Civil  19 Rights Act of 1964 Title VI actions that  20 have been filed with EPA against the  21 Department. After a thorough review of  22 all matters related to the complaints,  23 the Department has concluded it meets</p>

<p style="text-align: right;">Page 29</p> <p>1 both the spirit and the letter of all  2 applicable laws and it has a robust  3 program of community outreach. The  4 Department is, therefore, vigorously  5 defending against any claims to the  6 contrary. The Title VI matters have been  7 pending with EPA for varying lengths of  8 time, with one exceeding 13 years. We  9 are hopeful the new administration will  10 agree to prompt action.  11 A final legal item involves a suit  12 filed on July 13, 2016 in Alabama Circuit  13 Court by parties involved in the three  14 Title VI complaints just mentioned  15 seeking to have the Department's  16 procedures for handling discrimination  17 claims declared invalid. On November 16,  18 2016, the Court dismissed that suit. On  19 January 9, 2017, the same plaintiffs  20 filed a new Complaint alleging the same  21 issues. On April 12, 2017, that suit was  22 dismissed once again.  23 It's still too early in the new</p>	<p style="text-align: right;">Page 31</p> <p>1 Commission chair. Chair has no specific  2 comments at this time.  3 Next item on the agenda is  4 consideration of the adoption of proposed  5 amendments to ADEM Administrative Code  6 335-3, Air Pollution Control Program  7 Regulations. The rules proposed to be  8 amended are listed in the agenda. Chair  9 calls on the Department for comments.  10 Good morning.  11 MR. GORE: Good morning,  12 Mr. Chair, gentlemen. I'm Ron Gore with  13 the Department's Air Division and I have  14 several air rule things I'd like to ask  15 you to adopt. Without exception, these  16 rule changes involve keeping our program  17 congruent with EPA rules either by  18 adopting EPA rules by reference or by  19 adopting state rules that the EPA will  20 say are equivalent to federal rules.  21 We had a comment period that ran  22 from January the 23rd through March the  23 10th and a hearing on March the 8th and</p>
<p style="text-align: right;">Page 30</p> <p>1 administration to report on what specific  2 changes will be occurring at EPA;  3 however, I can report the Clean Power  4 Plan, which seeks to reduce CO2  5 emissions, and the Waters of the US rule,  6 which seeks to expand federal control  7 over state waters which for many years  8 have been controlled by the states, are  9 in the process of being rescinded. As  10 previously reported, Scott Pruitt has  11 been confirmed as EPA administrator.  12 However, the next -- the important next  13 level of management has not yet been  14 proposed for Senate confirmation.  15 Likewise, regional administrators for the  16 ten EPA regions have not been named.  17 That concludes today's report. If  18 there are any questions, I'd be pleased  19 to try to address them.  20 CHAIRMAN BROWN: Any questions?  21 (No response.)  22 CHAIRMAN BROWN: Thank you. Next  23 on the agenda is the report from the</p>	<p style="text-align: right;">Page 32</p> <p>1 received one set of comments from EPA.  2 Those comments have been reconciled in  3 your package. Almost without exception  4 they were ministerial in nature rather  5 than being substantive.  6 And pending any questions, I'd like  7 to ask that you adopt those rules.  8 MR. PHILLIPS: Move to adopt the  9 proposed amendments.  10 DR. MILLER: Second.  11 CHAIRMAN BROWN: Any questions?  12 (No response.)  13 CHAIRMAN BROWN: Call for the  14 question all in favor.  15 (Indicating.)  16 CHAIRMAN BROWN: Thank you.  17 MR. GORE: Thank you.  18 CHAIRMAN BROWN: I guess this is  19 what we're all here for today, huh? Next  20 on the agenda is Item No. 5, a petition  21 for rulemaking to amend ADEM  22 Administrative Code 335-6-6-.12. It's  23 Rulemaking Petition 17-03 relating to</p>

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1 notification of sewage spillage.  
2 First we will consider the  
3 Petitioners' request to address  
4 Commission's meeting and make  
5 presentations and then consider the  
6 petition itself.  
7 We've had a bunch of comments  
8 submitted. The Director has submitted  
9 the views of the Director. I believe all  
10 that's been made available on the  
11 website, Commission website, but we have  
12 comments from environmentally-affiliated  
13 groups, the public, municipality, water,  
14 and sewer systems. A lot of comments, a  
15 lot of interest in this notification.  
16 The first request was filed by Eva  
17 Dillard, Black Warrior Riverkeeper, to  
18 address the Commission and a second  
19 request was made by Casi Callaway with  
20 the Mobile Baykeeper. And I'll entertain  
21 a motion to approve the request to make  
22 presentations.  
23 MR. PHILLIPS: Move to approve

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1 we're a strong organization that believes  
2 in what goes on in the state of Alabama.  
3 And we need your leadership and guidance.  
4 My job here today is in small part  
5 to -- to refute a little bit of what the  
6 Director said about this rule, to define  
7 for you a little bit of what public  
8 notice looks like today and then also  
9 show how we don't believe that this is a  
10 burden. And we are very ready and have  
11 been working with local sewage operators  
12 who -- and have written me letters and  
13 are a part of the package that really  
14 show that we can do this and it can be  
15 done, and most of them think it's a good  
16 idea to do it.  
17 So I'll start with this notice. So  
18 what we do first of all is look at -- we  
19 just Googled sewage overflows in the city  
20 of Prichard. We know we had a  
21 significant amount of sewage overflows in  
22 the month of April; it's just what we  
23 have in our area. But when you Google

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1 the petitioners' request.  
2 DR. RICHARDSON: Second.  
3 CHAIRMAN BROWN: All in favor?  
4 (Indicating.)  
5 CHAIRMAN BROWN: You will be  
6 first.  
7 MS. DILLARD: With the  
8 Committee's indulgence, can we have Casi  
9 Callaway first?  
10 CHAIRMAN BROWN: Yes.  
11 MS. DILLARD: Thank you. She's  
12 going to set up the problem and then I'm  
13 going to talk about some potential  
14 solutions.  
15 CHAIRMAN BROWN: You're the  
16 closer.  
17 MS. DILLARD: Yes, the closer.  
18 MS. CALLAWAY: Thank you so much  
19 for allowing me to be here. I'm Casi  
20 Callaway. I'm the Director of Mobile  
21 Baykeeper, and we are 20 -- 20 years old  
22 this year, environmental advocate in our  
23 community with over 4500 members. And

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1 it, the public knows very little. It  
2 appears that no news was picked up, so it  
3 didn't make a cut for anybody to find out  
4 what's going on.  
5 DR. RICHARDSON: Ms. Callaway --  
6 MS. CALLAWAY: Yes, sir.  
7 DR. RICHARDSON: -- when did you  
8 make this search?  
9 MS. CALLAWAY: I'm sorry?  
10 DR. RICHARDSON: When did you  
11 make this search?  
12 MS. CALLAWAY: We did all this  
13 preparation just the other day before we  
14 had -- before we put the program  
15 together, so --  
16 DR. RICHARDSON: You should know  
17 that I did, too, and that I got a number  
18 of hits on that and a number more when I  
19 added Alabama after Prichard.  
20 MS. CALLAWAY: Well, that's  
21 awesome.  
22 DR. RICHARDSON: Yes, it is.  
23 MS. CALLAWAY: Because here's

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1 what we got. So this was the release  
2 that we know -- so you got actual news  
3 media?  
4 DR. RICHARDSON: Yes.  
5 MS. CALLAWAY: On Prichard. So  
6 we're --  
7 DR. RICHARDSON: Yes.  
8 MS. CALLAWAY: -- looking at  
9 "news," not "all"?  
10 DR. RICHARDSON: Yes.  
11 MS. CALLAWAY: Well, I would love  
12 to do that again. We should do it right  
13 now, because "news" and "all" are  
14 different, and news is what we're looking  
15 for because it's how the public actually  
16 gets to know what happens. I can assure  
17 you, living in the Mobile area and  
18 watching all three of our news stations,  
19 I haven't seen them follow Prichard sewer  
20 spills.  
21 DR. RICHARDSON: Well, maybe  
22 north Alabama is a little more informed.  
23 MS. CALLAWAY: Well, it's not

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1 Now, the -- couple things about this  
2 release is, you look at this spill. This  
3 is April 5th, so these are predominantly  
4 the spills that happened on April 3rd.  
5 This is about 40,000 gallons' worth of  
6 spills that all claimed to happen in the  
7 Gum Tree Branch area. On the same day in  
8 the same series of spills, Mobile Water  
9 and Sewer Service had about a million  
10 gallons. So we feel pretty confident  
11 that these are underreported. But that's  
12 not really why we're here today.  
13 The second thing that's really  
14 important is this. This is the sheet  
15 that y'all get -- that's your  
16 requirement -- and it also lists -- and I  
17 can't see it on here -- but it also lists  
18 that the area was Gum Tree Branch. It  
19 tells you what each spill looked like and  
20 where it was. But when you actually --  
21 and it has the location of the spill  
22 exactly. And when you map out the  
23 location of the spill, those four -- five

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1 really important for you to know about  
2 sewer spills in north Alabama when they  
3 happen in Prichard. The Prichard  
4 community should know about them, and  
5 that's what we're really concerned about  
6 here.  
7 This is the release, so we know that  
8 Prichard did their job to a degree. They  
9 told the Mobile County Health Department,  
10 which turned around and created a release  
11 that they sent out to the public. So we  
12 don't get releases from the City of  
13 Prichard, though we are supposed to  
14 because we got that in our consent order.  
15 What we got -- what we know, though, is  
16 we do get them from the Mobile County  
17 Health Department and Baldwin County  
18 Health Department who send a release to  
19 us because we ask for it, Mobile  
20 Baykeeper. We turn around and put that  
21 information back out to the public  
22 because we believe the public should know  
23 about it.

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1 stars are where the five -- where five of  
2 the spills were, that's Toulmins Springs  
3 Branch, not Gum Tree. So we've got a  
4 problem with some of that information,  
5 too. Now, if you're able to opt into a  
6 system where you talk about I live in  
7 this area and I want to know where sewer  
8 spills are, even if it was misreported as  
9 Gum Tree Branch, if the address is  
10 reported, you actually get to know where  
11 your spill is, and you get to know that  
12 Toulmins Springs Branch is not where you  
13 ought to be.  
14 The other thing -- so we did the  
15 same thing again with MAWSS -- and this  
16 is just a quick little blip of where --  
17 of some of the spills. Or you could have  
18 also Googled Mobile Baykeeper because the  
19 vast majority of these spills came  
20 because we announced them and we put them  
21 out to the public. Mobile Water and  
22 Sewer Service via a continuing agreement  
23 with us has sent us their spills every

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1 time they've happened regularly. So we  
2 can go in and report them, we can post  
3 them on our Facebook, and we can also go  
4 out and actually take pictures and get  
5 there and get the media there when we  
6 need to.  
7 Now, again, the day before these  
8 spills came out, April 4th -- or the day  
9 after. I apologize -- we're out -- they  
10 all happened at the mouth of Dog River.  
11 And then we went out the next day, which  
12 you can't really see up here, but  
13 hopefully y'all can on your screens.  
14 Gorgeous, beautiful Mobile Bay day.  
15 Spring, summer -- I mean -- well, it's  
16 not summer yet. It's 70 degrees. It's  
17 spectacularly gorgeous. We went out on  
18 the boat that day. We saw, you know,  
19 hundreds of people out on their boats,  
20 fishing, swimming. Another thing about a  
21 gorgeous day is when the news is on on a  
22 gorgeous day, you might not see it. The  
23 news might not come out till the end of

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1 the day. So if our only notification of  
2 the -- to the public is via the news  
3 media, you're not going to see it or only  
4 a small percentage of the people are  
5 going to see it.  
6 The second thing is -- and this is  
7 another day. So Toulmins Springs Branch  
8 again that actually had the spills, we're  
9 working with students to do a program  
10 where we're teaching water -- we're  
11 teaching water-quality monitoring. When  
12 Cade took them out to this site -- this  
13 is a ditch, concrete ditch -- but these  
14 kids right there who live in the  
15 neighborhood play in it. And, again,  
16 another gorgeous spring day that the  
17 kids, if it was a Saturday, which there  
18 are lots of Saturdays, they're in it.  
19 Y'all remember your youth and you  
20 remember the fun in the creek that you  
21 never got out of if you couldn't -- if  
22 you didn't have it. Of course, I told  
23 Cade that I got out the moment I saw the

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1 first snake and didn't go back for a  
2 really long time, but he's cooler than I  
3 am. But kids play in waterways and  
4 parents need the opportunity to protect  
5 them, and that's what this -- we believe  
6 this petition does.  
7 I don't think this is going to work,  
8 but I've got a slide of this. So this is  
9 another one that happened in the back of  
10 an area. This was 252,000 gallons. It  
11 started late on Friday night. The  
12 community found out about it because of  
13 the smell. But it's back in the woods  
14 where you can see on this slide at the  
15 very tippy top, and that's the river that  
16 it comes down. All of that woods area  
17 backs up to neighborhoods and homes, and  
18 it's exactly the kind of creek that I  
19 played in all of my youth. So all the  
20 way down through that, if Mobile  
21 Baykeeper hadn't been engaged and  
22 involved, the public wouldn't have known  
23 about it. It did go up. We got video.

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1 We got -- we got MAWSS there more  
2 quickly. We got the media out there.  
3 And we -- and, again, these are more kids  
4 who are out there seeing it and playing  
5 in it, and this is what you do.  
6 But I want to say, this is what  
7 Mobile Baykeeper put out. These two  
8 posts on our Facebook site show about  
9 10,000 people reached, because we've got  
10 a big following and we're pretty cool and  
11 we're loud and people who are looking for  
12 sewer spills, this is what they do, this  
13 is where they go. So if, again, you are  
14 electronically-minded and you have  
15 Facebook and you follow Mobile Baykeeper,  
16 you probably found out about this spill.  
17 I don't have a clue how many people on  
18 Second Creek or mamas on Second Creek  
19 knew that they couldn't keep their kid in  
20 there or the people downstream that  
21 shouldn't be eating fish out of there.  
22 But let me switch to Baldwin County  
23 just because. So if you have a spill in

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1 Baldwin County where we don't have the  
2 same opportunities, where we don't have  
3 anybody reporting sewer spills to us,  
4 where we only find out about it after  
5 it's gone to the health department,  
6 here's the Baldwin County Health  
7 Department's Facebook page; 294 people.  
8 Baldwin County has about 180,000  
9 residents. So clearly this is not  
10 necessarily -- well, this might be the  
11 best-kept secret in Baldwin County. This  
12 is the last sewage spill they posted on  
13 their Facebook site, January 9th. You  
14 can see how many "likes" and comments and  
15 shares it got down at the bottom. Zero.  
16 Sorry. Zero for those in the back row.  
17 This also is a quick search of ADEM's  
18 site of how many spills happened since  
19 January 9th in that area that did not  
20 make the cut to go on the Baldwin County  
21 Health Department page.  
22 So if it's not reported by the  
23 media, even if there is an excellent

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1 so that you always can call and always  
2 have access to the information.  
3 This is another one in Florida where  
4 they have it more like one of those  
5 politician's yard signs. You stick it in  
6 when you've got a problem and you pull it  
7 out when you don't. Again, you call to  
8 find out if the sewer spill has ended.  
9 You can leave it up for five days.  
10 We've talked to sewer operators in  
11 our area who all see the devil's in the  
12 details; we got to work it out. Do we  
13 put a sign in the middle of the backwoods  
14 or wherever that -- I mean, Second Creek,  
15 do you put a sign back there where nobody  
16 lives, nobody is? That may not make  
17 sense, but you definitely put a sign or  
18 you put a sign at a location when it is  
19 accepted by the community so that you can  
20 always go and find that sign. So there  
21 are easy ways to do that.  
22 Secondly, the text-messaging  
23 system. This is Cedar Hills -- Cedar

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1 press release that goes out to the media,  
2 it's not making the cut. If the media  
3 only plays at five o'clock at night, five  
4 or six o'clock or ten o'clock at night,  
5 if you only watch the news for that one  
6 portion of it, you're missing it and your  
7 families are missing it and your children  
8 are missing it, and this is where parents  
9 want to be involved.  
10 So let's go to the fact that it is  
11 not that hard. There are a million ways  
12 to do this right and do it very easily.  
13 This is in west LaFayette, Georgia, which  
14 we understand is a combined sewer system,  
15 line sewer river flows, not just line  
16 sewer -- storm water and sewer system --  
17 storm water and sewer system, different  
18 from us. But they put one sign at a  
19 water body where you can call or you can  
20 use the little QR code to look it up on  
21 your phone so you can go directly to the  
22 site and figure out what's going on.  
23 It's a permanent sign that's placed there

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1 Hill Elementary in Ardmore, Alabama,  
2 which is not a huge town as y'all know.  
3 That's near Limestone County school  
4 system. They've got a text message  
5 opt-in system, so really easy. I live on  
6 Second Creek. I want to be notified when  
7 a spill happens. That's a school system,  
8 so it's not tiny. But our wonderful  
9 friends at Coosa Riverkeeper are a staff  
10 of two and some interns and they have an  
11 opt-in text-message system for their  
12 notifications. It's free. It is an app  
13 that was put up called Why Rained Out.  
14 It's a great -- or Rained Out. Sorry.  
15 It's a great system. Everybody knows you  
16 opt in; your choice. Again, let me  
17 reiterate. Free. So really easy apps  
18 exist. We are not asking to reinvent the  
19 wheel.  
20 And that kind of is where I want to  
21 finish. But the other thing I want to  
22 say is we are not -- one of the reasons  
23 we feel like this petition is the

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1 strongest, best way to move and the best  
2 right direction to move is because it  
3 actually removes a burden from ADEM.  
4 ADEM doesn't have to do this. Our sewage  
5 treatment facility operators have to do  
6 this. And as much as they are stressed  
7 and they are poor, we all pay our bills,  
8 and one of the most important things  
9 about paying our bill is that we expect  
10 our sewage to be processed, we expect for  
11 it to be cared for, and we expect to make  
12 sure that we know what's happening in our  
13 area and in our waterways.  
14 So as a mother of a nine-year-old,  
15 I -- I have a child who's going to hate  
16 me and probably grow up to be something  
17 else because he didn't get to play in  
18 puddles as a kid because his mama knows  
19 what's in a puddle in the south Alabama  
20 area as a kid. They're lovely and  
21 they're wonderful. So we found other  
22 places to go play, but not in the street  
23 in a puddle, because in Mobile, Alabama,

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1 that means it's full of sewer. We are  
2 working on that, and seeing a place where  
3 we have zero sewer spills is absolutely  
4 my goal. And I believe it's the  
5 Department's goal, or if it isn't, should  
6 be.  
7 And sewer spills vary. Absolutely.  
8 I think that was a part of the Director's  
9 notes, is that every sewer spill is  
10 different. But the one thing I have to  
11 disagree with is that they are not small  
12 and they are not nothing and hopefully  
13 many, many of them don't result in  
14 anything. But every one of them has the  
15 potential to have an impact on public  
16 health and on our children, on the fish  
17 that we eat from our waterways. We have  
18 a responsibility, and we charge you with  
19 taking up that responsibility and just  
20 moving this to rulemaking. Let's go  
21 forward with that. Thank you very much.  
22 MS. DILLARD: Good morning. My  
23 name is Eva Dillard and together with

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1 Mitch Reid, we represent the Petitioners  
2 in this matter. I think the Mobile  
3 Baykeeper did an excellent job of  
4 illustrating why public notification is  
5 both an important issue and an unmet --  
6 unmet need in the state of Alabama. I  
7 also think that some of the comments you  
8 received reflect on similar concerns. We  
9 in fact were surprised with the amount of  
10 attention that the interactive sewage map  
11 that we published received. Over 32,000  
12 people accessed that map in a two-week  
13 period. And I think all of those things  
14 demonstrate both the degree of interest  
15 and importance this issue has for the  
16 public.  
17 I can sit up here and talk, but I  
18 think perhaps the most persuasive  
19 argument for a comprehensive right-to-  
20 know regulation is the picture that  
21 you're looking at. You see two children.  
22 Coincidentally, they are Cahaba  
23 Riverkeeper Myra Crawford's

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1 grandchildren. They're playing in Helena  
2 in a waterfall, and that waterfall,  
3 unfortunately, is immediately downstream  
4 of a sewage overflow. And even people  
5 like riverkeepers don't always  
6 understand, aren't always adequately  
7 informed, when there's sewage in the  
8 water.  
9 Me and technology. See, I told you.  
10 Happens every time. And I even rehearsed  
11 this with the technology folks. How  
12 about that.  
13 That is why the Petitioners  
14 submitted the petition for rulemaking. I  
15 think we can all agree we have a problem,  
16 and the idea of children or anybody being  
17 exposed to sewage is unacceptable. I  
18 know the Commission thinks that way. I  
19 know the Department thinks that way. And  
20 I know the wastewater treatment operators  
21 think that way. So we have a problem.  
22 But as -- as Casi mentioned, the  
23 devil is always in the details. And if

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1 sewage right-to-know regulations, if  
2 crafting them and drafting them and  
3 passing them were an easy undertaking, it  
4 probably would have been done long before  
5 now. But the current regime is not  
6 working for the citizens of Alabama.  
7 Immediate notification is required. The  
8 permittee shall report to the Director,  
9 the public, the county health department,  
10 and any other affected entity such as  
11 public water systems as soon as possible  
12 upon becoming aware of any notifiable  
13 sanitary sewer overflow, which sounds  
14 great except for the fact that there are  
15 no requirements, there are no specifics  
16 about what notification should look like.  
17 There's no minimum standard, no guidance  
18 as to what those affected entities might  
19 be. And perhaps most importantly,  
20 there's no plan required.  
21 And the time to think about what  
22 your public notification should look like  
23 is not when you're in the midst of a

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1 reported by the operator towards  
2 notifying the public as required. So  
3 roughly one in four times, no effort at  
4 all. And for over 28 percent of the  
5 spills, utility admitted it did not  
6 verbally notify ADEM within 24 hours as  
7 required.  
8 So setting up the problem is easy.  
9 As I stated before, coming up with  
10 solutions is a little bit more  
11 challenging. So we did our homework.  
12 For the past nine months, we've been  
13 studying the issue. We talked with the  
14 Department, and they were very generous  
15 with their time and their resources.  
16 They set up a meeting for us with the  
17 Alabama Department of Public Health. We  
18 talked to system operators. We talked to  
19 our members. We talked to the public.  
20 We looked at what resources the  
21 Environmental Protection Agency had out  
22 there. And we also looked to what  
23 neighboring states were doing. And at

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1 crisis responding to an ongoing sanitary  
2 sewer overflow. We want permittees to be  
3 thinking about these issues and planning  
4 for these issues ahead of time.  
5 I think ADEM's own statistics from  
6 2016 are very telling. First of all, we  
7 all acknowledge SSOs are a problem and  
8 are going to continue to be a problem for  
9 the foreseeable future, particularly as  
10 the Director referenced with aging  
11 infrastructure, problems with collection  
12 systems, and other things. They're a  
13 fact of life. Between 28.8 million and  
14 46.2 million gallons of sewage overflows  
15 were reported in 2016, and that did not  
16 include the nine percent of spills for  
17 which there was no volume estimated.  
18 In addition to that, there are some  
19 chronic spills that only reported one or  
20 two events when, you know, ADEM knows and  
21 we know there are many more than that.  
22 This is an important statistic. For 23  
23 percent of sewage spills, no effort was

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1 the end of the day, there is room for  
2 disagreement and debate about some of the  
3 finer points of the rule we have  
4 proposed, but we need to start the  
5 rulemaking process.  
6 What we essentially are asking for  
7 is not something that will create an  
8 additional burden on permittees or on  
9 ADEM. We are asking that permittees take  
10 information they're already collecting  
11 pursuant to ADEM Form 415 and share it  
12 with the public in a variety of easy-to-  
13 use, low-cost or no-cost formats.  
14 Our rule was based upon Georgia's  
15 rule. Georgia has a very robust sewage  
16 notification regulation. And for us as  
17 Petitioners but also you as policymakers  
18 and the Department which ultimately will  
19 be administering and enforcing the rule,  
20 it's important to have rules that, I  
21 think, where we can, that have been road-  
22 tested, that are tried and are true. So  
23 the structure of our rule is essentially

<p style="text-align: right;">Page 57</p> <p>1 Georgia's rule. We've made some changes. 2 Their rule requires 24-hour notification; 3 ours requires 12. We want to physically 4 post the site, the affected areas, much 5 like the affected entities that it 6 referenced in the previous rule, but we 7 define what those affected are. We also 8 think there needs to be a predesignated 9 central notification, perhaps at a city 10 hall or a county clerk's office, social 11 media and news media notification, an 12 opt-in list, and a plan incorporating 13 those requirements. Again, the emphasis 14 being on thinking about this ahead of 15 time and knowing what your plan is. 16 And you're looking at that and 17 you're thinking, wow, that's a lot of 18 different ways to reach a target 19 population, and that is absolutely true, 20 because that's what EPA recommends. You 21 are trying to inform a wide variety of 22 people who you will meet in different 23 places and who have different aptitudes.</p>	<p style="text-align: right;">Page 59</p> <p>1 it's not the public-comment period. ADEM 2 is already updating 415; the Director 3 mentioned that in his remarks. And it 4 would require perhaps adding another box 5 to the sewage notification form. There 6 would have to be a slight permit 7 application change, perhaps. There will 8 be an administrative burden on systems to 9 come up with a plan and to file it with 10 ADEM and ADEM is going to have to review 11 it as a part of their permit renewal, but 12 ADEM reviews a lot of plans as part of 13 permit renewals, including BMPs, best 14 management practices, and other things. 15 The way that we've structured the 16 rule, it's an opportunity for ADEM to 17 look at the rule and to basically ensure 18 that whatever the minimum requirements 19 are, the systems' plans incorporate it. 20 Also gives the public a valuable 21 opportunity to be able to read that plan 22 in eFile in their community and be 23 familiar with it. Signs are low cost and</p>
<p style="text-align: right;">Page 58</p> <p>1 Not everybody is going to be able to use 2 an app, not everybody has a cell phone, 3 not everybody is going to be able to 4 receive the information in any one 5 format, and that's why the best approach 6 is one that utilizes a number of 7 different ways to get that message out. 8 Now, the Director has responded, and 9 his perspective is that making rules 10 burdens ADEM, complying with the rules 11 burdens operators, diverts resources away 12 from actually fixing the spill, and he 13 sees no discernible benefit to the public 14 in his remarks. We think there is an 15 obvious benefit to the public and 16 educating the public about when it's safe 17 to recreate and when they need to stay 18 away from sewage spills. And we also 19 think the burden is light. 20 Rulemaking has been initiated. 21 We've already started. We've given you a 22 rule. You've already started receiving 23 public comments on the rule even though</p>	<p style="text-align: right;">Page 60</p> <p>1 reusable. 2 You know, what we're doing with the 3 minimum plan is to essentially equip 4 these operators for success. This is the 5 bare minimum. This is what you have to 6 do every time. It does not affect their 7 flexibility, because they're free to go 8 above and beyond that minimum and do what 9 works for that spill or for that 10 particular community. But it does ensure 11 that the public will have a minimum level 12 of notification and, just as important, 13 the public will have assurances whether 14 they recreate in Jefferson County or 15 Mobile County or somewhere else, that 16 there is going to be a consistent and 17 predictable way for them to educate 18 themselves about what's going on in the 19 areas in which they recreate. 20 We think not requiring these 21 communities to be protected, not 22 requiring the system operators to 23 implement these plans with these kinds of</p>

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1 easy, low-cost/no-cost features  
 2 essentially sets them up to fail, and  
 3 that's what's happening right now. And  
 4 believe me, I don't think any of these  
 5 plants want to fail. This is their  
 6 service area. These are their customers.  
 7 These are their communities. They want  
 8 to do it right. They just don't have the  
 9 tools. We think a regulation would set  
 10 them up to succeed and not to fail.  
 11 And one last point. With respect to  
 12 impacts -- and I know there's some  
 13 concern about some of these smaller  
 14 systems. But remember, these impacts are  
 15 going to be scaled. In other words, a  
 16 smaller system has a smaller service area  
 17 and is going to have fewer  
 18 responsibilities whereas a larger system  
 19 with a larger service area perhaps may  
 20 have more responsibilities but they're  
 21 going to have more assets, more  
 22 resources, to do that.  
 23 We have found in our discussions

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1 ADEM is trying to do with limited  
 2 resources -- to try and develop the app,  
 3 to try and think creatively about how can  
 4 we add to the public's level of  
 5 information, but I still continue to  
 6 think that the best system is going to be  
 7 local, because that's where the SSO is  
 8 taking place. Those system operators  
 9 have the necessary information but also  
 10 the duty, the obligation to keep their  
 11 surrounding communities and their  
 12 customers safe.  
 13 MR. PHILLIPS: Can you go back to  
 14 your previous slide, please?  
 15 MS. DILLARD: Yes.  
 16 MR. PHILLIPS: You have a list of  
 17 operators on the left.  
 18 MS. DILLARD: Yes.  
 19 MR. PHILLIPS: Are those the ones  
 20 you spoke with?  
 21 MS. DILLARD: Those are operators  
 22 that we've either talked to or that we  
 23 have noticed doing better with respect to

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1 with local systems -- and I've listed  
 2 some of the systems that we've talked  
 3 to -- that there is receptivity to doing  
 4 a better job of public notification. For  
 5 example, you're seeing some innovations  
 6 because it is becoming more and more a  
 7 topic of concern. Again, not just for  
 8 groups like ours, not just for the  
 9 Department, but also for these plant  
 10 operators. The City of Tuscaloosa now  
 11 notifies via e-mail any time they have  
 12 any spill regardless of whether it meets  
 13 the requirements of the notifiable sewer  
 14 spill that the Director spoke about. I  
 15 thought this sentence summed it up  
 16 nicely. It was a system operator who did  
 17 not want to be quoted, but he said in the  
 18 meeting, The meaningful notification of  
 19 the water quality and public health  
 20 impacts of SSOs is the duty of the system  
 21 operator. The duty of the system  
 22 operator.  
 23 And I think it's impressive what

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1 public notification. We did not go out  
 2 and try and get operators to endorse the  
 3 petition, but we have had conversations  
 4 either in the context of a consent order  
 5 or just staying on top of notification  
 6 issues in our respective watersheds.  
 7 These are all systems that are starting  
 8 to -- to make improvements.  
 9 And if I can mention one thing. I  
 10 thought that the Mobile Baykeeper's  
 11 presentation was great and she  
 12 highlighted so many of the problems, but  
 13 Mobile is one of the good systems. That  
 14 is one of the good places. They are an  
 15 example. And if -- if notification is  
 16 problematic in Mobile, imagine what it's  
 17 like in -- in other areas of the state.  
 18 DR. RICHARDSON: So you're not  
 19 saying necessarily that these were in  
 20 support of the petition?  
 21 MS. DILLARD: No. They did not  
 22 sign onto the petition; we did not ask  
 23 them to. But in our work, in our

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1 discussions, these are all systems that  
2 are starting to develop better  
3 notification requirements.  
4 DR. RICHARDSON: And can you --  
5 regarding that quote, isn't the systems  
6 operator required now to notify the  
7 public?  
8 MS. DILLARD: They are required  
9 to immediately notify the public, but the  
10 whole --  
11 DR. RICHARDSON: Ma'am. Without  
12 any changes to the rule.  
13 MS. DILLARD: Without any changes  
14 whatsoever. You are absolutely right.  
15 But the problem is, it's not happening.  
16 And I think part of the reason it's not  
17 happening is there are no minimum  
18 standards, there are no guidelines, there  
19 are no requirements of what notifications  
20 should be, and these plants are falling  
21 short. There are some, like these  
22 particular systems, that are doing  
23 better; but across the state, it is an

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1 ad hoc kind of approach that I think  
2 makes it hard for these systems. And it  
3 makes it equally hard on the public to  
4 stay abreast of developments,  
5 particularly if they are going to  
6 recreate from jurisdiction to  
7 jurisdiction.  
8 DR. RICHARDSON: So you're  
9 thinking the rule changes that you're  
10 proposing would increase compliance?  
11 MS. DILLARD: I think they would,  
12 because I think the systems -- and it  
13 certainly has been the case in -- in our  
14 discussions, they want to do better.  
15 They want to be equipped to do better.  
16 We think giving them a minimum standard  
17 is going to put them to do that.  
18 DR. MILLER: Who wrote your  
19 proposal?  
20 MS. DILLARD: The proposal was a  
21 protracted negotiation among all the  
22 Petitioners. The bones of it are the  
23 Georgia regulation, and then we looked at

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1 it and we brought our own experiences to  
2 bear and came up with something that we  
3 as a group thought would work in the  
4 state of Alabama.  
5 DR. MILLER: And you did that  
6 with no input from any public sewer  
7 system?  
8 MS. DILLARD: We did not. We  
9 talked to public sewer systems, we talked  
10 to ADEM, we talked to the Department of  
11 Public Health --  
12 DR. MILLER: But they had nothing  
13 to do with what is written in --  
14 MS. DILLARD: No. They are not  
15 Petitioners. We as Petitioners drafted  
16 the regulation that we wanted to see,  
17 that we thought would work in Alabama.  
18 And as I stated earlier, there may be  
19 room for meaningful debate about certain  
20 of the particulars, but we think the  
21 bones, the essence of the regulation, are  
22 good. They're tried and true, because  
23 it's been done in Georgia. And we think

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1 with the public-comment process, the  
2 formal public-comment process, that  
3 you-all will initiate as part of  
4 rulemaking, you have an opportunity to  
5 hear from a variety of stakeholders. And  
6 if we didn't get a detail right or if  
7 there is wide-ranging disagreement about  
8 certain parts of the plan, it is your  
9 responsibility and obligation to fix  
10 them. But we think the regulation is  
11 more than an excellent starting point.  
12 We think it's a very solid regulation  
13 that would work in Alabama.  
14 DR. MILLER: You do realize,  
15 though, that we cannot change the  
16 regulation. We vote yes, it's verbatim  
17 what you have submitted. You do realize  
18 that?  
19 MS. DILLARD: I do realize that,  
20 but it will go to a public-comment  
21 process under the code section, which I  
22 have written here, 22-22A-8. And during  
23 that public comment process, folks will

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1 weigh in, and you have the ability at  
2 that point to tweak the regulation  
3 without sending out to public comment  
4 again. That's your job, to be the  
5 arbiter of the information, the comments,  
6 and see if the regulation we drafted is  
7 the one that is going to work or if there  
8 are things that you think need to be done  
9 differently.

10 MR. PHILLIPS: Sorry I  
11 interrupted you.

12 MS. DILLARD: No.

13 MR. PHILLIPS: Keep going.

14 MS. DILLARD: That's fine. Here  
15 are the benefits of what we have  
16 proposed. And in answer to some of your  
17 questions, I've already talked about  
18 these. Again, having a minimum standard.  
19 It's helpful for operators; they know  
20 what to do and then the public knows what  
21 to expect. The multifaceted  
22 communication I talked about earlier.  
23 You've got a variety of targeted groups

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1 statistics. And because the state of  
2 public notification in Alabama is so  
3 inadequate, how would the public know,  
4 you know, if they have a sewage-related  
5 illness if they don't know they're  
6 swimming in sewage? So we feel like  
7 ideally the Department of Public Health  
8 would play more of a role. They don't  
9 have the ability to do that. And to act  
10 as if they can or will is simply not a  
11 realistic assessment of the situation.

12 Again, public notification is  
13 practicable, it's capable of being done  
14 in Alabama. This is a sign that the City  
15 of Northport now posts. We are asking in  
16 the regulation that all cities be  
17 required to post these kinds of signs at  
18 the site of sewage spills. If Northport  
19 can do it, we think other localities can  
20 as well.

21 We can do better. And you may look  
22 at some of the developments and some of  
23 the advancements that some of the better

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1 you're trying to reach. You need a wide  
2 variety of ways to try and inform them,  
3 to reach them. The systems know what to  
4 do. They know what public notification  
5 is supposed to look like. They have a  
6 plan. Notification takes place and then  
7 an informed public can make good  
8 decisions.

9 The Alabama Department of Public  
10 Health, you would think they would be  
11 playing perhaps more of a role than they  
12 are. We were very grateful that ADEM set  
13 up a meeting with them. And they told us  
14 flat out they do not have the bandwidth  
15 to take on this issue. Like many state  
16 agencies, including, you know, ADEM, as  
17 the Director remarked, everybody's trying  
18 to do more with less.

19 And it was disturbing to us that the  
20 Director stated that the Department of  
21 Public Health didn't have statistics.  
22 Well, the Department of Public Health  
23 also indicated they were not compiling

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1 systems are doing and thinking, Okay,  
2 everybody's becoming aware of this, you  
3 know, practices are getting better; we  
4 don't necessarily need a regulation  
5 because we're already moving in the right  
6 direction. I would caution you against  
7 drawing that conclusion, because  
8 unfortunately, the lowest common  
9 denominator often prevails. And I was  
10 very disappointed to see the City of  
11 Prichard say things in their comments:  
12 To comply will require entities to hire  
13 significant manpower to patrol for  
14 overflows, monitor them, and provide the  
15 notices and information petitioners  
16 request.

17 Operators are already required to do  
18 those things, not by our regulation but  
19 by current regulation. So if you have  
20 systems that fail to understand their  
21 obligations and fail to discharge them,  
22 the problem of public notification in the  
23 state is not going to get better.

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1 This is a saying we often use in our  
2 organization, Don't make the perfect the  
3 enemy of the good. You know, grappling  
4 with difficult problems is always a  
5 challenge, and sometimes we shy away from  
6 solving problems because it's hard. I  
7 will tell you absolutely you are not  
8 going to be able to pass a public  
9 notification regulation that's perfect.  
10 Can't do it. You're not going to be able  
11 to pass a regulation that meets  
12 everybody's approval. There are going to  
13 be people, whether it's people in our  
14 constituency or elsewhere, that are going  
15 to disagree, you know, maybe with some of  
16 the finer points of the regulation.  
17 But I think we can agree we need a  
18 regulation, and that is why we have filed  
19 the petition for rulemaking, for us to  
20 take our shot at what we think is the  
21 right direction for Alabama and for you  
22 to look at it and decide whether or not  
23 you want to move the ball on the issue or

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1 MS. DILLARD: Pardon me?  
2 CHAIRMAN BROWN: That the best  
3 system is local. You said that.  
4 MS. DILLARD: Yes. The best  
5 system of notification is local.  
6 CHAIRMAN BROWN: And so my  
7 question is, should the local health  
8 agencies or departments be making those  
9 determinations like Northport is?  
10 MS. DILLARD: No, because the  
11 health agency didn't do that. The system  
12 operator did. And when I say the best  
13 system of notification is local, I mean  
14 those local operators who are at ground  
15 zero need to be the ones sending out the  
16 notifications to the opt-in list, posting  
17 the site, you know, contacting local news  
18 media, using their own social media.  
19 They are the ones that have the  
20 obligation and, I think, also the means  
21 to get the word out.  
22 DR. MILLER: But they currently  
23 already have the obligation.

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1 not.  
2 I remember a college visit I went on  
3 several years ago and director of campus  
4 security said, I give all the kids my  
5 cell phone number because if they get in  
6 trouble somewhere, I want them to call  
7 me. I would rather get in trouble for  
8 something that I do rather than something  
9 that I don't do. And that's what we are  
10 asking you essentially here to do. This  
11 is an issue. We agree that public  
12 notification in Alabama is not working.  
13 And if that is the case, do you want to  
14 do something about it? We think our  
15 petition for rulemaking gives you that  
16 opportunity, and we ask you to vote to  
17 support it.  
18 Any more questions?  
19 CHAIRMAN BROWN: Yes.  
20 MR. PHILLIPS: Yes.  
21 DR. RICHARDSON: Yes.  
22 CHAIRMAN BROWN: You made a quote  
23 the best system is local.

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1 MS. DILLARD: They have the  
2 obligation, that is correct.  
3 DR. RICHARDSON: And you think  
4 that the rule you're proposing would  
5 increase the effectiveness of that  
6 notification?  
7 MS. DILLARD: I do.  
8 DR. RICHARDSON: Even though  
9 right now they're required and they don't  
10 comply?  
11 MS. DILLARD: I do. And, again,  
12 I think it goes back to the idea that  
13 these systems, these are their customers,  
14 these are their communities. I don't  
15 think they're doing it out -- I think  
16 they're doing it out of ignorance. I  
17 think they need help, and I think we,  
18 meaning collective -- a collective we --  
19 we need to set them up for success, and  
20 you do that by passing a regulation that  
21 shows them what good public notification  
22 is in terms of a baseline.  
23 DR. RICHARDSON: Well, I'm glad

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1 you brought up ignorance about the public  
2 and -- and what they know and -- and --  
3 because that brings me to misinformation  
4 and things like that. I just want to  
5 very quickly read a few quotes from the  
6 deluge of e-mails that we received.  
7 I cannot believe I have to write to  
8 advocate for full and transparent sharing  
9 of information so critical to the health  
10 and well-being of Alabama citizens. We  
11 should also have the right to know when  
12 there is a spill near our homes due to  
13 wastewater treatment for any reason. We  
14 need to be notified when this happens.  
15 It should not be a secret if sewage is  
16 spilled because animals, natural  
17 resources, and livelihoods may be in  
18 danger.  
19 All of those statements to me  
20 reflect that these people don't seem to  
21 recognize that there is a requirement for  
22 notification. They don't seem to  
23 recognize that public notification is

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1 notification requirement is not  
2 immediate, I would really like to hear  
3 what you have to say about that.  
4 MS. DILLARD: I would like to  
5 answer that. The reason they think that  
6 is because it's not happening. And  
7 that's the whole point of the petition.  
8 There is a requirement for immediate  
9 notification. There is no baseline or  
10 minimum standard. These people do not  
11 know. It's like the children on my first  
12 slide, they were downstream of a sewage  
13 spill. There was no notification. There  
14 was no posting at that swimming spot.  
15 There was no attempt to let the public  
16 know. So the fact that in the abstract  
17 or in a regulation there is a requirement  
18 for immediate notification means nothing  
19 to people who are actually swimming in  
20 these lakes and creeks or fishing or  
21 doing other things. It's not happening.  
22 So if it's in a law but it's not working,  
23 then that kind of frustration is going to

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1 happening in a lot of cases. And I'm  
2 wondering how what you're proposing is  
3 going to improve that. These people I  
4 don't think -- many of them wouldn't opt  
5 in. Many of these people that wrote are  
6 people that would be users that you would  
7 think would be interested in keeping up  
8 with what's happening in their  
9 watersheds, and apparently they don't by  
10 their own words. So I'm trying to  
11 reconcile the information that I get like  
12 that, which is unfortunate that some of  
13 this came in at 1 and 2 a.m. this  
14 morning, because I'll just tell you right  
15 now, I refuse to approve any petition for  
16 which I have not had adequate opportunity  
17 to review all of the documentation  
18 presented. And I just -- I don't see  
19 where these people are getting their  
20 position.  
21 If you can enlighten me on why they  
22 seem to think we don't have public  
23 notification or why the public

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1 come through in the comments, and that is  
2 precisely why we filed this petition.  
3 DR. RICHARDSON: So you don't  
4 think it -- that those -- that position  
5 and the attitudes reflected in some of  
6 these e-mails would have had anything to  
7 do with, say, a form letter that went out  
8 to everybody that strongly suggested that  
9 a system was not in place?  
10 MS. DILLARD: I don't think  
11 the -- the form letter suggested that.  
12 What it did suggest and what the whole  
13 premise of the petition is, is that  
14 public notification is not working.  
15 DR. MILLER: Ms. Dillard, I think  
16 we all hear the cry for help. However,  
17 to expect us to pass your petition  
18 without previous input and working with  
19 the municipalities, with the Department,  
20 just your group, I don't think is  
21 realistic. I think you have to have a  
22 consensus among all the stakeholders, not  
23 just one set. And I just don't see --

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1 and, plus, like Dr. Richardson said, when  
2 some of this stuff we got in the middle  
3 of the night last night, that -- that --  
4 that doesn't work too well.  
5 MS. DILLARD: Well, I apologize  
6 for things that you got in the middle of  
7 the night, even though I was not  
8 personally responsible. That was not the  
9 intention. We set this up in a way that  
10 ideally you would get things in an  
11 adequate amount of time to be able to  
12 read them and digest them. And, you  
13 know, for that, that's -- that's  
14 unfortunate. But it shouldn't detract  
15 from the overall message of the petition.  
16 And for us, we've been in discussions  
17 with the Department for a really long  
18 time about this issue and about the need  
19 to take action on this issue, and  
20 unfortunately we've not been able to get  
21 traction.  
22 And the Department has said to us,  
23 you know, please, you know, if you have

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1 you've just said and what you've  
2 presented here are two entirely  
3 different --  
4 MS. DILLARD: Right.  
5 DR. MILLER: -- things.  
6  
7 MS. DILLARD: And I do not want  
8 you to do the second thing. I want you  
9 to please, you know, send our -- our  
10 regulation for rulemaking. I think that  
11 is the best course of action. But I am  
12 concerned in trying to address, you know,  
13 what -- the statements that you've made.  
14 DR. RICHARDSON: Well, you've --  
15 you've not spent a lot of time with us.  
16 Maybe you have spent a lot of time with  
17 the Department, but you've not spent a  
18 lot of time with us, and we've had 45  
19 days to review this document and the  
20 other documents that have come in, some  
21 of which, as I said, came in last night.  
22 So I need as much information as I can  
23 before I -- before I proceed with this in

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1 ideas, if you have solutions, we want to  
2 hear them. And we thought a petition for  
3 rulemaking was an excellent way to  
4 present that solution. I think it's a  
5 very strong regulation. I understand you  
6 lack a comfort level with it. But,  
7 again, I think that the public-comment  
8 period would help with that. But if you  
9 are uncomfortable with -- with voting to  
10 approve it, I do think, based on the  
11 comments that you have received from all  
12 the stakeholders, including plant  
13 operators, at a minimum, perhaps the  
14 Commission should consider appointing or  
15 referring this to the Rulemaking  
16 Committee and appointing a stakeholder  
17 group with representation from groups  
18 like us, from wastewater treatment plant  
19 operators, from the Department, and maybe  
20 pursuing that solution, because the need  
21 for a solution to this problem is  
22 critical.  
23 DR. MILLER: Well, now, what

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1 any manner, even into rulemaking.  
2 And one of the statements that you  
3 made was that the public needs a reliable  
4 and consistent area to educate  
5 themselves, and I would like to know why  
6 the eFile system that is available  
7 through the Department is not -- does not  
8 meet that standard.  
9 MS. DILLARD: The eFile system is  
10 a valuable system, but it is more a  
11 repository of information. It is not a  
12 nimble notification system. And it is  
13 centralized in Montgomery. And a local  
14 notification with the people who are  
15 already on the scene, already ideally  
16 addressing the spill, they are in the  
17 best position to provide that  
18 notification. I do think eFile and  
19 perhaps some app to be developed in the  
20 future could be yet another tool, because  
21 as we've stated previously, we need a  
22 number of tools in the toolbox to try and  
23 reach the maximum number of people

<p style="text-align: right;">Page 85</p> <p>1 possible. I don't denigrate eFile as a 2 tool; but for a lot of Alabamians, it is 3 not going to be the tool of choice. I 4 don't know how comfortable each of you 5 are with telephone apps and other things. 6 Maybe you're much more sophisticated than 7 I am. But a lot of people are not going 8 to be able to use eFile. 9 DR. RICHARDSON: Well, just -- 10 just for the sake of the argument, I 11 think your statement about a reliable 12 place to educate themselves versus being 13 notified, those are not the same thing. 14 Educating -- you educating yourself on 15 something versus someone notifying you 16 are two different things. 17 MS. DILLARD: That is true. 18 DR. RICHARDSON: And my question 19 was, why isn't the eFile system an 20 appropriate central area for a person to 21 educate themselves on SSOs? 22 MS. DILLARD: I think they can be 23 educated about SSOs. I don't think they</p>	<p style="text-align: right;">Page 87</p> <p>1 am to you here today. We're a little 2 hamstrung by our own regulation on 3 dealing with petitions for rulemaking. I 4 think as a Commission, at some point, 5 whether it's with this or not, this 6 screams to me why our disposition for 7 petition for rulemaking rule is an issue 8 and one that we need to look at in the 9 future. Driving a petitioner to throw 10 something in front of this Commission 11 with a 60-day window with every other 12 monthly meetings which then drive it 45 13 days, as Commissioner Richardson said, is 14 very difficult on a very complex issue 15 like this. This is not an easy issue. 16 This touches a lot of people beyond the 17 Department and this Commission. It 18 touches those operators, but it touches 19 communities. It touches people. And 20 that's not something to be taken lightly. 21 We spent, with a group of you in 22 this room, almost a year dealing with how 23 to have public comments in front of this</p>
<p style="text-align: right;">Page 86</p> <p>1 can be adequately notified about SSOs. 2 DR. RICHARDSON: Understood. 3 Understood. 4 CHAIRMAN BROWN: Go ahead. 5 MR. PHILLIPS: You've heard a lot 6 from this Commission about how voluminous 7 the comments were. And there were some 8 good in it and some bad, some positives 9 and some negatives that were presented. 10 We've heard from the Department in the 11 Director's report about the improvements 12 to technology that they're us- -- they're 13 making. It also enhanced some of the 14 things that you've talked about. I won't 15 say that it gets to where your petition 16 wants it to go to. It most certainly 17 enhances it. 18 There were some of the regulated 19 communities that sent in comments. One 20 came in late yesterday afternoon, pretty 21 meaningful. One of the -- it kind of 22 echoed for me a problem -- and I'm 23 speaking as much to the Commission as I</p>	<p style="text-align: right;">Page 88</p> <p>1 body. Now we're talking about how we're 2 going to do public notifications to the 3 entire state of Alabama. I don't believe 4 45 days is a comfortable spot for this 5 Commission to be in in accepting one 6 petition for rulemaking from one group 7 who did nine months of due diligence -- 8 and I applaud you for that -- in trying 9 to incorporate as much as you could from 10 a lot of other stakeholders. I'm 11 distressed when I hear that the 12 Department of Public Health can't do it, 13 won't do it, don't expect to do it, and 14 you kind of say so but you look at us and 15 you expect us to do something. I expect 16 them to do something too. I mean, they 17 need to be as much a part of this 18 rulemaking as we are, because if they're 19 not, no matter what we pass up here, it 20 won't work because it won't be locally- 21 and health-based in what they can do 22 which we cannot. 23 So I would ask you please not to</p>

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1 retreat from the Department of Health.  
 2 I'll finish and then you can. You're  
 3 right about we could approve this and it  
 4 would go to public comment for an  
 5 opportunity to comment. But, once again,  
 6 if you look at our rules, it comes with a  
 7 timetable, and that timetable doesn't  
 8 allow a lot of debate. It allows taking  
 9 those comments and reconciling them to  
 10 what's in the petition. And if we get  
 11 enough comments, we may be tearing the  
 12 petition apart and just saying denied. I  
 13 don't think that's the right approach for  
 14 something that's so important as what's  
 15 in your petition and is what's so complex  
 16 as in your petition.  
 17 So I really wish that your second  
 18 option that you threw out there would  
 19 have been the first option where we  
 20 really could have sat down with the  
 21 Department, understood what the  
 22 Department was doing and what they could  
 23 do, because I'm not sure the Department

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1 Health, and other affected entities. But  
 2 there is no responsibility placed on  
 3 anybody but the operators to notify the  
 4 public, and so that is one reason why the  
 5 regulation is geared towards having those  
 6 local operators perform the notification,  
 7 because they are required to by the  
 8 regulation. And more importantly than  
 9 that, from a practical perspective, we  
 10 think they're the ones that -- that have  
 11 the ability to do it.  
 12 The second --  
 13 MR. PHILLIPS: Before you move to  
 14 No. 2, I agree with you.  
 15 MS. DILLARD: Yeah.  
 16 MR. PHILLIPS: But it still  
 17 doesn't -- I still don't believe the  
 18 Department of Public Health shouldn't be  
 19 in the conversation.  
 20 MS. DILLARD: I --  
 21 CHAIRMAN BROWN: And probably  
 22 other agencies.  
 23 MS. DILLARD: It just -- but the

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1 can do everything to get a very effective  
 2 local notification. They can set  
 3 standards. Absolutely we can. And they  
 4 can administer those standards. But at  
 5 the same time, we need the input of the  
 6 other stakeholders that are local.  
 7 So I do believe that the public-  
 8 comment period would provide an  
 9 opportunity for feedback. I'm just not  
 10 sure how effective we would be able to  
 11 manage that feedback through that forum  
 12 of rulemaking.  
 13 That's all I have. I think she has  
 14 a response.  
 15 MS. DILLARD: Just to respond to  
 16 you. I share your disappointment that  
 17 the Department of Public Health is not  
 18 equipped to play a more active role and I  
 19 agree with you they should. But that is  
 20 what led us to undertake this petition in  
 21 the first place, is, if you look at the  
 22 notification rule, operators notify ADEM,  
 23 the public, the Department of Public

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1 Department of Public Health shut us down  
 2 very, very quickly.  
 3 And the last part is in terms of  
 4 standards, you know, in setting  
 5 standards. And you mentioned just  
 6 because you have standards doesn't mean  
 7 these local systems are going to  
 8 necessarily follow them. It's an  
 9 iterative process. Right now there are  
 10 no standards. There's nothing that tells  
 11 them what good public notification is.  
 12 If we have a minimum standard, none of us  
 13 in this room believe that overnight the  
 14 problem is going to be solved. But it is  
 15 a start. And once you have those  
 16 standards in place, once you're requiring  
 17 a plan, you're requiring those systems to  
 18 think constructively about notification.  
 19 And it is going to begin to happen, and  
 20 it is going to begin to happen and it's  
 21 going to evolve much more quickly than it  
 22 is right now. That is why we filed the  
 23 petition.

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1 MR. PHILLIPS: May I respond?  
2 CHAIRMAN BROWN: Go ahead.  
3 MR. PHILLIPS: Once again we find  
4 ourselves in agreement, although I will  
5 say approving this petition for  
6 rulemaking the way it's set doesn't allow  
7 much of an iterative process. The  
8 process that we use for developing public  
9 comment before the Commission was an  
10 iterative process, extremely iterative.  
11 This will not allow much iteration to go  
12 back and forth on what's right and what  
13 could be dealt with and what's practical.  
14 And while I know you said, you know,  
15 don't let perfect get in the way of being  
16 good or being better, I agree with that;  
17 but good comes from a very diverse group  
18 of people that are all affected working  
19 towards the same goal. And at this  
20 point, I'm just not sure that -- I think  
21 yours looks perfect to you. I'm not sure  
22 it looks perfect to anyone else at the  
23 moment. Could. I just haven't heard

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1 MAWSS itself with Charles. All the  
2 efforts that we worked with to try and  
3 have a consensus to have an alliance with  
4 people in our state, particularly when we  
5 were trying to work with a way to find  
6 out how Prichard could be an alliance for  
7 us, we were -- we were stopped in our  
8 tracks by Prichard; they had no interest,  
9 no desire. We had one politician in the  
10 state of Alabama trying to bring this  
11 forward for us and we were shortchanged  
12 and never had an opportunity to go  
13 forward with -- with this opportunity in  
14 Prichard. And Prichard now is a  
15 disaster. And I don't know how you can  
16 overcome Prichard at all without some  
17 time and effort and understanding. It  
18 won't be quick. It will be a process. I  
19 spent two years of my life trying to make  
20 it happen and we were dead in our tracks.  
21 And so I think we need time, we need  
22 discussions, we need more information.  
23 All those kinds of things are important.

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1 from them, so I don't know.  
2 I know that some of these public  
3 operators, some of which have made quotes  
4 that we know obviously they don't know  
5 that they're already required to do  
6 public notification, like some parts and  
7 are even willing to have discussions  
8 about other parts, but there are other  
9 parts that they have trouble with. I  
10 think we need to understand that before  
11 we can move to rulemaking on the public  
12 notification standard.  
13 That's all I have.  
14 CHAIRMAN BROWN: Anybody else?  
15 CHAIRMAN LAIER: Yeah. I would  
16 like to make one comment. For the past  
17 ten years, I have personally been  
18 committed to improve so many issues in  
19 the state of Alabama, but primarily in  
20 Mobile, Alabama. And I'm aware of some  
21 recent success with an association with  
22 Casi Callaway and her work, the  
23 University of South Alabama, Kevin White,

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1 It won't come just instantaneously, and  
2 so I think we need more time to  
3 understand.  
4 MS. DILLARD: Respectfully, I  
5 understand that and the Commission has  
6 expressed, you know, that viewpoint quite  
7 eloquently. I would just urge you not to  
8 take too much time. There's deliberative  
9 study and doing something right and doing  
10 something well, but you also have to put  
11 it in context, and that is currently the  
12 system of public notification is badly  
13 broken, so it has to be fixed; it should  
14 be fixed the right way. We think our  
15 regulation offers a way forward. But  
16 regardless of what the Commission  
17 decides, we don't have the luxury of a  
18 lot of time.  
19 DR. MARTIN: Did you state that  
20 the Alabama Department of Health had no  
21 statistics on illnesses and sicknesses as  
22 it relates to overflows?  
23 MS. DILLARD: That was -- yes.

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1 That was included in the Director's  
2 response.  
3 CHAIRMAN BROWN: Did you check  
4 with any of the local health departments?  
5 MS. DILLARD: I didn't. Again,  
6 it's part of the ad hoc kind of problem.  
7 Some local departments probably do put  
8 together information. We also have  
9 anecdotal information from paddler groups  
10 and others as well as coverage in local  
11 newspapers, but for us, that wasn't -- I  
12 think it's helpful, but it's not  
13 scientific, so we did not put it in the  
14 petition.  
15 DR. RICHARDSON: I would just  
16 like to make one more comment, because  
17 this is one of my favorite topics of mine  
18 at Commission meetings. I have to --  
19 when I read over all of this stuff, I  
20 really have to ask myself one question in  
21 particular for me and being an aquatic  
22 ecologist, very involved in this kind of  
23 thing. I recognize that a large part of

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1 public notification system that works to  
2 protect the public and the public health.  
3 MR. PHILLIPS: Most certainly  
4 wouldn't hurt to have good statistics,  
5 being able to show people that had to  
6 make decisions about infrastructure.  
7 DR. RICHARDSON: That's one thing  
8 I -- I find about this, is the, I guess  
9 for lack of a better phrase, the data to  
10 support some of the things you wish to  
11 change. I don't see a lot of data to --  
12 to support why you think this is better  
13 than that, you know. You modeled after  
14 Georgia. You said Georgia had 24 hours;  
15 you say you want 12. Does that improve  
16 public health? Does that improve the  
17 ecology? Certainly it improves the speed  
18 at which somebody gets notified, but does  
19 that improve public health? There's --  
20 there's a lot of information lacking that  
21 I, for one, before I get to the point, if  
22 it gets to the point of rulemaking -- for  
23 me to get it to the point to move it to

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1 the problem here is poor infrastructure.  
2 And I shudder to think what these  
3 letters, these e-mails, these signatories  
4 on petitions, this list of active  
5 involvement of petitioners, if they all  
6 descended upon the State House to promote  
7 funding for infrastructure improvements.  
8 With the 30,000 responses, I shudder to  
9 think what impact that might have on  
10 improving our infrastructure.  
11 MR. PHILLIPS: They wouldn't have  
12 to go to the state house. They can just  
13 go to city council and county commission.  
14 DR. RICHARDSON: And I agree with  
15 that.  
16 MS. DILLARD: And both places.  
17 And that point is well taken. Part of  
18 the problem in terms of the sewage  
19 overflows is aging infrastructure. But  
20 at the same time, as long as we have  
21 sewage systems, we are going to have  
22 sewage system overflows for a variety of  
23 reasons, and it's critical that we have a

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1 this Commission, I'm going to have to  
2 have some information. And I think  
3 that's the kind of stuff we need to be  
4 trying to strive for. Thank you.  
5 MS. DILLARD: Commissioner  
6 Richardson, with not asking for an  
7 exhaustive list, what kind of additional  
8 information would you personally like to  
9 see?  
10 DR. RICHARDSON: Well, I would  
11 like to see something that compares this  
12 system that we currently have to the  
13 system that Georgia has that you say you  
14 modeled yours after that would make ours  
15 better; that's one thing I would like to  
16 see. I would like to see if any  
17 surrounding states, any in the region,  
18 have other similar models that might be  
19 just as effective but not involve the  
20 state's steps and procedures that you put  
21 forth. If anyone does have any public  
22 health information that relates SSOs to  
23 public health concerns, and how effective

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1 has been their signage and their  
2 notifications, et cetera, et cetera, and  
3 enumerating that. Those are the kind of  
4 data that I want to see before I can  
5 start going into rule and changing rule.  
6 Okay? When the basis of this is  
7 immediate notification.  
8 And immediate notification is just  
9 what it says it is, and if people aren't  
10 doing it, people aren't doing it. And I  
11 think that I am going to have to have  
12 that information before I can make an  
13 informed decision that I want to make in  
14 favor of your petition and suggestions or  
15 against them or whatever, whatever  
16 position I ultimately take. So that's  
17 the kind of stuff that I think ultimately  
18 we're going to have to have.  
19 MS. DILLARD: And if nobody is  
20 compiling this information, you're not in  
21 a position to even consider amending the  
22 regulations?  
23 DR. RICHARDSON: I've got to be

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1 Department's proposals are, what we're  
2 working on that you have alluded to  
3 earlier.  
4 MR. LeFLEUR: Well, I'll forego  
5 these -- these comments. But we have  
6 been working for the past several years  
7 on the first piece of improving  
8 notification to the public. That first  
9 piece is to put the systems on an  
10 immediate electronic form of notification  
11 to the Department that can then be  
12 accessed by health departments,  
13 environmental organizations, individuals.  
14 And as a second step on that, which is in  
15 the early stages but I think you-all have  
16 mentioned it, the opt-in notification to  
17 individuals who would like to have a ping  
18 on their cell phones or whatever, e-mail,  
19 if there is an SSO in their area. So we  
20 have been working on that and we continue  
21 working on that. As you see -- as you  
22 saw in the presentation --  
23 MR. PHILLIPS: Can you get your

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1 convinced. Yeah.  
2 CHAIRMAN BROWN: You've had nine  
3 months. We've had 45 days.  
4 DR. RICHARDSON: Right.  
5 MS. DILLARD: Any other  
6 questions?  
7 (Brief pause.)  
8 MS. DILLARD: Thank you. I  
9 really appreciate the time and the effort  
10 that the Commission has -- has taken with  
11 this issue. And even with the expression  
12 of certain reservations, I do think that  
13 the regulation is a good one. It's a  
14 good starting point and I would urge you  
15 to refer to rulemaking. Thank you.  
16 CHAIRMAN BROWN: Comments from  
17 the Department?  
18 MR. LeFLEUR: I have some  
19 prepared comments. The length of the  
20 meeting --  
21 CHAIRMAN BROWN: I'd be more  
22 interested in hearing what the current  
23 notification requirements are, what the

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1 IT guru to put that back up just so that  
2 we --  
3 MR. LeFLEUR: Beg your pardon?  
4 MR. PHILLIPS: Can you get your  
5 IT guru to put that back up so we can  
6 have it?  
7 MR. LeFLEUR: Guru?  
8 MR. PHILLIPS: I thought it was  
9 going to be you.  
10 MR. LeFLEUR: That definitely  
11 would not be me. The -- we are working  
12 with -- with the -- the various  
13 wastewater treatment systems, sewer  
14 systems. This is a very thorny problem.  
15 Back in August of 2016, the report  
16 focused in large part on the  
17 wastewater -- the sanitary sewer systems  
18 in the state and around the nation and  
19 the reasons why they are the most likely  
20 industry sector to have compliance  
21 issues. And they all do have compliance  
22 issues. As -- as petitioner said, the --  
23 we will always have SSOs. We have them

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1 in this state. They have them in every  
2 single state -- maybe not in Nevada --  
3 but they have them in every single state  
4 where -- where there's any volume of rain  
5 that appears. We are working with the  
6 systems to try to address those issues.  
7 We have been unable to take -- for  
8 example, in Uniontown we have taken all  
9 of the compliance steps that we have  
10 available to us and we've had to turn it  
11 over to the Courts; and that's where it  
12 resides now, in the hands of the Court,  
13 to deal with the kinds of problems that  
14 they're having to deal with. That's --  
15 to a lesser degree, that happens all  
16 around the state. So we are trying to be  
17 an instrument of change to make a readily  
18 available authoritative system available  
19 to these sewer systems, sanitary sewer  
20 systems, to give them an easy path toward  
21 notification. Once again --  
22 CHAIRMAN BROWN: What will that  
23 consist of? I mean, what I'm seeing here

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1 is information that's being reported to  
2 ADEM --  
3 MR. LeFLEUR: Right.  
4 CHAIRMAN BROWN: -- by the  
5 permittee, but the current regulation  
6 requires them to notify the public.  
7 What -- what are their guide- -- are  
8 there guidelines or suggestions or  
9 anything on how they should go about  
10 that?  
11 MR. LeFLEUR: Well, we're in the  
12 process of stakeholder meetings with the  
13 wastewater -- the sanitary sewer systems  
14 and their representative industry  
15 organizations on the best components of  
16 the plans for each of them to have in  
17 place. That was one of the good  
18 suggestions that came out of -- of our  
19 discussion, was that on-site plans are  
20 appropriate for each of these sanitary  
21 sewer systems, hard plans.  
22 Now, we -- we have some difficulty  
23 with approving plans because then we

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1 assume liability for those plans. But to  
2 make sure that the individual systems  
3 have a plan in place for notification is  
4 one of the things we're moving forward  
5 with, that and -- and electronic --  
6 putting things in electronic format that  
7 allow people to -- to make rapid  
8 decisions on what's happening.  
9 MR. PHILLIPS: In light of what  
10 you just said about accepting liability,  
11 you accept plans that are in other  
12 regulations like spill prevention  
13 pollution. You can accept them --  
14 MR. LeFLEUR: Correct.  
15 MR. PHILLIPS: -- and you can  
16 hold them accountable for them.  
17 MR. LeFLEUR: Correct.  
18 MR. PHILLIPS: You just don't  
19 want to approve them?  
20 MR. LeFLEUR: That's exactly  
21 right.  
22 MR. PHILLIPS: Just wanted to  
23 clarify.

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1 MR. LeFLEUR: Yeah. For -- for  
2 example, construction BMPs, a  
3 professional engineer or other  
4 credentialed professional has to prepare  
5 the plan. That has to be in place. We  
6 don't say the plan is adequate or  
7 inadequate.  
8 MR. PHILLIPS: But you do hold  
9 them accountable for the plan?  
10 MR. LeFLEUR: They are  
11 accountable. They're accountable for  
12 meeting the standards, regardless of what  
13 their plan says.  
14 CHAIRMAN BROWN: And I guess  
15 ultimately my question is, the  
16 regulation -- ADEM regulations require  
17 immediate public notification by the  
18 permittee; correct?  
19 MR. LeFLEUR: Exactly.  
20 CHAIRMAN BROWN: So how would you  
21 evaluate today whether somebody complied  
22 or didn't comply and whether or not  
23 enforcement action should be assessed?

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1 MR. LeFLEUR: Well, we have taken  
2 enforcement action against sanitary sewer  
3 systems for a number of failures, SSOs,  
4 and for failure to provide public notice.  
5 We have taken enforcement action against  
6 those.  
7 CHAIRMAN BROWN: And my question  
8 is, how did you -- what is your measuring  
9 stick to decide whether to take  
10 enforcement action for failure to provide  
11 public notice?  
12 MR. LeFLEUR: Well, there --  
13 there are a number of factors that go  
14 into any enforcement action. What is the  
15 consequence of failure to do it, is there  
16 a history of failure to do it, did they  
17 make a concerted effort to do it and then  
18 just failed to meet that effort. There  
19 are a number of factors that go into  
20 that. But what is appropriate for that  
21 particular SSO in that particular system,  
22 did they meet a reasonable standard in  
23 notifying the public.

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1 MR. PHILLIPS: Let me step in.  
2 CHAIRMAN BROWN: Go ahead.  
3 MR. PHILLIPS: Let me help my  
4 chairman.  
5 MR. LeFLEUR: Thank you.  
6 MR. PHILLIPS: Something happens  
7 from the time there's a release -- or  
8 something happens from the time that  
9 there's a release, a spillage of sewage,  
10 to a notification of the public and then  
11 something -- for them to be in  
12 noncompliance, you found out something at  
13 some point that led you to believe that  
14 they did not comply. How does that  
15 happen in between those two points? You  
16 describe very well this point over here.  
17 What happens between? How do you know  
18 that they're in noncompliance for a  
19 release that they didn't notify the  
20 public for?  
21 MR. LeFLEUR: Well, oftentimes it  
22 may be they just didn't notify us at all,  
23 in which case there's obviously a --

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1 MR. PHILLIPS: Then how did you  
2 know there was a release of an SSO?  
3 MR. LeFLEUR: Well, if we found  
4 out through some other method.  
5 MR. PHILLIPS: Okay.  
6 MR. LeFLEUR: Okay. Well, please  
7 stand by me.  
8 MR. PHILLIPS: Come on up.  
9 MS. DEAN: I'm Glenda Dean. I'm  
10 Chief of the Water Division. What I was  
11 pointing out to --  
12 MR. LeFLEUR: This is our SSO  
13 form.  
14 MS. DEAN: Yes. We have -- the  
15 permittee is required even through the  
16 eSSO system or through the manual  
17 system -- as the Director explained to  
18 you earlier, there is in that a certain  
19 set of questions they have to answer, and  
20 part of that is your public  
21 notification -- what was your volume of  
22 SSO, did it reach waters of the state,  
23 what method did you use, what date did

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1 you do -- did you do that on. And this  
2 is part of our response to the petition;  
3 it's Exhibit A-4. On the back of that  
4 page, it asked in particular, indicate  
5 efforts to notify the public, check all  
6 that apply, and it has press release,  
7 placement of signs, other notice not  
8 required and the reason why not, and a  
9 date for that.  
10 MR. PHILLIPS: And so just to  
11 follow out my question, it's  
12 inconsistencies that you get when they  
13 report?  
14 MS. DEAN: Yes. We -- our staff,  
15 when they're doing enforcement reviews or  
16 compliance reviews, will look at the  
17 information provided to us. Absence of  
18 information says one thing. If they  
19 provided information, what did they  
20 provide to us, was that adequate for the  
21 circumstances that they reported and did  
22 we have information to the contrary.  
23 MR. PHILLIPS: And are there

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1 operators that actually submit that form  
2 and when it asked, did you notify the  
3 public they put no?  
4 MS. DEAN: That does happen.  
5 Sometimes it's left blank.  
6 MR. LeFLEUR: And --  
7 MR. PHILLIPS: That helps. Thank  
8 you.  
9 MR. LeFLEUR: -- of course --  
10 MR. PHILLIPS: Thank you.  
11 Is that what you were asking?  
12 CHAIRMAN BROWN: Yes.  
13 MR. LeFLEUR: -- when they don't  
14 report the SSO to us --  
15 MR. PHILLIPS: You still don't  
16 have --  
17 MR. LeFLEUR: -- at all, then  
18 we're -- we're uninformed and we have to  
19 find out through other means --  
20 MR. PHILLIPS: Yeah.  
21 MR. LeFLEUR: -- obviously.  
22 MR. PHILLIPS: What types of  
23 means are those?

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1 Department at the point of that orange  
2 square in the middle, could that square,  
3 for example, be divided in half and have  
4 eSSO, what you have up there, on one-half  
5 and on the other half have opt-in e-mail  
6 and text notification?  
7 MR. LeFLEUR: Well, that is -- we  
8 are in the process of adding the opt-in  
9 notification to anybody who would like to  
10 be notified. They have to tell us that  
11 they want to be notified.  
12 DR. RICHARDSON: What's your time  
13 line on that?  
14 MR. LeFLEUR: Well, as with many  
15 of our things, it's resource- and  
16 manpower-dependent.  
17 DR. RICHARDSON: If you had a  
18 bigger budget from the state, you could  
19 do this better?  
20 MR. LeFLEUR: Our IT folks are  
21 not in here at the moment, but sometime  
22 in the next year is what we're looking  
23 at.

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1 MR. LeFLEUR: Well, it may be  
2 that it's an on-site inspection where  
3 they go over the records and say, Wait a  
4 minute, here's an SSO that you didn't  
5 report to us. Why not?  
6 MR. PHILLIPS: Good point.  
7 DR. RICHARDSON: Can you go  
8 forward a slide? I think the slide where  
9 this is more --  
10 MR. PHILLIPS: The mapping thing?  
11 DR. RICHARDSON: Go back -- back  
12 one. -- what you're working towards.  
13 MR. LeFLEUR: Oh, that would be  
14 the next one.  
15 DR. RICHARDSON: Okay. Okay.  
16 MR. LeFLEUR: This is what we  
17 talked about earlier, that we are  
18 developing the system. Once we get  
19 enough of these people on the E-reporting  
20 system, then we can have a critical mass  
21 that will allow us to upload and map  
22 those on a real-time basis.  
23 DR. RICHARDSON: So could the

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1 CHAIRMAN BROWN: But this, again,  
2 would be -- this would be ADEM providing  
3 notice, where- --  
4 MR. LeFLEUR: Right.  
5 CHAIRMAN BROWN: -- public notice  
6 or public opt-in, whereas the regulation  
7 requires the operator to --  
8 MR. LeFLEUR: Right. This will  
9 not relieve them of their obligation to  
10 notify the public, but it provides a tool  
11 that will help them in their notification  
12 to the public.  
13 MR. PHILLIPS: But as I  
14 understand it, the petition that's been  
15 put before us is to not so much focus on  
16 what you will do as it will on what the  
17 local --  
18 CHAIRMAN BROWN: Correct.  
19 MR. LeFLEUR: Correct.  
20 MR. PHILLIPS: -- notification --  
21 MR. LeFLEUR: Well, failure to  
22 notify the public is an enforcement  
23 issue.

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1 MR. PHILLIPS: True. It does  
2 have impact.  
3 MR. LeFLEUR: The rule being in  
4 place does not change their -- their  
5 compliance with that rule. Having more  
6 notification -- we already have  
7 notification requirements. Some of the  
8 facilities do not comply with that  
9 regulation. And changing the regulation  
10 to -- I completely understand that if we  
11 can make it easy, step by step on how you  
12 notify the public, that that may assist  
13 some of those. But we don't find that --  
14 that failure to notify the public is  
15 because they don't know how to do it.  
16 MR. PHILLIPS: They just don't do  
17 it.  
18 MR. LeFLEUR: They just don't do  
19 it.  
20 MR. PHILLIPS: I have one more  
21 question. Your two green boxes at the  
22 top seem to indicate about a five-day  
23 span between when the permittee notifies

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1 MR. LeFLEUR: No, no, no. It  
2 goes in -- whenever it comes into our  
3 system, it electronically goes over to  
4 the map. We don't have to take any other  
5 steps. So it's simultaneous with our  
6 notification -- I guess simultaneous  
7 or --  
8 MR. PHILLIPS: I've give you a  
9 few hours.  
10 MR. LeFLEUR: -- couple of hours.  
11 MS. ELLIOTT: It will be a couple  
12 of hours or something. Depending on when  
13 they -- exactly when they notify --  
14 MR. LeFLEUR: And we upload --  
15 MS. ELLIOTT: -- and it rolls  
16 over to the map. It -- you know, if they  
17 notify us, the very -- either the hour --  
18 it might immediate -- otherwise, it might  
19 be a couple of hours.  
20 MR. PHILLIPS: Gotcha.  
21 MS. ELLIOTT: Maybe so much as  
22 six, depending on --  
23 MR. PHILLIPS: Sooner than it is

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1 ADEM and when the permittee submits the  
2 SSO report; right? So zero to five.  
3 MR. LeFLEUR: Correct.  
4 MR. PHILLIPS: Give me an idea  
5 with this new system how quickly me as  
6 the public would know on that map, once  
7 you get to that point --  
8 MR. LeFLEUR: Well --  
9 MR. PHILLIPS: -- I'll know that  
10 there's an SSO in my area.  
11 MR. LeFLEUR: Okay. The program  
12 that we're putting in place and been  
13 working on for the last several years  
14 would have the public be able to be  
15 notified at the same time that the  
16 Department is notified.  
17 MR. PHILLIPS: So if I opt in,  
18 somebody notifies you, within some  
19 reasonable amount of time --  
20 MR. LeFLEUR: That goes in --  
21 MR. PHILLIPS: -- but not five --  
22 but not five days?  
23 MS. ELLIOTT: No.

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1 now.  
2 MR. LeFLEUR: Oh, absolutely.  
3 MS. ELLIOTT: Reasonably  
4 immediate.  
5 MR. LeFLEUR: Once again, we  
6 would -- we would have the local sanitary  
7 system tie -- have a link on their  
8 website that would link to the ADEM map  
9 the central location for these. So if a  
10 citizen wanted to go to their local  
11 system and find out what's going on, that  
12 link would tie in with our link, with our  
13 mapping system.  
14 CHAIRMAN BROWN: I guess going  
15 back to sort of my original question, the  
16 form that we've been discussing talks  
17 about the press release, placement of  
18 signs, who's notified. Is there  
19 something somewhere that tells people  
20 what process or suggest what they should  
21 do, permittees?  
22 MR. LeFLEUR: Do we have a  
23 stepwise public notification program for

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1 the individual sewer --  
2 CHAIRMAN BROWN: Permittees.  
3 MR. LeFLEUR: -- systems? No, we  
4 do not. And it's up to them to develop  
5 that.  
6 MR. PHILLIPS: I like the idea of  
7 the plan you talked about.  
8 MR. LeFLEUR: A plan -- a plan  
9 will force them -- if they don't already  
10 have a laid-out process, it will force  
11 them to have one.  
12 MS. DEAN: Speaking back to --  
13 Director, speaking back to the guidance,  
14 the EPA has some guidance out there for  
15 sewer response plans that permittees can  
16 utilize, and we've directed them toward  
17 that.  
18 CHAIRMAN BROWN: For  
19 notifications?  
20 MS. DEANS: For notifications.  
21 It's broader than that, but it also  
22 includes notification that people can  
23 use, permittees may use. We don't have

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1 specific other than our Form 415, but at  
2 least for --  
3 CHAIRMAN BROWN: Because what  
4 I -- what I -- I guess what I see on the  
5 Petitioners' side is, well, what is  
6 reasonable -- what's reasonable, what's  
7 public notice, how do we judge it. You  
8 know, if the Jefferson County sewage  
9 department has a sewage spill and they  
10 put a note up -- put a billboard -- I  
11 mean a sign in front of their office  
12 building, is that public notice? I think  
13 that's what the whole point of this is,  
14 is -- is, you know, making sure public  
15 notice actually informs the public that  
16 needs to know rather than people who may  
17 just happen to drive down to the  
18 courthouse today. And I understand that,  
19 you know, there can be an information  
20 overload as well. You know, I certainly  
21 wouldn't want to opt in to this system  
22 that was going to notify me of every  
23 sewage spill in every part of the state.

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1 You know, I suspect my phone might  
2 just --  
3 MR. PHILLIPS: Explode?  
4 CHAIRMAN BROWN: -- explode,  
5 vibrate till it fell apart.  
6 MR. LeFLEUR: Yes.  
7 CHAIRMAN BROWN: Any other  
8 questions of the Director?  
9 (No response.)  
10 MR. LeFLEUR: Let me -- let me  
11 close by saying that we are committed to  
12 improving the public notification in the  
13 state and we will work with all  
14 interested parties. That includes  
15 environmental organizations as well as  
16 the sanitary sewer systems, health  
17 department, and organizations that  
18 represent the individual sewer systems.  
19 CHAIRMAN BROWN: There was some  
20 discussion -- I thank you. I wanted to  
21 ask counsel some -- there was some  
22 discussions about the options, I guess,  
23 of whether we have to vote this up or

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1 down or whether it can be amended through  
2 the rulemaking process, and I thought you  
3 should comment on those.  
4 MR. TAMBLING: Well, I think your  
5 options are fairly limited. You can  
6 either vote it up or down. I'll refer to  
7 this Rule 335-2-2-.06, Disposition of the  
8 Petition. Each one of you has the rule  
9 in your packet. Essentially, within 60  
10 days after the petition is filed with the  
11 Commission, the Commission shall do one  
12 of the following, (a), initiate  
13 rulemaking proceedings in accordance with  
14 Code of Alabama Section 22-22A-8 and  
15 41-22-5 -- that's the Administrative  
16 Procedures Act -- or, (b), deny the  
17 petition in writing on the merits stating  
18 the reasons therefor.  
19 CHAIRMAN BROWN: But if we  
20 initiate the rulemaking process, can it  
21 be amended therein to maybe -- yes?  
22 MS. DILLARD: I believe I have  
23 the answer. I agree with Mr. Tambling

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1 that it is a straight up or down rule.  
2 During the rulemaking process, if you  
3 vote to refer the petition to rulemaking,  
4 you're required in the process of  
5 adopting the rule to have a public  
6 hearing and to take public comments. And  
7 under Alabama Code Section 22-22A-8,  
8 after the public hearing, the Department  
9 may revise the -- after such hearing, the  
10 Department may revise the proposed rules,  
11 regulations, or standards before adoption  
12 in response to testimony, written  
13 submissions, or exhibits introduced at  
14 the hearing without conducting a further  
15 hearing on the revisions.  
16 So your vote today is straight up or  
17 down, but the rulemaking process enables  
18 you, if you do refer the regulation to  
19 rulemaking, to take into consideration  
20 those public comments and at that point  
21 in time make adjustments.  
22 Mr. Tambling, would you agree?  
23 MR. TAMBLING: I do. I think --

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1 comment, then it's -- it's up to the  
2 Commission to reconcile those comments.  
3 And, you know, if you're going to make  
4 any modification to the rule, it would  
5 have to be a logical outgrowth from the  
6 time that you proceed. And there can't  
7 be a significant departure so that it  
8 substantively just changes the rule  
9 altogether; otherwise, you're going to be  
10 in a situation where you have to deny or  
11 basically vote down the rule or basically  
12 approve the rule, and then you'd be open  
13 to a challenge, if that makes any sense.  
14 MR. PHILLIPS: Is there a time  
15 line -- if we initiate rulemaking, what's  
16 the time line?  
17 MR. TAMBLING: Yeah. I was -- I  
18 was asking Debi about that, and we -- we  
19 have to -- to look at that.  
20 Does anybody -- I don't really have  
21 the answer to that question right --  
22 right now.  
23 DR. MILLER: It looks to me like

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1 I do agree with that.  
2 MR. PHILLIPS: Let me ask a  
3 question before you -- but we can deny it  
4 and do the same thing?  
5 CHAIRMAN BROWN: We can send it  
6 to rulemaking.  
7 MR. PHILLIPS: Yeah.  
8 CHAIRMAN BROWN: We can send it  
9 our Rulemaking Committee.  
10 DR. LAIER: Right.  
11 MR. PHILLIPS: Correct?  
12 MR. TAMBLING: You can deny the  
13 petition and then you could, you know, I  
14 guess, send this matter to the Rulemaking  
15 Committee for consideration.  
16 MR. PHILLIPS: And I interrupted,  
17 so finish your --  
18 MR. TAMBLING: Well --  
19 MR. PHILLIPS: -- agreement or  
20 not agreement.  
21 MR. TAMBLING: You know, once --  
22 once the rule goes to notice and comment  
23 and there's an opportunity for public

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1 it's 60 days from the time --  
2 MR. TAMBLING: It's not a very  
3 long time.  
4 MR. PHILLIPS: It's not a long  
5 period.  
6 MR. TAMBLING: Yeah. It's either  
7 60 or 90 days. And I'll have to get back  
8 with you on --  
9 CHAIRMAN BROWN: Still wouldn't  
10 be nine months.  
11 MR. TAMBLING: No, no.  
12 DR. MILLER: There's no way that  
13 can happen. There's just no way that can  
14 happen.  
15 CHAIRMAN BROWN: Is there  
16 anything else anybody would like to add?  
17 (No response.)  
18 CHAIRMAN BROWN: I think the Vice  
19 Chair has something he would like to say.  
20 MR. PHILLIPS: I have a motion to  
21 make that we deny the petition and refer  
22 this rule to the Rulemaking Committee to  
23 determine by working with the Department

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1 and stakeholders the need for any  
2 additional rules or modifications to the  
3 existing rules for public notification of  
4 SSOs.  
5 DR. RICHARDSON: Second.  
6 CHAIRMAN BROWN: Chair calls for  
7 the question all in favor?  
8 (Indicated.)  
9 CHAIRMAN BROWN: Passes.  
10 MR. TAMBLING: If you're going to  
11 deny the petition, I think you need to be  
12 able to state your reasons for denying  
13 the petition.  
14 MR. PHILLIPS: You want me to do  
15 it now?  
16 DR. RICHARDSON: Can you read --  
17 MR. TAMBLING: Well, if it's  
18 in --  
19 DR. RICHARDSON: Can you read me  
20 the code that says we have to do that?  
21 CHAIRMAN BROWN: Yeah, it's in  
22 there.  
23 MR. PHILLIPS: It's in the

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1 disposition. It's in there.  
2 MR. TAMBLING: Well, under  
3 Section 332-2-.05 -- I'm not saying you  
4 absolutely have to do it, you know,  
5 verbally, but I think your order should  
6 recite the reasons for the denial of the  
7 petition. And you can -- you have  
8 332-2-.05 (a) through (i) to consider.  
9 DR. RICHARDSON: You're talking  
10 about the items --  
11 MR. PHILLIPS: Yeah.  
12 DR. RICHARDSON: -- the items  
13 that we may consider for --  
14 MR. TAMBLING: That's fine.  
15 DR. RICHARDSON: -- approval or  
16 denial?  
17 MR. TAMBLING: But I would -- I  
18 would recommend that in -- if you're  
19 going to deny the petition, that you  
20 articulate reasons for denying the  
21 petition.  
22 MR. PHILLIPS: We have to do that  
23 here?

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1 MR. TAMBLING: No, I don't think  
2 you have to do it here; but I think in  
3 your order, your written order should  
4 reflect those -- those reasons.  
5 DR. RICHARDSON: I would like to  
6 offer an amendment to the motion.  
7 MR. PHILLIPS: I think the motion  
8 has passed.  
9 DR. RICHARDSON: Oh, the motion  
10 has passed. That's right. I can't offer  
11 an amendment. Never mind.  
12 DR. MILLER: Well, is what we  
13 passed, Robert, is that a valid vote or  
14 not? I mean, we don't state the reason,  
15 do we need to revote with the reason?  
16 MR. TAMBLING: I would recommend  
17 that you propose another motion to  
18 supplement the one you just passed.  
19 MR. PHILLIPS: Or one with an  
20 amendment.  
21 DR. RICHARDSON: Then I would  
22 like to move, Mr. Chairman, that petition  
23 be denied for rulemaking based on ADEM

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1 Administrative Code Rule 335-2-2-.05,  
2 consideration of petition, paragraphs (g)  
3 and (i), with the reason for denial being  
4 that adoption of the proposed rule would  
5 negatively impact the overall regulatory  
6 scheme of the Department and  
7 consideration of any other relevant  
8 factors, evidence, data, or information.  
9 DR. MILLER: I'll second that  
10 motion.  
11 CHAIRMAN BROWN: Any discussion?  
12 (No response.)  
13 DR. MARTIN: Is that sufficient,  
14 Counsel?  
15 MR. PHILLIPS: I believe you  
16 could have added (a).  
17 DR. MARTIN: Correct.  
18 DR. RICHARDSON: And (a). No.  
19 DR. MILLER: Robert, you  
20 comfortable?  
21 MR. TAMBLING: Yeah. I'm just  
22 looking at it. Yeah, I think that's  
23 sufficient.

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1 MR. PHILLIPS: Got a motion and  
2 second.  
3 CHAIRMAN BROWN: All in favor?  
4 (Indicated.)  
5 CHAIRMAN BROWN: Passes. Yes?  
6 MR. PHILLIPS: I have one other  
7 thing, and I'll bring it up here since I  
8 mentioned it in my earlier comments. I'm  
9 not saying that we have to do this in our  
10 Commission meeting today, but I really  
11 would like the Commission to think about  
12 passing a motion to refer or have Chair  
13 refer to the Rulemaking Committee the  
14 review of the existing EMC Rule  
15 335-2-2-.06, which is the disposition of  
16 petition to determine if any changes or  
17 modifications that would improve that  
18 rule should be considered in the future  
19 of our full Commission. Just my view.  
20 DR. MILLER: I would like to ask  
21 Robert if the rule that Scott is  
22 referring to is an ADEM-specific rule or  
23 if that's a rule that any department --

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1 CHAIRMAN BROWN: No. That's an  
2 ADEM regulation, Commission regulation.  
3 MR. TAMBLING: I know the  
4 Administrative Procedure Act has specific  
5 rules governing the passage -- or  
6 governing the process of rulemaking; and  
7 at this point, I don't know how the two  
8 right off the top of my head, you know,  
9 jive with each other, but --  
10 MR. PHILLIPS: And maybe it's  
11 just Mr. Chair make a charge to --  
12 MR. TAMBLING: Yeah.  
13 MR. PHILLIPS: -- Robert to look  
14 at it --  
15 MR. TAMBLING: Yeah.  
16 MR. PHILLIPS: -- between now and  
17 the next meeting.  
18 MR. TAMBLING: Ask me to look at  
19 it. I think that's a better, you know --  
20 CHAIRMAN BROWN: So asked. Yes?  
21 MR. REID: Mr. Chairman, I just  
22 want to clarify. In the second motion  
23 that we heard, it sounded like it was a

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1 formal denial of the petition, but I did  
2 not hear a referral to the Rulemaking  
3 Committee. Was that --  
4 MR. PHILLIPS: The first -- first  
5 motion passed.  
6 MR. REID: Okay. And so the  
7 second motion was a -- was the --  
8 CHAIRMAN BROWN: It is referred to  
9 rulemaking.  
10 DR. RICHARDSON: It is referred  
11 to Rulemaking Committee, yes.  
12 MR. REID: I will sit in silence  
13 the remainder of the time.  
14 MS. THOMAS: Chairman, I'm going  
15 to have you-all sign the signature page  
16 and then I'll get with you to get the  
17 correct wording. Thank you.  
18 CHAIRMAN BROWN: Is there any  
19 other business? Any other business on  
20 the agenda that anyone wants to address?  
21 MR. PHILLIPS: I already took  
22 care of mine.  
23 CHAIRMAN BROWN: Commission notes

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1 date of the next Commission meeting is  
2 June 16, 2017, right here, 11 a.m.  
3 So now we will move to the public-  
4 comment period. Three minutes. David  
5 Butler, Cahaba Riverkeeper, wants to  
6 address sewage RTK petition, Helena.  
7 MR. BUTLER: Yes, sir. So my  
8 name is David Butler. I'm the Cahaba  
9 Riverkeeper. And I had sort of prepared  
10 some comments and just threw it away.  
11 The way the discussion went today has  
12 kind of changed, I guess, the comments  
13 that I would have.  
14 And the first thing I want to ask is  
15 just to Dr. Richardson. Did I understand  
16 you clearly to ask if there was a public  
17 health benefit to knowing that you're  
18 swimming in feces 24 hours as opposed to  
19 12 hours? because I found that  
20 incomprehensible. We took the picture  
21 that you saw on the slides before of our  
22 grandchildren playing in that water. We  
23 were in the best position of anybody to

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1 be notified if there was actually public  
2 notice. And we talked to the City of  
3 Pelham, who was responsible for the  
4 overflow, and what they said was that  
5 they do want to notify the public but  
6 they didn't know how. And we did; we did  
7 notify the public and we do know how to  
8 do it. And in a very short period of  
9 time, our, you know, attempt to notify  
10 the public reached 70,000 people in less  
11 than eight hours. And there is a very  
12 strong desire for the public to know  
13 that.  
14 And in your questions, you asked --  
15 you know, you referenced these comments  
16 of people that sent in that don't believe  
17 there is a system for public  
18 notification, and that's the reason why.  
19 When their children have swum -- you  
20 know, been swimming in water that is  
21 contaminated and they were not notified,  
22 that is effectively not a system of  
23 public notification. And in our case,

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1 anybody to do more with less resources  
2 than the groups who have submitted this  
3 petition. I think Casi mentioned it. We  
4 work closely with the Coosa Riverkeeper,  
5 which is two employees. We have two  
6 employees. We test all summer at every  
7 recreational access point. We provide,  
8 you know, adequate public notice. And I  
9 think that -- that we have shown that you  
10 can do that with -- with limited  
11 resources.  
12 And then the only other --  
13 CHAIRMAN BROWN: Thank you.  
14 MR. BUTLER: -- thing I wanted to  
15 say -- what's that?  
16 CHAIRMAN BROWN: Thank you.  
17 MR. BUTLER: That's it?  
18 CHAIRMAN BROWN: Next, David  
19 Ludder representing self to address  
20 Director's criticism at last meeting. Be  
21 careful.  
22 MR. LUDDER: Of course. My name  
23 is David Ludder, and I am here on behalf

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1 you know, in a state of six million, you  
2 know, however many million people live in  
3 Alabama, I happen to be in the right  
4 place at the right time with the right  
5 equipment. And had I not been there that  
6 day, nobody would have been notified.  
7 There would have been absolutely no  
8 notification. And at that location where  
9 that waterfall is, on a day like that,  
10 which was July 22, 2015, literally  
11 hundreds of people play in that water,  
12 and it's inexcusable to us that -- that  
13 the operator came to that park and  
14 notified nobody. The difference -- what  
15 we are asking in the petition is that the  
16 difference in his responsibility -- he  
17 was responsible to go to the park, and  
18 all we're asking is to hang a sign there.  
19 And that's a very small burden on the  
20 operator.  
21 And then the other thing is, you  
22 know, resources. We've heard "resources"  
23 come up a lot. And I would challenge

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1 of myself. I was unable to attend the  
2 last meeting of the Commission; however,  
3 I did view the videotape of that meeting.  
4 I was very disappointed to see the  
5 criticism leveled at the environmental  
6 community by the Director as well as  
7 leveled at Michael Mullen in particular.  
8 Michael Mullen has complained  
9 repeatedly to ADEM about construction  
10 storm-water sites that are not adequately  
11 prepared to control erosion and sediment  
12 deposition in state water. Mr. Mullen is  
13 not an amateur at this. He is a  
14 certified professional in erosion and  
15 sediment control, a certification that  
16 under ADEM's regulations authorizes him  
17 to design all nonstructural elements of  
18 construction of storm water best-  
19 management plans. He also has a Bachelor  
20 of Science degree in chemistry and  
21 biology, a Master of Science degree in  
22 chemistry, and a Master of Science degree  
23 in biology. He is the former director of

Page 141	<p>1 the Center for Environmental Research and 2 Service at Troy State University. Given 3 his expertise and qualifications, his 4 complaints about adequate or inadequate 5 erosion and sediment controls at 6 construction and storm water sites should 7 be taken seriously. 8 One complaint that Mr. Mullen and 9 others have had repeatedly or have made 10 repeatedly concerns the time it takes for 11 ADEM to take enforcement action once a 12 violation is discovered and the time it 13 takes for violators to return to 14 compliance once enforcement action is 15 taken. The timeliness of enforcement 16 actions and return to compliance are 17 important measures of the effectiveness 18 of ADEM's enforcement program. The EPA 19 dashboards that the Director so often 20 references at Commission meetings do not 21 measure the timeliness of enforcement 22 actions or the timeliness of return to 23 compliance. The collection of anecdotal</p>	Page 143	<p>1 Choctatawhatchee Riverkeeper, 2 Incorporated, led by Mr. Mullen, filed 3 eight notices of intent to sue violators 4 for Clean Water Act violations. Some of 5 these included sanitary sewer overflows. 6 In response to each of these notices, 7 ADEM and the State of Alabama filed 8 lawsuits against the violators alleging 9 the same violations that Mr. Mullen 10 identified. 11 I urge the Commission to do two 12 things -- first, establish a policy -- 13 establish that it is a policy of ADEM to 14 collect and report data on the timeliness 15 of enforcement actions and the timeliness 16 of return to compliance. And, second, 17 advise the Director to refrain from 18 engaging in personal attacks on members 19 of the environmental community. 20 Thank you for giving me the 21 opportunity to express my views. Thank 22 you. 23 CHAIRMAN BROWN: Thank you. I'll</p>
Page 142	<p>1 data on timeliness of enforcement and 2 timeliness of return to compliance is not 3 an appropriate way to characterize the 4 effectiveness of ADEM's enforcement 5 program. Therefore, the environmental 6 community has repeatedly asked the 7 Director to collect such data, and the 8 Director has repeatedly refused to do so, 9 preferring instead to rely on the EPA 10 dashboards. 11 Given the Director's reluctance to 12 collect such data, it is appropriate for 13 the environmental community now to ask 14 the Commission to establish that it is 15 the policy of the Department to collect 16 and report data on the timeliness of 17 enforcement action and the timeliness of 18 return to compliance. 19 Finally, I would say that 20 Mr. Mullen's credibility and accuracy has 21 been confirmed numerous times by ADEM and 22 the attorney general. Between April 12, 23 2008 and May 4, 2016, the</p>	Page 144	<p>1 entertain a motion -- 2 MR. PHILLIPS: Move we adjourn. 3 DR. MARTIN: Second. 4 CHAIRMAN BROWN: All in favor? 5 (Indicated.) 6 CHAIRMAN BROWN: We're adjourned. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 REPORTER'S CERTIFICATE</p>

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2                                    )  
3           ELMORE COUNTY     )

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5           I do hereby certify that the above  
6           and foregoing transcript was taken down  
7           by me in stenotype, and the questions and  
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10          the foregoing represents a true and  
11          correct transcript of the testimony given  
12          by said witness.

13          I further certify that I am neither  
14          of counsel, nor any relation to the  
15          parties to the action, nor am I anyway  
16          interested in the result of said cause.

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18          licensed by the Alabama Board of Court  
19          Reporting as a Certified Court Reporter  
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23                   /s/ Bridgette W. Mitchell  
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1           STATE OF ALABAMA     )  
2                                     )  
3           ELMORE COUNTY        )

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ACCR No. 231 - Expires 9/30/17  
MY COMMISSION EXPIRES 12/19/17

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**Part B**

## **Attachment Index**

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**Attachment 2 Director's Slides  
(Agenda Item 2)**

**Attachment 3 Resolution adopting revisions to ADEM Administrative Code 335-3,  
Air Pollution Control Program Regulations and Attachment A – Adopted  
Revisions  
(Agenda Item 4)**

**Attachment 4 Order adoption motion to deny Petition for Rulemaking based on  
ADEM Administrative Code Rule 335-2-2-.05, Consideration of Petition,  
paragraphs (g) and (i), with the reasons for denial being that adoption  
of the proposed rule would negatively impact the overall regulatory  
scheme of the Department and consideration of any other relevant  
factors, evidence, data, or information, and referring the proposed rule  
to the Rulemaking Committee to determine by working with the  
Department and stakeholders the need for any additional rules or  
modifications to existing rules for public notification of Separate Sanitary  
Sewer Overflows (SSOs)  
(Agenda Item 5)**

**Attachment 1**

Amended 4/10/17

AGENDA\*  
MEETING OF THE  
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION  
DATE: April 21, 2017  
TIME: 11:00 a.m.  
LOCATION: Alabama Department of Environmental Management (ADEM) Building  
Alabama Room (Main Conference Room)  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110-2400

<u>ITEM</u>	<u>PAGE</u>
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4. Consideration of adoption of proposed amendments to ADEM Administrative Code 335-3, Air Pollution Control Program Regulations	2
5. Petition for Rulemaking to Amend ADEM Administrative Code Rule 335-6-6-.12, Conditions Applicable to All NPDES Permits EMC Rulemaking Petition 17-03 (NPDES-Related Matter) Petitioners – Alabama Rivers Alliance, Inc., Black Warrior Riverkeeper, Inc., Cahaba Riverkeeper, Inc., Choctawhatchee Riverkeeper, Inc., Coosa Riverkeeper, Inc., Friends of Hurricane Creek, Little River Waterkeeper, Mobile Baykeeper, Inc., and Tennessee Riverkeeper, Inc.	2
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\* The Agenda for this meeting will be available on the ADEM website, [www.adem.alabama.gov](http://www.adem.alabama.gov), under Environmental Management Commission.

\*\* The Minutes for this meeting will be available on the ADEM website under Environmental Management Commission.

1. CONSIDERATION OF MINUTES OF MEETING HELD ON FEBRUARY 10, 2017
2. REPORT FROM THE ADEM DIRECTOR
3. REPORT FROM THE COMMISSION CHAIR
4. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-3, AIR POLLUTION CONTROL PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code 335-3, Air Pollution Control Program Regulations. The Department proposes to amend ADEM Administrative Code Rules 335-3-1-.02, 335-3-3-.05, 335-3-4-.08, 335-3-8-.39, 335-3-8-.41, 335-3-8-.42, 335-3-8-.43, 335-3-8-.45, 335-3-8-.46, 335-3-8-.48 through 335-3-8-.53, 335-3-8-.55 through 335-3-8-.63, 335-3-8-.65 through 335-3-8-.70, 335-3-10-.01, 335-3-10-.02, 335-3-10-.03, 335-3-11-.01, 335-3-11-.03, 335-3-11-.06, 335-3-11-.07, 335-3-14-.01, 335-3-14-.04, 335-3-14-.05, 335-3-14-.06, 335-3-15-.05, 335-3-16-.15, 335-3-19-.01 through 335-3-19-.05, and Appendix C. Revisions to the Division 3 Code are being proposed to incorporate by reference changes to the EPA's New Source Performance Standards (NSPS), and National Emissions Standards for Hazardous Air Pollutants (NESHAPs). The definition of volatile organic compounds (VOCs) in Chapter 335-3-1 is also being proposed for revision to be consistent with EPA's revisions. Revisions are being made to Chapter 335-8 to incorporate amendments to EPA's Cross State Air Pollution Rules (CSAPR), which updates the NO<sub>x</sub> ozone season emission budgets for the electric generating units (EGUs) within the state, and that implement these budgets via modification to the CSAPR NO<sub>x</sub> ozone season allowance trading program established under the original CSAPR. Chapters 335-3-14, 335-3-15, and 335-3-16 are being revised to incorporate amendments to EPA public notice regulations. The State Plans to control emissions from Commercial and Industrial Solid Waste Incineration Units (CISWI) and emissions at Existing Municipal Solid Waste Landfills (MSWL) are also being revised. Chapters 335-3-1, 4, 14, 15 and 8 are considered part of the federally-enforceable State Implementation Plan (SIP). Revisions to these Chapters are proposed to be incorporated into Alabama's SIP. The Department held a public hearing on the proposed amendments on March 8, 2017.

5. PETITION FOR RULEMAKING TO AMEND ADEM ADMINISTRATIVE CODE RULE 335-6-6-.12, CONDITIONS APPLICABLE TO ALL NPDES PERMITS, EMC RULEMAKING PETITION 17-03 (NPDES-RELATED MATTER), PETITIONERS – ALABAMA RIVER ALLIANCE, INC., BLACK WARRIOR RIVERKEEPER, INC., CAHABA RIVERKEEPER, INC., CHOCTAWHATCHEE RIVERKEEPER, INC., COOSA RIVERKEEPER, INC., FRIENDS OF HURRICANE CREEK, LITTLE RIVER WATERKEEPER, MOBILE BAYKEEPER, INC., AND TENNESSEE RIVERKEEPER, INC.

The Commission will consider the following Petitioners' requests to make presentations regarding the above Petition for Rulemaking: (1) Request 1 – Attorney for Petitioners Eva Dillard, Black Warrior Riverkeeper, Inc. and (2) Request 2 – Casi Callaway, Mobile Baykeeper.

The Commission will also consider the above Petition for Rulemaking, which seeks the amendment of ADEM Administrative Code Rule 335-6-6-.12 by expansion of the provisions of Rule 335-6-6-.12(1)(7)(v), Immediate notification, by adding proposed Rule (vi), Minimum requirements for public notification, and proposed Rule (vii), Public notification plan.

6. OTHER BUSINESS
7. FUTURE BUSINESS SESSION

PUBLIC COMMENT PERIOD

**BRIEF STATEMENTS BY MEMBERS OF THE PUBLIC REGISTERED TO SPEAK**

Members of the public that wish to make a brief statement at a Commission meeting may do so by first signing in on a register maintained by the Commission office prior to each regularly scheduled meeting. The register will close ten minutes prior to convening each meeting of the Commission. Following completion of all agenda items, the Commission Chair will call on members of the public wishing to make a statement in the order their names appear on the register. Speakers are encouraged to limit their statement to matters that directly relate to the Commission's functions. Speakers will be asked to observe a three minute time limit. While an effort will be made to hear all members of the public signed on the register, the Commission may place reasonable limitations on the number of speakers to be heard. (Guideline 11, Guidelines for Public Comment).

The Guidelines for Public Comment are used in the application of ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda and Public Participation. The Guidelines for Public Comment serve to educate and inform the public as to how the Commission interprets and intends to apply the Rule. The revised Rule 335-2-3-.05 was effective October 7, 2016.

**Attachment 2**



## Alabama Department of Environmental Management

### ADEM Funding

<u>FY</u>	<u>General Fund</u> <u>\$ million</u>	<u>Rank in Total</u> <u>Funding</u>
2013	3.0	



## Alabama Department of Environmental Management

### ADEM Funding

<u>FY</u>	<u>General Fund</u> <u>\$ million</u>	<u>Rank in Total</u> <u>Funding</u>
2013	3.0	49 <sup>th</sup>



## Alabama Department of Environmental Management

### ADEM Funding

<u>FY</u>	<u>General Fund</u> <u>\$ million</u>	<u>Rank in Total</u> <u>Funding</u>
2013	3.0	49 <sup>th</sup>
2014	0.8	
2015	0.8	



## Alabama Department of Environmental Management

### ADEM Funding

<u>FY</u>	<u>General Fund</u> <u>\$ million</u>	<u>Rank in Total</u> <u>Funding</u>
2013	3.0	49 <sup>th</sup>
2014	0.8	50 <sup>th</sup>
2015	0.8	50 <sup>th</sup>



## Alabama Department of Environmental Management

### ADEM Funding

<u>FY</u>	<u>General Fund</u> <u>\$ million</u>	<u>Rank in Total</u> <u>Funding</u>
2013	3.0	49 <sup>th</sup>
2014	0.8	50 <sup>th</sup>
2015	0.8	50 <sup>th</sup>
2016	(0.9)	
2017	0.3	
2018	0.6 (House version)	



**Alabama Department of  
Environmental Management**

**Possible responses to budget cuts**



**Alabama Department of  
Environmental Management**

**Possible responses to budget cuts**

- Reducing background monitoring and testing



## Alabama Department of Environmental Management

### Possible responses to budget cuts

- Reducing background monitoring and testing
- Reducing monitoring of emerging contaminants



## Alabama Department of Environmental Management

### Possible responses to budget cuts

- Reducing background monitoring and testing
- Reducing monitoring of emerging contaminants
- Delaying UST inspections, TMDL development, and permit renewals



## Alabama Department of Environmental Management

### Possible responses to budget cuts

- Reducing background monitoring and testing
- Reducing monitoring of emerging contaminants
- Delaying UST inspections, TMDL development, and permit renewals
- Scaling back or eliminating optional programs



## Alabama Department of Environmental Management

### Possible responses to budget cuts

- Reducing background monitoring and testing
- Reducing monitoring of emerging contaminants
- Delaying UST inspections, TMDL development, and permit renewals
- Scaling back or eliminating optional programs
- Renegotiating EPA work plans

**Attachment 3**

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-3 of the Department's Air Division – Air Pollution Control Program Rules in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

WHEREAS, a public hearing was held before a representative of the Alabama Department of Environmental Management designated by the Environmental Management Commission for the purpose of receiving data, views and arguments on the amendment of such proposed rules; and

WHEREAS, the Alabama Department of Environmental Management has reviewed the oral and written submissions introduced into the hearing record, and has prepared a concise statement of the principal reasons for and against the adoption of the proposed rules incorporating therein its reasons for the adoption of certain revisions to the proposed rules in response to oral and written submissions, such revisions, where appropriate, having been incorporated into the proposed rules attached hereto; and

WHEREAS, the Environmental Management Commission has considered fully all oral and written submissions respecting the proposed amendments and the Reconciliation Statement prepared by the Alabama Department of Environmental Management.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-3 [rules 335-3-1-.02/Definitions (Amend); 335-3-3-.06/Incineration of Commercial and Industrial Solid Waste (Amend); 335-3-4-.08/Wood Waste Boilers (Amend); 335-3-8-.39/ TR NO<sub>x</sub> Ozone Season Trading Program-Purpose and Definitions (Amend); 335-3-8-.41/ TR NO<sub>x</sub> Ozone Season Trading Program-Retired Unit Exemption (Amend); 335-3-8-.42/ TR NO<sub>x</sub> Ozone Season Trading Program-

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

Standard Requirements (Amend); 335-3-8-.43/ TR NO<sub>x</sub> Ozone Season Trading Program-Computation of Time (Amend); 335-3-8-.45/NO<sub>x</sub> Ozone Season Trading Budgets and Variability Limits (Amend); 335-3-8-.46/ TR NO<sub>x</sub> Ozone Season Allowance Allocations (Amend); 335-3-8-.48/Authorization of Designated Representative and Alternate Designated Representative (Amend); 335-3-8-.49/Responsibilities of Designated Representative and Alternate Designated Representative (Amend); 335-3-8-.50/Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source (Amend); 335-3-8-.51/Certificate of Representation (Amend); 335-3-8-.52/Objections Concerning Designated Representative and Alternate Designated Representative (Amend); 335-3-8-.53/Delegation by Designated Representative and Alternate Designated Representative (Amend); 335-3-8-.55/Establishment of Compliance Accounts, Assurance Accounts, and General Accounts (Amend); 335-3-8-.56/Recordation of TR NO<sub>x</sub> Ozone Season Allowance Allocations and Auction Results (Amend); 335-3-8-.57/Submission of TR NO<sub>x</sub> Ozone Season Allowance Transfers (Amend); 335-3-8-.58/Recordation of TR NO<sub>x</sub> Ozone Season Allowance Transfers (Amend); 335-3-8-.59/Compliance with TR NO<sub>x</sub> Ozone Season Emissions Limitation (Amend); 335-3-8-.60/Compliance with TR NO<sub>x</sub> Ozone Season Assurance Provisions (Amend); 335-3-8-.61/Banking (Amend); 335-3-8-.62/ TR NO<sub>x</sub> Ozone Season Trading Program-Account Error (Amend); 335-3-8-.63/ TR NO<sub>x</sub> Ozone Season Trading Program-Administrator's Action on Submissions (Amend); 335-3-8-.65/General Monitoring, Recordkeeping, and Reporting Requirements (Amend); 335-3-8-.66/Initial Monitoring System Certification and Recertification Procedures (Amend); 335-3-8-.67/Monitoring System Out-of-Control Periods (Amend); 335-3-8-.68/Notifications Concerning Monitoring (Amend); 335-3-8-.69/Recordkeeping and Reporting (Amend); 335-3-8-.70/Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements (Amend); 335-3-10-.01/General (Amend); 335-3-10-.02/Designated Standards of Performance (Amend); 335-3-10-.03/Appendices to 40 CFR 60 (Amend); 335-3-11-.01/General (Amend); 335-3-11-.02/Designated Emission Standards (Amend); 335-3-11-.03/Appendices to 40 CFR 61 (Amend); 335-3-11-.06/National Emission Standards for Hazardous Air Pollutants for Source Categories (Amend); 335-3-11-.07/Appendices to 40 CFR 63 (Amend); 335-3-14-.01/General Provisions (Amend); 335-3-14-.04/Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting {PSD}] (Amend); 335-3-14-.05/Air Permits Authorizing Construction In or Near Non-Attainment Areas (Amend); 335-3-14-.06/Requirements for General Technology [Determinations for Major Sources in Accordance with Clean Air Act Section 112(g)]

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

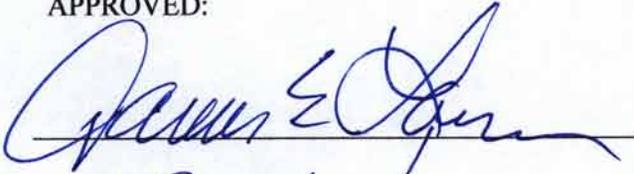
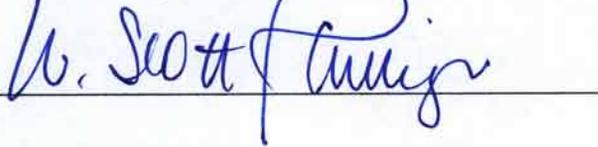
(Amend); 335-3-15-.05/Public Participation (Amend); 335-3-16-.15/Permit Review by EPA, Affected States and Public (Amend); 335-3-19-.01/Definitions (Amend); 335-3-19-.02/General Provisions (Amend); 335-3-19-.03/Standards for Existing Municipal Solid Waste Landfills (Amend); 335-3-19-.04/Compliance Schedule (Amend); 335-3-19-.05/Petition for Alternative Standards and Compliance Schedules (Amend); 335-3 Appendix C/EPA Regulation Reference Documents for New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants (Amend)]; of the Department's Air Division – Air Pollution Control Program rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

ADEM Admin. Code division 335-3 - Air Pollution Control Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 21<sup>st</sup> day of April 2017.

APPROVED:

  
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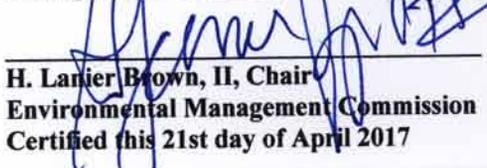
  
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DISAPPROVED:

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This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 21st day of April 2017.

  
\_\_\_\_\_  
H. Lanier Brown, II, Chair  
Environmental Management Commission  
Certified this 21st day of April 2017

ABSTAINED:

\_\_\_\_\_

\_\_\_\_\_

**ATTACHMENT A**

**ADEM Admin. Code Rule 335-3-1-.02**

**335-3-1-.02 Definitions.**

(1) **Meaning of Terms.** As used in these rules and regulations, terms shall have the meanings ascribed in this rule.

(a) "Act" shall mean the Alabama Air Pollution Control Act of 1971, Act No. 769, Regular Session, 1971.

(b) "Adjudication" shall mean decisions, orders, decrees, determinations, or rulings by the Commission or its authorized Hearing officers and is specifically limited to decisions in regard to citations, Sections 17(e) and (f) of the Act, and variances, Section 12 of the Act.

(c) "Adjudication Hearing" shall mean a hearing held before the Commission or its authorized Hearing Officer, pursuant to the issuance of a citation(s), Section 17(e) and (f) of the Act, and variances, Section 12 of the Act, for the purpose of establishing a record and a set of recommendations to provide the basis for an adjudication by the Commission of a contested case.

(d) "Air Contaminant" shall mean any solid, liquid, or gaseous matter, any odor, or any combination thereof, from whatever source.

(e) "Air Pollution" shall mean the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life, or property, or would interfere with the enjoyment of life or property throughout the State and in such territories of the State as shall be affected thereby.

(f) "Air Pollution Emergency" shall mean a situation in which meteorological conditions and/or contaminant levels in the ambient air reach or exceed the levels which may cause imminent and substantial endangerment to health.

(g) "Air Quality Control Region" shall mean jurisdictional areas designated in 40 CFR 81.

(h) "Capture System" shall mean the equipment (including hoods, ducts, fans, etc.) used to contain, capture, or transport a pollutant to a control device.

(i) "Chairman" shall mean the Chairman or, in his absence, the Vice Chairman of the Commission.

(j) "Citation" shall mean a notice sent by the Commission or its authorized agent (to suspected violators of the Act) pursuant to Section 17(e).

(k) "Coating" shall mean a protective, decorative, or functional film applied in a thin layer to a surface substrate.

(l) "Coating Applicator" shall mean an apparatus used to apply a surface coating.

(m) "Coating Line" shall mean one or more apparatus or operations which may include any number or combination of coating applicators, flash-off areas, and ovens wherein a surface coating is applied, dried, and/or cured.

(n) "Commenced" shall mean that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a binding agreement or contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(o) "Commission" shall mean the "Environmental Management Commission".

(p) "Construction" shall mean fabrication, erection, or installation of an affected facility.

(q) "Continuous Vapor Control System" shall mean a vapor control system that treats vapors displaced from tanks during filling on a demand basis without intermediate accumulation.

(r) "Control Device" shall mean any device which has the function of controlling the emissions from a process, fuel-burning, or refuse-burning device and thus reduces the creation of or the emission of air contaminants into the atmosphere, or both.

(s) "Control Regulation" shall mean a legally enforceable emission control strategy.

(t) "Control Strategy" shall mean a collection of various emission standards selected for the different categories of sources.

(u) "County Classification" shall mean the designation Class 1 County or Class 2 County. All facilities, plants, or other installations shall be subject to the restrictions on air pollution emissions specific to the county classification of the county in which they are located.

1. A "Class 2 County" shall mean a county in which:

(i) More than 50 percent of the county population resides in a non-urban place, as defined by the U.S. Department of Commerce Census Bureau for 1970.

(ii) No secondary National Ambient Air Quality Standards are being exceeded, based on 1971 air quality measurements.

2. A "Class 1 County" shall mean a county in which the conditions of either subparagraph 1.(i) or 1.(ii) above or both are not met.

(v) "Day" shall mean a twenty-four (24) hour period beginning at midnight.

(w) "Department" shall mean the Alabama Department of Environmental Management.

(x) "Director" shall mean the Director of the Department of Environmental Management.

(y) "Effluent Water Separator" shall mean any tank, box, sump, or other container in which any volatile organic compound floating on or entrained or contained in water entering such tank, box, sump, or other container is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

(z) "Emission" shall mean a release into the outdoor atmosphere of air contaminants.

(aa) "Employee" shall mean any employee of the Commission or Division.

(bb) "Existing Source" shall mean any source in operation or on which construction has commenced on the date of initial adoption of an applicable rule or regulation; except that any existing source which has undergone modification after the date of initial adoption of an applicable rule or regulation, shall be reclassified and considered a new source.

(cc) "Federal Act" shall mean the Clean Air Act (42 U.S.C. 1857 et seq.) as last amended, and as may hereafter be amended.

(dd) "Flash-Off Area" shall mean the space between the application area and the oven.

(ee) "Fuel-Burning Equipment" shall mean any equipment, device, or contrivance and all appurtenances thereto, including ducts, breechings, fuel-feeding equipment, ash removal equipment, combustion controls, stacks, and chimney, used primarily, but not exclusively, to burn any fuel for the purpose of indirect heating in which the material being heated is not contacted by and adds no substance to the products of combustion.

(ff) "Fugitive Dust" shall mean solid air-borne particulate matter emitted from any source other than a flue or stack.

(gg) "Gasoline" shall mean a petroleum distillate having a Reid vapor pressure of 27.6 kPa (4 psia) or greater and used as a fuel for internal combustion engines.

(hh) "Heat Available" shall mean the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks.

(ii) "Hydrocarbons" shall mean any organic compound of carbon and hydrogen only.

(jj) "Incinerator" shall mean any equipment, device, or contrivance and all appurtenances thereof used for the destruction (by burning) of solid, semi-solid, liquid, or gaseous combustible wastes.

(kk) "Intermediate Vapor Control System" shall mean a vapor control system that employs an intermediate vapor holder to accumulate vapors displaced from tanks during filling. The control device treats the accumulated vapors only during automatically controlled cycles.

(ll) "Loading Rack" shall mean an aggregation or combination of gasoline loading equipment arranged so that all loading outlets in the combination can be connected to a tank truck or trailer parked in a specified loading space.

(mm) "Maximum Process Weight Per Hour" shall mean the equipment manufacturer's or designer's guaranteed maximum (whichever is greater) process weight per hour.

(nn) "Model Year" shall mean the annual production period of new motor vehicles designated by the calendar year in which such period ends, provided that if the manufacturer does not so designate vehicles manufactured by him, the model year with respect to such vehicle shall mean the twelve-month period beginning January 1 of the year specified herein.

(oo) "Modification" shall mean any physical change in, or change in the method of operation of, an affected source which increases the amount of any air contaminant (to which a rule or regulation applies) emitted by such source or which results in the emission of any air contaminant (to which a rule or regulation applies) not previously emitted, except that:

1. Routine maintenance, repair, and replacement shall not be considered physical changes, and

2. The following shall not be considered a change in the method of operation:

(i) An increase in the production rate;

(ii) An increase in hours of operation;

(iii) Use of an alternative fuel or raw material.

(pp) "Motor Vehicle" shall mean every self-propelled device in or upon or by which any person or property is, or may be, transported or drawn upon a public highway.

(qq) "New Source" shall mean any source built or installed on or after the date of initial adoption of an applicable rule or regulation, and any source existing at said stated time which later undergoes modification. Any source moved to another premise involving a change of location after the date of initial adoption of an applicable rule or regulation shall be considered a new source.

This definition of new source is not applicable to ADEM Admin. Code rules 335-3-10-.01(3) and 335-3-11-.01(3).

(rr) "Objector" shall mean any person who objects to the granting of a variance pursuant to Section 12(d) of the Act.

(ss) "Odor" shall mean smells or aromas which are unpleasant to persons or which tend to lessen human food and water intake, interfere with sleep, upset appetite, produce irritation of the upper respiratory tract, or cause symptoms or nausea, or which by their inherent chemical or physical nature or method or processing are, or may be, detrimental or dangerous to health. Odor and smell are used interchangeably herein.

(tt) "Opacity" shall mean the degree to which emissions reduce the transmission of light and obscure the view of the background.

(uu) "Open Burning" shall mean the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack, duct, or chimney.

(vv) "Operating Time" shall mean the number of hours per year that a source conducts operations.

(ww) "Organic Material" shall mean a chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

(xx) "Oven" shall mean a chamber within which heat is used to bake, cure, polymerize, and/or dry a surface coating.

(yy) "Owner or Operator" shall mean any person who owns, leases, operates, controls, or supervises an affected facility, article, machine, equipment, other contrivance, or source.

(zz) "Particulate Matter" shall mean finely divided material, except uncombined water, which is a liquid or solid at the conditions of the applicable test method.

(aaa) "Party" shall mean the petitioner(s) for variance under Section 12 of the Act, the person(s) objecting to the grant of a variance petition under Section 12 of the Act, the alleged violator in the case of a citation issued pursuant to Section 17(e) of the Act, and the State.

(bbb) "Petitioner" shall mean any person who petitions the Commission pursuant to Section 12 of the Act and in accordance with rule 335-3-1-.09 of the Rules and Regulations.

(ccc) "PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method

based on 40 CFR 50, Appendix J, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(ddd) "PM<sub>10</sub> Emission" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR.

(eee) "Prime Coat" shall mean the first film of coating applied in a multiple coat operation.

(fff) "Priority Classification" shall mean Air Quality Control Region Pollutant Priority Classifications set forth in 40 CFR 52.

(ggg) "Process" shall mean any action, operation, or treatment of materials, including handling and storage thereof, which may cause discharge of an air contaminant or contaminants into the atmosphere, but excluding fuel burning and refuse burning.

(hhh) "Process Weight" shall mean the total weight in pounds of all materials introduced into any specific process which may cause any discharge into the atmosphere.

(iii) "Process Weight Per Hour" shall mean the total weight of all materials introduced into any specific process that may cause any discharge of particulate matter. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. For a cyclical or batch operation, the process weight per hour will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment is idle. For a continuous operation, the process weight per hour will be derived by dividing the process weight for a typical period of time by that time period.

(jjj) "Refuse" shall mean matter consisting of garbage, rubbish, ashes, street debris, dead animals, abandoned vehicles, industrial wastes, demolition wastes, construction wastes, special wastes, or sewage treatment residue.

(kkk) "Reid Vapor Pressure" shall mean a vapor pressure specification for volatile organic crude oil and volatile nonviscous petroleum liquids except liquid petroleum gases as determined by American Society for Testing and Materials. The pressure approximates the absolute vapor pressure of the liquid.

(lll) "Shutdown" shall mean the cessation of operation of affected source or emission control equipment.

(mmm) "Six-Minute Average" shall be determined by calculating the arithmetic mean of twenty-four (24) consecutive opacity observations, taken at intervals of fifteen (15) seconds.

(nnn) "Smoke" shall mean gas-borne particles resulting from incomplete combustion consisting predominantly, but not exclusively, of carbon, ashes, or other combustible materials.

(ooo) "Soiling Index" shall mean a measure of the soiling properties of total suspended particulates in air determined by drawing a measured volume of air through a known area of Whatman No. 4 filter paper for a measured period of time, expressed as COHs/1,000 linear feet.

(ppp) "Solvent" shall mean organic materials which are liquid at standard conditions and which are used as solvers, viscosity reducers, or cleaning agents.

(qqq) "Source" shall mean any building, structure, facility, installation, article, machine, equipment, device, or other contrivance which emits or may emit any air contaminant. Any activity which utilizes abrasives or chemicals for cleaning or any other purpose (such as cleaning the exterior of buildings) which emits air contaminants shall be considered a source.

(rrr) "Stack or Ducts" shall mean any flue, duct, or other contrivance arranged to conduct emissions to the open air.

(sss) "Standard Conditions" shall mean a temperature of 20°C (68°F) and pressure of 760 millimeters of mercury (29.92 inches of mercury).

(ttt) "Startup" shall mean the setting in operation of an affected source for any purpose.

(uuu) "State" shall mean the State of Alabama, the Environmental Management Commission, and the Commission's representatives.

(vvv) "Storage Tank Capacity" shall mean the tank manufacturer's design capacity. Storage tank and storage vessel shall be equivalent in meaning.

(www) "Submerged Fill Pipe" shall mean any fill pipe, the discharge opening of which is entirely submerged when the liquid level is six (6) inches above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean any fill pipe, of which the top of the discharge opening is not over 18 inches from the bottom of the tank.

(xxx) "Topcoat" shall mean the final film of coating applied in a multiple coat operation.

(yyy) "Total Reduced Sulfur (TRS)" shall mean hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides present.

(zzz) "Total suspended particulate" means particulate matter as measured by the method described in 40 CFR 50, Appendix B.

(aaaa) "Transfer Efficiency (TE)" shall mean the efficiency of a surface coating application system to deposit coating solids on a substrate. The transfer efficiency of an application system is determined by dividing the volume of coating solids deposited on a substrate by the total volume of coating solids used.

(bbbb) "True Vapor Pressure" shall mean the equilibrium partial pressure exerted by a stored petroleum liquid at the temperature equal to the highest calendar-month average of the liquid storage temperature as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from External Floating Roof Tanks," 1962, Second Edition, February 1980.

(cccc) "Uncombined Water" shall mean any water droplets or water vapor condensate that does not contain any other solid or liquid particulate matter attached to the water droplets.

(dddd) "Vapor Collection System" shall mean a vapor transport system which uses direct displacement by the liquid loaded to force vapors from the tank into a vapor control system.

(eeee) "Vapor Recovery System" shall mean a system that prevents release to the atmosphere of at least 90 percent by weight of organic compounds in the vapor displaced from a tank during the transfer of gasoline.

(ffff) "Violator" shall mean any person who is issued a citation by the Commission or its authorized agent pursuant to Section 17(e) and (f) of the Act.

(gggg) "Volatile Organic Compounds (VOC)" shall mean any compound of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any such organic compound **other than the following**:

1. Methane;
2. Ethane;
3. Methyl Chloroform (1,1,1 Trichloroethane);
4. Methylene Chloride (Dichloromethane);
5. CFC-11 (Trichlorofluoromethane);
6. CFC-12 (Dichlorodifluoromethane);
7. HCFC-22 (Chlorodifluoromethane);
8. HFC-23 (Trifluoromethane);
9. CFC-114 (1,2-dichloro-1,1,2,2-Tetrafluoroethane);
10. CFC-115 (Chloropentafluoroethane);
11. HCFC-123 (1,1,1-Trifluoro-2,2-dichloroethane);
12. HCFC-124 (2-Chloro-1,1,1,2-tetrafluoroethane);
13. HFC-125 (Pentafluoroethane);
14. HFC-134 (1,1,2,2-Tetrafluoroethane);

15. HFC-134a (1,1,1,2-Tetrafluoroethane);
16. HCFC-141b (1,1-Dichloro-1-fluoroethane);
17. HCFC-142b (1-Chloro-1,1-difluoroethane);
18. HFC-143a (1,1,1-Trifluoroethane);
19. HFC-152a (1,1-Difluoroethane);
20. CFC-113 (1,1,2-Trichloro-1,2,2-Trifluoroethane);
21. Parachlorobenzotrifluoride (PCBTF);
22. Cyclic, branched, or linear completely methylated siloxanes;
23. Acetone;
24. Perchloroethylene (tetrachloroethylene);
25. HCFC-225ca (3,3-dichloro-1,1,1,2,2-pentafluoropropane);
26. HCFC-225cb (1,3-dichloro-1,1,2,2,3-pentafluoropropane);
27. HFC 43-10mee (1,1,1,2,3,4,4,5,5,5-decafluoropentane);
28. HFC-32 (Difluoromethane);
29. HFC-161 (Ethylfluoride);
30. HFC-236fa (1,1,1,3,3,3-Hexafluoropropane);
31. HFC-245ca (1,1,2,2,3-Pentafluoropropane);
32. HFC-245ea (1,1,2,3,3-Pentafluoropropane);
33. HFC-245eb (1,1,1,2,3-Pentafluoropropane);
34. HFC-245fa (1,1,1,3,3-Pentafluoropropane);
35. HFC-236ea (1,1,1,2,3,3-Hexafluoropropane);
36. HFC-365mfc (1,1,1,3,3-Pentafluorobutane);
37. HCFC-31 (Chlorofluoromethane);
38. HCFC-123a (1,2-Dichloro-1,1,2-trifluoroethane);
39. HCFC-151a (1-Chloro-1-fluoroethane);
40. C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub> (1,1,1,2,2,3,3,4,4-Nonfluoro-4-methoxybutane);
41. (CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>CF<sub>2</sub>OCH<sub>3</sub> (2-(Difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane);
42. C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub> (1-Ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane);
43. (CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub> (2-(Ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane);
44. Methyl Acetate;
45. HFE-7000, n-C<sub>3</sub>F<sub>7</sub>OCH<sub>3</sub>, (1,1,1,2,2,3,3,-heptafluoro-3 methoxypropane);
46. HFE-7500 (3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane);
47. HFC-227ea (1,1,1,2,3,3,3-heptafluoropropane);
48. methyl formate (HCOOCH<sub>3</sub>);
49. HFE-7300 (1,1,1,2,2,3,4,5,5,5,-decafluoro-3-methoxy-4-trifluoromethyl-pentane);
50. propylene carbonate;
51. dimethyl carbonate;
52. trans-1,3,3,3-tetrafluoropropene;

53. HFE-134 (HCF<sub>2</sub>OCF<sub>2</sub>H);
54. HFE-236cal2 (HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H);
55. HFE-338pcc13 (HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H);
56. H-Galden 1040x or H-Galden ZT130 (or 150 or 180)  
(HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H);
57. trans 1-chloro-3,3,3-trifluoroprop-1-ene (Solstice™ 1233zd(E));
58. HFO-1234yf (2,3,3,3-tetrafluoropropene);
59. 2-amino-2-methyl-1-propanol;

60. t-butyl acetate

61. 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane; and

~~60-62.~~ Perfluorocarbon compounds which fall into these classes:

- (i) Cyclic, branched, or linear, completely fluorinated alkanes;
- (ii) Cyclic, branched, or linear, completely fluorinated ethers with no

Unsaturation;

- (iii) Cyclic, branched, or linear, completely fluorinated tertiary

~~Amines~~ amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(2) The heretofore mentioned excluded organic compounds have been determined to have negligible photochemical reactivity by the EPA Administrator. For purposes of determining compliance with emission limits under chapter 335-3-6, VOC shall be measured by the approved test methods contained in chapter 335-3-6. Where such a method also inadvertently measures the heretofore mentioned negligibly photochemical reactive organic compounds with the reactive organic compounds, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emission limit using EPA-approved test methods and procedures.

~~(3) The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.~~

**Author:** James W. Cooper and John E. Daniel.

**Statutory Authority:** Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.

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**ADEM Admin. Code Rule 335-3-3-.05**

**335-3-3-.05 Incineration of Commercial and Industrial Solid Waste.**

(1) Terms used but not defined in this rule are defined in 40 CFR 60, Subparts A and B, and are incorporated by reference in ADEM Admin. Code chapter 335-3-10. For the purposes of this rule only, the following definitions apply:

(a) "30-day rolling average" means the arithmetic mean of the previous 720 hours of valid operating data. Valid data excludes periods when this unit is not operating. The 720 hours should be consecutive, but not necessarily continuous if operations are intermittent.

(b) "Administrator" means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative.

(c) "Affirmative defense" means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

(d) "Agricultural waste" means vegetative agricultural materials such as nut and grain hulls and chaff (e.g., almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds, and other vegetative waste materials generated as a result of agricultural operations.

(e) "Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

(f) "Annual heat input" means the heat input for the 12 months preceding the compliance demonstration.

(g) "Auxiliary fuel" means natural gas, liquified petroleum gas, fuel oil, or diesel fuel.

(h) "Average annual heat input rate" means annual heat input divided by the hours of operation for the 12 months preceding the compliance demonstration.

(i) "Bag leak detection system" means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (i.e., baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other principle to monitor relative particulate matter loadings.

(j) "Burn-off oven" means any rack reclamation unit, part reclamation unit, or drum reclamation unit. A burn-off oven is not an incinerator, waste-burning kiln, an energy recover unit or a small, remote incinerator under this rule.

(k) "Bypass stack" means a device used for discharging combustion gases to avoid severe damage to the air pollution control device or other equipment.

(l) "Calendar quarter" means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

(m) "Calendar year" means 365 consecutive days starting on January 1 and ending on December 31.

(n) "CEMS data during startup and shutdown" means the following:

1. For incinerators, small remote incinerators: CEMS data collected during the first hours of a CISWI unit startup from a cold start until waste is fed into the unit and the hours of operation following the cessation of waste material being fed to the CISWI unit during a unit shutdown. For each startup event, the length of time that CEMS data may be claimed as being CEMS data during startup must be 48 operating hours or less. For each shutdown event, the length of time that CEMS data may be claimed as being CEMS data during shutdown must be 24 operating hours or less.

2. For energy recovery units: CEMS data collected during the startup or shutdown periods of operation. Startup begins with either the first-ever firing of fuel in a boiler or process heater for the purpose of supplying useful thermal energy (such as steam or heat) for heating, cooling or process purposes, or producing electricity, or the firing of fuel in a boiler or process heater for any purpose after a shutdown event. Startup ends four hours after when the boiler or process heater makes useful thermal energy (such as heat or steam) for heating, cooling, or process purposes, or generates electricity or when no fuel is being fed to the boiler or process heater, whichever is earlier. Shutdown begins when the boiler or process heater no longer makes useful thermal energy (such as heat or steam) for heating, cooling, or process purposes and/or generates electricity or when no fuel is being fed to the boiler or process heater, whichever is earlier. Shutdown ends when the boiler or process heater no longer makes useful thermal energy (such as steam or heat) for heating, cooling, or process purposes and/or generates electricity, and no fuel is being combusted in less;

3. For waste-burning kilns: CEMS data collected during the periods of kiln operation that do not include normal operations. Startup means the time from when a shutdown kiln first begins firing fuel until it begins producing clinker. Startup begins when a shutdown kiln turns on the induced draft fan and begins firing fuel in the main burner. Startup ends when feed is being continuously introduced into the kiln for a least 120 minutes or when the feed rate exceeds 60 percent of the kiln design limitation rate, whichever occurs first. Shutdown means the cessation of kiln operation. Shutdown begins when feed to the kiln is halted and ends when continuous kiln rotation ceases.

(o) "Chemical recovery unit" means combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. A chemical recovery unit is not an incinerator, a waste-burning kiln, an energy recovery unit or a small, remote incinerator under this rule. The following seven types of units are considered chemical recovery units:

1. Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

2. Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

3. Units burning only wood or coal feedstock for the production of charcoal.

4. Units burning only manufacturing byproduct streams/residue containing catalyst metals that are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

5. Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

6. Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

7. Units burning only photographic film to recover silver.

(p) "Chemotherapeutic waste" means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

(q) "Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

(r) "Commercial and industrial solid waste incineration (CISWI) unit" means any distinct operating unit of any commercial or industrial facility that combusts, or has combusted in the preceding 6 months, any solid waste as that term is defined in 40 CFR part 241. If the operating unit burns material other than traditional fuels as defined in §241.2 that have been discarded, and the owner or operator does not keep and produce records as required by subparagraph (ll)(u) of this rule, the operating unit is a CISWI unit. While not all CISWI units will include all of the following components, a CISWI unit includes, but is not limited to, the solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The CISWI unit does not include air pollution control equipment or the stack.

The CISWI unit boundary starts at the solid waste hopper (if applicable) and extends through two areas:

1. The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and

2. The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The CISWI unit includes all ash handling systems connected to the bottom ash handling system.

3. A CISWI unit does not include any of the types of units described in subparagraph (2)(d) of this rule, nor does it include any combustion turbine or reciprocating internal combustion engine.

(s) "Contained gaseous material" means gases that are in a container when that container is combusted.

(t) "Continuous emission monitoring system (CEMS)" means the total equipment that may be required to meet the data acquisition and availability requirements of this rule, used to sample, condition (if applicable), analyze, and provide a record of emissions.

(u) "Continuous monitoring system (CMS)" means the total equipment, required under the emission monitoring sections in applicable rules, used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters. A particulate matter continuous parameter monitoring system (PM CPMS) is a type of CMS.

(v) "Cyclonic burn barrel" means a combustion device for waste materials that is attached to a 55 gallon, open-head drum. The device consists of a lid, which fits onto and encloses the drum, and a blower that forces combustion air into the drum in a cyclonic manner to enhance the mixing of waste material and air. A cyclonic burn barrel is not an incinerator, a waste-burning kiln, an energy recovery unit or a small, remote incinerator under this rule.

(w) "Deviation" means any instance in which an affected source subject to this rule, or an owner or operator of such a source:

1. Fails to meet any requirement or obligation established by this rule, including but not limited to any emission limitation, operating limit, or operator qualification and accessibility requirements;

2. Fails to meet any term or condition that is adopted to implement an applicable requirement in this rule and that is included in the operating permit for any affected source required to obtain such a permit.

(x) "Dioxins/furans" means tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans.

(y) "Discard" means, for purposes of this rule and 40 CFR 60, Subpart CCCC [ADEM Admin. Code r. 335-3-10-.02(81)], only, burned in an incineration unit without energy recovery.

(z) "Drum reclamation unit" means a unit that burns residues out of drums (e.g., 55 gallon drums) so that the drums can be reused.

(aa) "Dry scrubber" means an add-on air pollution control system that injects dry alkaline sorbent (dry injection) or sprays an alkaline sorbent (spray dryer) to react with and neutralize acid gas in the exhaust stream forming a dry powder material. Sorbent injection systems in fluidized bed boilers and process heaters are included in this definition. A dry scrubber is a dry control system.

(bb) "Energy recovery" means the process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

(cc) "Energy recovery unit" means a combustion unit combusting solid waste (as that term is defined by the Administrator in 40 CFR part 241) for energy recovery. Energy recovery units include units that would be considered boilers and process heaters if they did not combust solid waste.

(dd) "Energy recovery unit designed to burn biomass (Biomass)" means an energy recovery unit that burns solid waste, biomass, and non-coal solid materials but less than 10 percent coal, on a heat input basis on an annual average, either alone or in combination with liquid waste, liquid fuel or gaseous fuels.

(ee) "Energy recovery unit designed to burn coal (Coal)" means an energy recovery unit that burns solid waste and at least 10 percent coal on a heat input basis on an annual average, either alone or in combination with liquid waste, liquid fuel or gaseous fuels.

(ff) "Energy recovery unit designed to burn liquid waste materials and gas (Liquid/gas)" means an energy recovery unit that burns a liquid waste with liquid or gaseous fuels not combined with any solid fuel or waste materials.

(gg) "Energy recovery unit designed to burn solid materials (Solids)" includes energy recovery units designed to burn coal and energy recovery units designed to burn biomass.

(hh) "Fabric filter" means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media, also known as a baghouse.

(ii) "Foundry sand thermal reclamation unit" means a type of part reclamation unit that removes coatings that are on foundry sand. A foundry sand thermal reclamation unit is not an incinerator, a waste-burning kiln, an energy recovery unit or a small, remote incinerator under this rule.

(jj) "Incinerator" means any furnace used in the process of combusting solid waste (as that term is defined by the Administrator under Resource

Conservation and Recovery Act in 40 CFR part 241) for the purpose of reducing the volume of the waste by removing combustible matter. Incinerator designs include single chamber and two-chamber.

(kk) "In-line coal mill" means those coal mills using kiln exhaust gases in their process. Coal mills with a heat source other than the kiln or coal mills using exhaust gases from the clinker cooler alone are not an in-line coal mill.

(ll) "In-line kiln/raw mill" means a system in a Portland Cement production process where dry kiln system is integrated with the raw mill so that all or a portion of the kiln exhaust gases are used to perform the drying operation of the raw mill, with no auxiliary heat source used. In this system the kiln is capable of operating without the raw mill operating, but the raw mill cannot operate without the kiln gases, and consequently, the raw mill does not generate a separate exhaust gas stream.

(mm) "Kiln" means an oven or furnace, including any associated preheater or precalciner devices, in-line raw mills, in-line coal mills or alkali bypass used for processing a substance by burning, firing or drying. Kilns include cement kilns that produce clinker by heating limestone and other materials for subsequent production of Portland Cement. Because the alkali bypass, inline raw mill and inline coal mill are considered an integral part of the kiln, the kiln emissions limits also apply to the exhaust of the alkali bypass, in-line raw mill and in-line coal mill.

(nn) "Laboratory analysis unit" means units that burn samples of materials for the purpose of chemical or physical analysis. A laboratory analysis unit is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this rule.

(oo) "Load fraction" means the actual heat input of an energy recovery unit divided by heat input during the performance test that established the minimum sorbent injection rate or minimum activated carbon injection rate, expressed as a fraction (e.g., for 50 percent load the load fraction is 0.5).

(pp) "Low-level radioactive waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable Federal or State standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the Atomic Energy Act of 1954 [42 U.S.C. 2014(e)(2)].

(qq) "Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

(rr) "Minimum voltage or amperage" means 90 percent of the lowest test-run average voltage or amperage to the electrostatic precipitator measured during the most recent particulate matter or mercury performance test demonstrating compliance with the applicable emission limits.

(ss) "Modification or modified CISWI unit" means a CISWI unit that has been changed later than August 7, 2013, and that meets one of two criteria:

1. The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

2. Any physical change in the CISWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

(tt) "Municipal solid waste or municipal-type solid waste" means household, commercial/retail, or institutional waste. Household waste includes material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes materials discarded by schools, by hospitals (nonmedical), by nonmanufacturing activities at prisons and government facilities, and other similar establishments or facilities. Household, commercial/retail, and institutional waste does include yard waste and refuse-derived fuel. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which include railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

(uu) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(vv) "Operating day" means a 24-hour period between 12:00 midnight and the following midnight during which any amount of solid waste is combusted at any time in the CISWI unit.

(ww) "Oxygen analyzer system" means all equipment required to determine the oxygen content of a gas stream and used to monitor oxygen in the boiler or process heater flue gas, boiler/process heater, firebox, or other appropriate location. This definition includes oxygen trim systems and certified oxygen CEMS. The source owner or operator is responsible to install, calibrate, maintain, and operate the oxygen analyzer system in accordance with the manufacturer's recommendations.

(xx) "Oxygen trim system" means a system of monitors that is used to maintain excess air at the desired level in a combustion device over its operating range. A typical system consists of a flue gas oxygen and/or carbon monoxide monitor that automatically provides a feedback signal to the combustion air controller or draft controller.

(yy) "Part reclamation unit" means a unit that burns coatings off parts (e.g., tools, equipment) so that the parts can be reconditioned and reused.

(zz) "Particulate matter" means total particulate matter emitted from CISWI units as measured by Method 5 or Method 29 of 40 CFR 60, Appendix A.

(aaa) "Pathological waste" means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

(bbb) "Performance evaluation" means the conduct of relative accuracy testing, calibration error testing, and other measurements used in validating the continuous monitoring system data.

(ccc) "Performance test" means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the relevant standard.

(ddd) "Process change" means any of the following physical or operational changes:

1. A physical change (maintenance activities excluded) to the CISWI unit which may increase the emission rate of any air pollutant to which a standard applies;

2. An operational change to the CISWI unit where a new type of non-hazardous secondary material is being combusted;

3. A physical change (maintenance activities excluded) to the air pollution control devices used to comply with the emission limits for the CISWI unit (e.g., replacing an electrostatic precipitator with a fabric filter);

4. An operational change to the air pollution control devices used to comply with the emission limits for the affected CISWI unit (e.g., change in the sorbent injection rate used for activated carbon injection).

(eee) "Rack reclamation unit" means a unit that burns the coatings off racks used to hold small items for application of a coating. The unit burns the coating overspray off the rack so the rack can be reused.

(fff) Raw mill means a ball or tube mill, vertical roller mill or other size reduction equipment, that is not part of an in-line kiln/raw mill, used to grind feed to the appropriate size. Moisture may be added or removed from the feed during the grinding operation. If the raw mill is used to remove moisture from feed materials, it is also, by definition, a raw material dryer. The raw mill also includes the air separator associated with the raw mill.

(ggg) "Reconstruction" means rebuilding a CISWI unit and meeting two criteria:

1. The reconstruction begins on or after August 7, 2013.

2. The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

(hhh) "Refuse-derived fuel" means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

1. Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

2. Pelletized refuse-derived fuel.

(iii) "Responsible Official" means one of the following:

1. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the Department;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this rule, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

4. For affected facilities:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or the regulations promulgated there under are concerned; or

(ii) The designated representative for any other purposes under 40 CFR Part 60.

(jjj) "Shutdown" means the period of time after all waste has been combusted in the primary chamber.

(kkk) "Small, remote incinerator" means an incinerator that combusts solid waste (as that term is defined by the Administrator in 40 CFR part 241) and combusts 3 tons per day or less solid waste and is more than 25 miles driving distance to the nearest municipal solid waste landfill.

(lll) "Soil treatment unit" means a unit that thermally treats petroleum-contaminated soils for the sole purpose of site remediation. A soil treatment unit may be direct-fired or indirect fired. A soil treatment unit is not an incinerator, a waste-burning kiln, an energy recovery unit or a small, remote incinerator under this rule.

(mmm) "Solid waste" (as defined in 40 CFR 241.2) means any garbage, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

(nnn) "Solid waste incineration unit" means a distinct operating unit of any facility which combusts any solid waste (as that term is defined by the Administrator in 40 CFR part 241) material from commercial or industrial establishments or the general public (including single and multiple residences, hotels and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act. The term "solid waste incineration unit" does not include:

1. Materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

2. Qualifying small power production facilities, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 769(17)(C)), or qualifying cogeneration facilities, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes; or

3. Air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain

incinerators comply with opacity limitations to be established by the Director by rule.

(ooo) "Space heater" means a unit that meets the requirements of 40 CFR 279.23. A space heater is not an incinerator, a waste-burning kiln, an energy recovery unit or a small, remote incinerator under this rule.

(ppp) "Standard conditions, when referring to units of measure", means a temperature of 68 deg. F (20 deg. C) and a pressure of 1 atmosphere (101.3 kilopascals).

(qqq) "Startup period" means the period of time between the activation of the system and the first charge to the unit.

(rrr) "Waste-burning kiln" means a kiln that is heated, in whole or in part, by combusting solid waste (as the term is defined by the Administrator in 40 CFR part 241). Secondary materials used in Portland cement kilns shall not be deemed to be combusted unless they are introduced into the flame zone in the hot end of the kiln or mixed with the precalciner fuel.

(sss) "Wet scrubber" means an add-on air pollution control device that uses an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

(ttt) "Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.
2. Construction, renovation, or demolition wastes.
3. Clean lumber.

(2) Applicability.

(a) Except as provided in subparagraph (b) of this paragraph below, the designated facility to which this rule applies is each individual CISWI that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010 but no later than August 7, 2013..

(b) If the owner or operator of a CISWI unit makes changes that meet the definition of modification or reconstruction on or after August 7, 2013, the CISWI unit becomes subject to 40 CFR 60, Subpart CCCC [ADEM Admin. Code r. 335-3-10-.02(81)] and this rule no longer applies to that unit.

(c) If the owner or operator of a CISWI unit makes physical or operational changes to an existing CISWI unit primarily to comply this rule, 40 CFR 60, Subpart CCCC [ADEM Admin. Code r. 335-3-10-.02(81)] does not apply to that unit. Such changes do not qualify as modifications or reconstructions under Subpart CCCC.

(d) The following types of units are exempt from this rule, but some units are required to provide notification. Air curtain incinerators are exempt from the requirements in this rule except for the provisions in paragraph (12), subparagraphs (13)(j) and (13)(l) of this rule:

1. Pathological waste incineration units. Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in paragraph (1) are not subject to this rule if the two requirements specified in subparagraphs (d)1.(i) and (ii) of this paragraph below are met.

(i) Notify the Director that the unit meets these criteria.

(ii) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

2. Reserved.

3. Municipal waste combustion units. Incineration units that are subject to 40 CFR 60, Subpart Ea (Standards of Performance for Municipal Waste Combustors); 40 CFR 60, Subpart Eb (Standards of Performance for Large Municipal Waste Combustors); 40 CFR 60, Subpart Cb (Emission Guidelines and Compliance Time for Large Municipal Combustors); 40 CFR 60, Subpart AAAA (Standards of Performance for Small Municipal Waste Combustion Units); or 40 CFR 60, Subpart BBBB (Emission Guidelines for Small Municipal Waste Combustion Units)

4. Medical waste incineration units. Incineration units regulated under 40 CFR 60, Subpart Ec incorporated by reference in rule 335-3-10-.02(3)(c) (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) or rule 335-3-3-.04 [Incineration of Hospital/Medical/Infectious Waste].

5. Small power production facilities. Units that meet the three requirements specified in subparagraphs (d)5.(i) through (iii) of this paragraph below.

(i) The unit qualifies as a small power-production facility under Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(ii) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(iii) The owner or operator submit a request to the Director for a determination that the qualifying small power production facility is combusting homogenous waste.

(iv) The owner or operator maintains records specified in subparagraph (ll)(v) of this rule.

6. Cogeneration facilities. Units that meet the three requirements specified in subparagraphs (d)6.(i) through (iii) of this paragraph below.

(i) The unit qualifies as a cogeneration facility under Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(ii) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(iii) The owner or operator submits a request to the Director for a determination that the qualifying cogeneration facility is combusting homogenous waste.

(iv) The owner or operator maintain records specified in subparagraph (ll)(w) of this rule.

7. Hazardous waste combustion units. Units that are required to get a permit under section 3005 of the Solid Waste Disposal Act.

8. Materials recovery units. Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.

9. Air curtain incinerators. Air curtain incinerators that burn only the materials listed in subparagraphs (d)9.(i) through (iii) of this paragraph below are only required to meet the requirements under "Air Curtain Incinerators" (paragraph (13) of this rule).

(i) 100 percent wood waste.

(ii) 100 percent clean lumber.

(iii) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

10. Reserved.

11. Reserved.

12. Reserved.

13. Sewage treatment plants. Incineration units regulated under 40 CFR 60, Subpart O as incorporated in rule 335-3-10-.02(15) (Standards of Performance for Sewage Treatment Plants).

14. Reserved.

15. Reserved.

16. Sewage sludge incineration units. Incineration units combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter that are subject to subpart LLLL of 40 CFR 60 as incorporated in rule 335-3-10-.02(90) (Standards of Performance for Sewage Sludge Incineration Units) or subpart MMMM of 40 CFR 60 (Emission Guidelines for Sewage Sludge Incineration Units).

17. Other solid waste incineration units. Incineration units that are subject to subpart EEEE of 40 CFR 60 (Standards of Performance for Other Solid Waste Incineration Units) or subpart FFFF of 40 CFR 60 (Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units).

(3) Increments of Progress.

(a) For owners or operators planning to achieve compliance more than one year following the effective date of EPA's approval of these rules, the two increments of progress specified in subparagraphs (a)1. and 2. of this paragraph below shall be met.

1. Submit a final control plan to the Director no later than one year after the effective date of EPA's approval of these rules.

2. Achieve final compliance no later than December 1, 2005 for CISWI units that commenced construction on or before November 30, 1999, or February 7, 2018 for CISWI units that commenced construction on or before June 4, 2010.

(b) The owner or operator shall submit to the Director, notifications for achieving increments of progress. The notifications shall be postmarked no later than 10 business days after the compliance date for the increment. These notifications shall include the three items specified in subparagraphs (b)1. through 3. of this paragraph below:

1. Notification that the increment of progress has been achieved.

2. Any items required to be submitted with each increment of progress.

3. Signature of the owner or operator of the CISWI unit.

(c) If an owner or operator fails to meet an increment of progress, a notification to the Director shall be submitted and postmarked within 10 business days after the date for that increment of progress in subparagraph (3)(a) above. The owner or operator shall inform the Director that the increment was not met, and reports shall be submitted each subsequent calendar month until the increment of progress is met.

(d) For the control plan increment of progress, the owner or operator shall satisfy the two requirements specified in subparagraphs (d)1. and 2. of this paragraph below.

1. Submit the final control plan that includes the five items described in subparagraphs (d)1.(i) through (v). of this paragraph below.

(i) A description of the devices for air pollution control and process changes that will be used to comply with the emission limitations and other requirements of this rule.

(ii) The type(s) of waste to be burned.

(iii) The maximum design waste burning capacity.

(iv) The anticipated maximum charge rate.

(v) If applicable, the petition for site-specific operating limits under paragraph (6)(c) of this rule.

2. Maintain an onsite copy of the final control plan.

(e) For the final compliance increment of progress, the owner or operator shall complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit is brought online, all necessary process changes and air pollution control devices would operate as designed.

(f) Closing and restarting a CISWI unit.

1. If the CISWI unit is closed but will be restarted prior to the final compliance date of December 1, 2005 for CISWI units that commenced construction on or before November 30, 1999, or February 7, 2018 for CISWI units that commenced construction on or before June 4, 2010, the owner or operator shall meet the increments of progress specified in subparagraph (a) of this paragraph.

2. If the CISWI unit is closed but will be restarted after the final compliance date of December 1, 2005 for CISWI units that commenced construction on or before November 30, 1999, or February 7, 2018 for CISWI units that commenced construction on or before June 4, 2010, the owner or operator shall complete emission control retrofits and meet the emission limitations and operating limits on the date the unit restarts operation.

(g) Permanent closure of a CISWI unit. If the owner or operator plans to close the CISWI unit rather than comply with this rule, submit a closure notification, including the date of closure, to the Director within 90 days after EPA approval of these rules.

(4) Waste Management Plan.

(a) A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

(b) A waste management plan shall be submitted no later than the date specified in subparagraph (3)(a)1. of this rule for submittal of the final control plan.

(c) A waste management plan shall include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan shall identify any additional waste management measures, and the source shall implement those measures considered practical and feasible, based on the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

(5) Operator Training and Qualification.

(a) No CISWI unit can be operated unless a fully trained and qualified CISWI unit operator is accessible, either at the facility or can be at the facility within 1 hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI unit operators are temporarily not accessible, the procedures in subparagraph (h) of this paragraph below shall be followed.

(b) Operator training and qualification shall be obtained through a State-approved program that meets the requirements included in subparagraph (c) of this paragraph below. Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under subparagraph (c)2. of this paragraph below.

(c) Training shall be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in subparagraphs (c)1. through 3. of this paragraph below.

1. Training on the eleven subjects listed in subparagraphs (c)1.(i) through (xi) of this paragraph below.

(i) Environmental concerns, including types of emissions.

(ii) Basic combustion principles, including products of combustion.

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures.

(iv) Combustion controls and monitoring.

(v) Operation of air pollution control equipment and factors affecting performance (if applicable).

(vi) Inspection and maintenance of the incinerator and air pollution control devices.

(vii) Actions to prevent and correct malfunctions or to prevent conditions that may lead to malfunction.

(viii) Bottom and fly ash characteristics and handling procedures.

(ix) Applicable Federal, State, and local regulations, including Occupational Safety and Health Administration workplace standards.

(x) Pollution prevention.

(xi) Waste management practices.

2. An examination designed and administered by the instructor.

3. Written material covering the training course topics that can serve as reference material following completion of the course.

(d) The operator training course shall be completed by the later of the three dates specified in subparagraphs (d)1. through 3. of this paragraph below.

1. The final compliance date of December 1, 2005 for CISWI units that commenced construction on or before November 30, 1999, or February 7, 2018 for CISWI units that commenced construction on or before June 4, 2010.

2. Six months after CISWI unit startup.

3. Six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.

(e) To maintain qualification, the operator shall complete an annual review or refresher course covering, at a minimum, the five topics described in subparagraphs (e)1. through 5. of this paragraph below.

1. Update of regulations.

2. Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.

3. Inspection and maintenance.

4. Prevention and correction of malfunctions or conditions that may lead to malfunction.

5. Discussion of operating problems encountered by attendees.

(f) A lapsed operator qualification shall be renewed by one of the two methods specified in subparagraphs (f)1. and 2. of this paragraph below.

1. For a lapse of less than 3 years, the operator shall complete a standard annual refresher course described in subparagraph (e) of this paragraph above.

2. For a lapse of 3 years or more, the operator shall repeat the initial qualification requirements in subparagraphs (b) and (c) of this paragraph above.

(g) Requirements for site specific documentation.

1. Site specific documentation shall be available at the facility and readily accessible for all CISWI unit operators that addresses the ten topics described in subparagraphs (g)1.(i) through (x) of this paragraph below. The owner or operator shall maintain this information and the training records required by subparagraph (g)3. of this paragraph below in a manner that they can be readily accessed and are suitable for inspection upon request.

(i) Summary of the applicable standards under this rule.

(ii) Procedures for receiving, handling, and charging waste.

(iii) Incinerator startup, shutdown, and malfunction procedures.

(iv) Procedures for maintaining proper combustion air supply levels.

(v) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this rule.

(vi) Monitoring procedures for demonstrating compliance with the incinerator operating limits.

(vii) Reporting and recordkeeping procedures.

(viii) The waste management plan required under paragraph (4) of this rule.

(ix) Procedures for handling ash.

(x) A list of the wastes burned during the performance test.

2. The owner or operator shall establish a program for reviewing the information listed in subparagraph (g)1. of this paragraph above with each incinerator operator.

(i) The initial review of the information listed in subparagraph (g)1. of this paragraph shall be conducted by the later of the three dates specified in subparagraphs (g)2.(i)(I) through (III) of this paragraph below.

(I) The final compliance date of December 1, 2005 for CISWI units that commenced construction on or before November 30, 1999, or February 7, 2018 for CISWI units that commenced construction on or before June 4, 2010.

(II) Six months after CISWI unit startup.

(III) Six months after being assigned to operate the CISWI unit.

(ii) Subsequent annual reviews of the information listed in subparagraph (g)1. of this paragraph shall be conducted no later than 12 months following the previous review.

3. The owner or operator shall also maintain the information specified in subparagraphs (g)3.(i) through (iii) below.

(i) Records showing the names of CISWI unit operators who have completed review of the information in subparagraph (g)1. of this paragraph above as required by subparagraph (g)2. of this paragraph, including the date of the initial review and all subsequent annual reviews.

(ii) Records showing the names of the CISWI operators who have completed the operator training requirements under this paragraph, met the criteria for qualification under subparagraphs (a), (b) and (c) of this paragraph, and maintained or renewed their qualification under subparagraphs (e) or (f) of this paragraph, respectively. Records shall include documentation of training, the dates of the initial refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(iii) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

(h) If all qualified operators are temporarily not accessible (i.e., not at the facility and not able to be at the facility within 1 hour), the owner or operator shall meet one of the two criteria specified in subparagraphs (h)1. and 2. of this paragraph below, depending on the length of time that a qualified operator is not accessible.

1. When all qualified operators are not accessible for more than 8 hours, but less than 2 weeks, the CISWI unit may be operated by other plant personnel familiar with the operation of the CISWI unit who have completed a review of the information specified in subparagraph (g)1. of this paragraph within the past 12 months. However, the period when all qualified operators were not accessible shall be recorded and this deviation included in the annual report as specified under paragraph (11) of this rule.

2. When all qualified operators are not accessible for 2 weeks or more, the two actions that are described in subparagraphs (h)2.(i) and (ii) of this paragraph below shall be taken.

(i) Notify the Director of this deviation in writing within 10 days. In the notice, state what caused this deviation, what actions are being taken to ensure that a qualified operator is accessible, and when it is expected that a qualified operator will be accessible.

(ii) Submit a status report to the Administrator every 4 weeks outlining what actions are being taken to ensure that a qualified operator is accessible, stating when it is expected that a qualified operator will be accessible and requesting approval from the Administrator to continue operation of the CISWI

unit. The first status report shall be submitted 4 weeks after notification to the Director of the deviation under subparagraph (h)2.(i). If the Administrator notifies the owner or operator that the request to continue operation of the CISWI unit is disapproved, the CISWI unit may continue operation for 90 days, then shall cease operation. Operation of the unit may resume if the two requirements in subparagraphs (h)2.(ii)(I) and (II) of this paragraph below are met.

(I) A qualified operator is accessible as required under subparagraph (a) of this paragraph.

(II) The owner or operator notifies the Administrator that a qualified operator is accessible and operation is resuming.

(6) Emission Limitations and Operating Limits.

(a) The owner or operator shall meet the emission limitations for each CISWI unit, including bypass stack or vent, specified in Table 1 of this rule or tables 5 through 8 of this rule by the final compliance date of December 1, 2005 for CISWI units that commenced construction on or before November 30, 1999, or February 7, 2018 for CISWI units that commenced construction on or before June 4, 2010, as applicable. The emission limitations apply at all times the unit is operating including and not limited to startup, shutdown, or malfunction.

1. Units that do not use wet scrubbers shall maintain opacity to less than equal to the percent opacity (three 1-hour blocks consisting of ten 6-minute average opacity values) specified in table 1 of this rule, as applicable.

(b) Timelines for Operating Limits.

1. If a wet scrubber(s) is used to comply with the emission limitations, the owner or operator shall establish operating limits for up to four operating parameters (as specified in Table 2 of this rule) as described in subparagraphs (b)1.(i) through (iv) of this paragraph during the initial performance test.

(i) Maximum charge rate, calculated using one of the two different procedures in subparagraph (b)1.(i)(I) or (II) of this paragraph, as appropriate.

(I) For continuous and intermittent units, maximum charge rate is 110 percent of the average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(II) For batch units, maximum charge rate is 110 percent of the daily charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(ii) Minimum pressure drop across the wet particulate matter scrubber, which is calculated as lowest 1-hour average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum

amperage to the wet scrubber, which is calculated as the lowest 1-hour average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(iii) Minimum scrubber liquid flow rate, which is calculated as the lowest 1-hour average liquid flow rate at the inlet to the wet acid gas or particulate matter scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(iv) Minimum scrubber liquor pH, which is calculated as the lowest 1-hour average liquor pH at the inlet to the wet acid gas scrubber measured during the most recent performance test demonstrating compliance with the HCl emission limitation.

2. The owner or operator shall meet the operating limits established during the initial performance test on the date the initial performance test is required or completed (whichever is earlier). The owner or operator shall conduct an initial performance evaluation of each continuous monitoring system and continuous parameter monitoring system within 60 days of installation of the monitoring system.

3. If the owner or operator uses a fabric filter to comply with the emission limitations, each fabric filter system shall be operated such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month period. In calculating this operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

4. If the owner or operator uses an electrostatic precipitator to comply with the emission limitations, the owner or operator shall measure the (secondary) voltage and amperage of the electrostatic precipitator collection plates during the particulate matter performance test. Calculate the average electric power value (secondary voltage x secondary current = secondary electric power) for each test run. The operating limit for the electrostatic precipitator is calculated as the lowest 1-hour average secondary electric power measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

5. If the owner or operator uses an activated carbon sorbent injection to comply with the emission limitations, the owner or operator shall measure the sorbent flow rate during the performance testing. The operating limit for the carbon sorbent injection is calculated as the lowest 1-hour average sorbent flow rate measured during the most recent performance test demonstrating compliance with the mercury emission limitations. For energy recovery units, when the unit operates at lower loads, multiply the sorbent injection rate by the load fraction, as defined in this rule, to determine the required injection rate (e.g., for 50 percent load, multiply the injection rate operating limit by 0.5).

6. If the owner or operator uses selective noncatalytic reduction to comply with the emission limitations, the owner or operator shall measure the charge rate, the secondary chamber temperature (if applicable to the CISWI unit), and the reagent flow rate during the nitrogen oxides performance testing. The operating limits for the selective noncatalytic reduction are calculated as the highest 1-hour average charge rate, lowest secondary chamber temperature, and lowest reagent flow rate measured during the most recent performance test demonstrating compliance with the nitrogen oxides emission limitations.

7. If the owner or operator uses a dry scrubber to comply with the emission limitations, the owner or operator shall measure the injection rate of each sorbent during the performance testing. The operating limit for the injection rate of each sorbent is calculated as the lowest 1-hour average injection rate of each sorbent measured during the most recent performance test demonstrating compliance with the hydrogen chloride emission limitations. For energy recovery units, when the unit operates at lower loads, multiply the sorbent injection rate by the load fraction, as defined in this rule, to determine the required injection rate (e.g., for 50 percent load, multiply the injection rate operating limit by 0.5).

8. If the owner or operator does not use a wet scrubber, electrostatic precipitator, or fabric filter to comply with the emission limitation, and if the owner or operator does not determine compliance with the particulate matter emission limitation with a particulate matter CEMS, the owner or operator shall maintain opacity to less than or equal to ten percent opacity (1-hour block average).

9. If the owner or operator uses a PM CPMS to demonstrate compliance, the owner or operator shall establish a PM CPMS operating limit and determine compliance with it according to subparagraphs (b)9.(i) through (v) of this paragraph below.

(i) During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, record all hourly average output values (milliamps) from the PM CPMS for the periods corresponding to the test runs (e.g., three 1-hour average PM CPMS output values for three 1-hour test runs).

(I) The owner or operator's PM CPMS shall provide a 4-20 milliamp output and the establishment of its relationship to manual reference method measurements shall be determined in units of milliamps.

(II) The owner or operator's PM CPMS operating range shall be capable of reading PM concentrations from zero to a level equivalent to at least two times the allowable emission limit. If the owner or operator's PM CPMS is an auto ranging instrument capable of multiple scales, the primary range of the instrument shall be capable of reading PM concentrations from zero to a level equivalent to two times the allowable emission limit.

(III) During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, record and

average all milliamp output values from the PM CPMS for the periods corresponding to the compliance test runs (e.g., average all the PM CPMS output values for three corresponding 2-hour Method 51 test runs).

(ii) If the average of the three PM performance test runs are below 75% of the PM emission limit, the owner or operator shall calculate an operating limit by establishing a relationship of PM CPMS signal to PM concentration using the PM CPMS instrument zero, the average PM CPMS values corresponding to the three compliance test runs, and the average PM concentration from the Method 5 or performance test with the procedures in subparagraphs (b)9.(i) through (v) of this paragraph.

(I) Determine the instrument zero output with one of the following procedures:

I. Zero point data for *in-situ* instruments shall be obtained by removing the instrument from the stack and monitoring ambient air on a test bench.

II. Zero point data for extractive instruments shall be obtained by removing the extractive probe from the stack and drawing in clean ambient air.

III. The zero point can also be obtained by performing manual reference method measurements when the flue gas is free of PM emissions or contains very low PM concentrations (e.g., when the process is not operating, but the fans are operating or the source is combusting only natural gas) and plotting these with the compliance data to find the zero intercept.

IV. If none of the steps in subparagraphs (b)9.(ii)(I) through (IV) of this paragraph are possible, the owner or operator shall use a zero output value provided by the manufacturer.

(II) Determine the PM CPMS instrument average in milliamps, and the average of the corresponding three PM compliance test runs, using Equation 1 of this rule:

$$\text{(Eq. 1) } \bar{x} = \frac{1}{n} \sum_{i=1}^n X_i, \quad \bar{y} = \frac{1}{n} \sum_{i=1}^n Y_i$$

Where:

$X_i$  = the PM CPMS data points for the three runs constituting the performance test;

$Y_i$  = the PM concentration value for the three runs constituting the performance test; and

$n$  = the number of data points.

(III) With the instrument zero expressed in milliamps, the three run average PM CPMS milliamp value, and the three run average PM concentration

from the three compliance tests, determine a relationship of lb/Mmbtu per milliamp with Equation 2 of this rule:

$$(Eq. 2) \quad R = \frac{Y_1}{(X_1 - z)}$$

Where:

R = the relative mg/dscm per milliamp for the PM CPMS;

$Y_1$  = the three run average mg/dscm PM concentration;

$X_1$  = the three run average milliamp output from the PM CPMS; and

z = the milliamp equivalent of the instrument zero determined from subparagraph (b)9.(ii)(I) of this paragraph.

(IV) Determine the source specific 30-day rolling average operating limit using the mg/dscm per milliamp value from Equation 2 in Equation 3, below. This sets the operating limit at the PM CPMS output value corresponding to 75% of the emission limit.

$$(Eq. 3) \quad O_1 = z + \frac{0.75(L)}{R}$$

Where:

$O_1$  = the operating limit for the PM CPMS on a 30-day rolling average, in milliamps;

L = the source emission limit expressed in lb/Mmbtu;

z = the instrument zero in milliamps, determined from subparagraph (b)9.(ii)(I) of this paragraph; and

R = the relative mg/dscm per milliamp for the PM CPMS, from Equation 2 of this rule..

(iii) If the average of the three PM compliance test runs is at or above 75% of the PM emission limit the owner or operator shall determine the operating limit by averaging the PM CPMS milliamp output corresponding to the three PM performance test runs that demonstrate compliance with the emission limit using Equation 4 and shall submit all compliance test and PM CPMS data according to the reporting requirements in subparagraph (b)9.(v) of this paragraph.

$$(Eq. 4) \quad O_h = \frac{1}{n} \sum_{i=1}^n X_i$$

Where:

$X_i$  = the PM CPMS data points for all runs i;

n = the number of data points; and

$O_h$  = the site specific operating limit, in milliamps.

(iv) To determine continuous compliance, the owner or operator shall record the PM CPMS output data for all periods when the process is operating and the PM CPMS is not out-of-control. The owner or operator shall demonstrate continuous compliance by using all quality-assured hourly average data collected by the PM CPMS for all operating hours to calculate the arithmetic average operating parameter in units of the operating limit (e.g., milliamps, PM concentration, raw data signal) on a 30-day rolling average basis.

(v) For PM performance test reports used to set a PM CPMS operating limit, the electronic submission of the test report shall also include the make and model of the PM CPMS instrument, serial number of the instrument, analytical principle of the instrument (e.g., beta attenuation), span of the instruments primary analytical range, milliamp value equivalent to the instrument zero output, technique by which this zero value was determined, and the average milliamp signals corresponding to each PM compliance test run.

(c) If the owner or operator uses an air pollution control device other than a wet scrubber, activated carbon injection, selective noncatalytic reduction, fabric filter, an electrostatic precipitator, or a dry scrubber or limit emissions in some other manner, including mass balances, to comply with the emission limitations under subparagraph (a) of this paragraph, the owner or operator shall petition the Administrator for specific operating limits to be established during the initial performance test and continuously monitored thereafter. The owner or operator shall submit the petition at least sixty days before the performance test is scheduled to begin. The petition shall include the five items listed in subparagraphs (c)1. through 5. of this paragraph below.

1. Identification of the specific parameters the owner or operator proposes to use as additional operating limits.

2. A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants.

3. A discussion of how the owner or operator will establish the upper and/or lower values for these parameters which will establish the operating limits on these parameters.

4. A discussion identifying the methods the owner or operator will use to measure and the instruments that will be used to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

5. A discussion identifying the frequency and methods for recalibrating the instruments that will be used for monitoring these parameters.

(7) Performance Testing.

(a) All performance tests shall consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) The owner or operator shall document that the waste burned during the performance test is representative of the waste burned under normal operating conditions by maintaining a log of the quantity of waste burned (as required in paragraph (11) of this rule) and the types of waste burned during the performance test.

(c) All performance tests shall be conducted using the minimum run duration specified in Table 1 and Tables 5 through 8 of this rule.

(d) Method 1 of Appendix A, 40 CFR 60 shall be used to select the sampling location and number of traverse points.

(e) Method 3A or 3B of Appendix A, 40 CFR 60 shall be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B of Appendix A, 40 CFR 60 shall be used simultaneously with each method.

(f) All pollutant concentrations, except for opacity, shall be adjusted to 7 percent oxygen using Equation 5 of this rule:

$$\text{(Eq. 5) } C_{\text{adj}} = C_{\text{meas}} (20.9 - 7) / (20.9 - \%O_2)$$

Where:

$C_{\text{adj}}$  = pollutant concentration adjusted to 7 percent oxygen;

$C_{\text{meas}}$  = pollutant concentration measured on a dry basis;  $(20.9 - 7) = 20.9$  percent oxygen - 7 percent oxygen (defined oxygen correction basis);

20.9 = oxygen concentration in air, percent; and

$\%O_2$  = oxygen concentration measured on a dry basis, percent.

(g) The owner or operator shall determine dioxins/furans toxic equivalency by following the procedures in subparagraphs (g)1. through 4. of this paragraph below.

1. Measure the concentration of each dioxin/furan tetra- through octa-isomer emitted using EPA Method 23 at 40 CFR part 60, Appendix A.

2. Quantify isomers meeting identification criteria 2, 3, 4, and 5 in Section 5.3.2.5 of Method 23, regardless of whether the isomers meet identification criteria 1 and 7. The owner or operator shall quantify the isomers per Section 9.0 of Method 23. (Note: the owner or operator may reanalyze the sample aliquot or split to reduce the number of isomers not meeting identification criteria 1 or 7 of Section 5.3.2.5)

3. For each dioxin/furan (tetra- through octa-chlorinated) isomer measured in accordance with subparagraph (g)1. and 2. of this paragraph above, multiply the isomer concentration by its corresponding toxic equivalency factor specified in Table 3 of this rule.

4. Sum the products calculated in accordance with subparagraph (g)3. of this paragraph above to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

(h) Method 22 at 40 CFR part 60, appendix A-7 shall be used to determine compliance with the fugitive ash emission limit in table 1 of this rule or tables 5 through 8 of this rule.

(i) If the owner or operator has an applicable opacity operating limit, the owner or operator shall determine compliance with the opacity limit using Method 9 at 40 CFR part 60, appendix A-4, based on three 1-hour blocks consisting of ten 6-minute average opacity values, unless the owner or operator is required to install a continuous opacity monitoring system, consistent with paragraphs (9) and (10).

(j) The owner or operator shall determine dioxins/furans total mass basis by following the procedures in subparagraphs (j)1. through 3. of this paragraph below.

1. Measure the concentration of each dioxin/furan tetra- through octa-chlorinated isomer emitted using EPA Method 23 at 40 CFR part 60, appendix A-7.

2. Quantify isomers meeting identification criteria 2, 3, 4, and 5 in Section 5.3.2.5 of Method 23, regardless of whether the isomers meet identification criteria 1 and 7. The owner or operator shall quantify the isomers per Section 9.0 of Method 23. (Note: The owner or operator may reanalyze the sample aliquot or split to reduce the number of isomers not meeting identification criteria 1 or 7 of Section 5.3.2.5).

3. Sum the quantities measured in accordance with subparagraphs (j)1. and 2. of this paragraph to obtain the total concentration of dioxins/furans emitted in terms of total mass basis.

(k) The results of performance tests are used to demonstrate compliance with the emission limitations in Table 1 or tables 5 through 8 of this rule.

(8) Initial Compliance Requirements.

(a) The owner or operator shall conduct a performance test, as required under paragraphs (6) and (7) of this rule, to determine compliance with the emission limitations in Table 1 and tables 5 through 8 of this rule, to establish compliance with any opacity operating limits in subparagraph (6)(b) of this rule, and to establish operating limits using the procedures in subparagraphs (6)(b) or (6)(c) of this rule. The performance test shall be conducted using the test methods listed in Table 1 and table 5 through 8 of this rule and the procedures in paragraph (7) of this rule. The use of the bypass stack during a performance test shall invalidate the performance test. The owner or operator shall conduct a performance evaluation of each continuous monitoring system within 60 days of installation of the monitoring system.

(b) The initial performance test shall be conducted no later than 180 days after the final compliance date. The final compliance date is specified in subparagraph (3)(a)2. of this rule.

(c) If the owner or operator commences or recommences combusting a solid waste at an existing combustion unit at any commercial or industrial facility and conducted a test consistent with the provisions of this rule while combusting the given solid waste within the 6 months preceding the reintroduction of that solid waste in the combustion chamber, retesting is not needed until 6 months from the date the solid waste is reintroduced.

(d) If the owner or operator commences combusting or recommences combusting a solid waste at an existing combustion unit at any commercial or industrial facility and has not conducted a performance test consistent with the provisions of this rule while combusting the given solid waste within the 6 months preceding the reintroduction of that solid waste in the combustion chamber, the owner or operator shall conduct a performance test within 60 days commencing or recommencing solid waste combustion.

(e) The initial air pollution control device inspection shall be conducted within 60 days after installation of the control device and the associated CISWI unit reaches the charge rate at which it will operate, but no later than 180 days after the final compliance date for meeting the amended emission limitations.

(f) Within 10 operating days following an air pollution control device inspection, all necessary repairs shall be completed unless the owner or operator obtains written approval from the Director establishing a date whereby all necessary repairs of the designated facility shall be completed.

(9) Continuous Compliance Requirements.

(a) Compliance with standards.

1. The emission standards and operating requirements set forth in this rule apply at all times.

2. If the combusting of solid waste is ceased the owner or operator may opt to remain subject to the provisions of this rule. Consistent with the definition of CISWI unit, the owner or operator is subject to the requirements of this rule at least 6 months following the last date of solid waste combustion. Solid waste combustion is ceased when solid waste is not in the combustion chamber (i.e., the solid waste feed to the combustor has been cut off for a period of time not less than the solid waste residence time).

3. If the combusting of solid waste is ceased the owner or operator shall be in compliance with any newly applicable standards on the effective date of the waste-to-fuel switch. The effective date of the waste-to-fuel switch is a date selected by the owner or operator, that shall be at least 6 months from the date that combusting solid waste is ceased, consistent with subparagraph (9)(a)2. of this paragraph above. The source shall remain in compliance with this rule until the effective date of the waste-to-fuel switch.

4. Any owner or operator of an existing commercial or industrial combustion unit that combusted a fuel or no-waste material, and commences or recommences combustion of solid waste, the owner or operator is subject to the provisions of this rule as of the first day solid waste is introduced or reintroduced to the combustion chamber, and this date constitutes the effective date of the fuel-to-waste switch. The owner or operator shall complete all initial compliance demonstrations for any Section 112 standards that are applicable to the facility before commencing or recommencing combustion of solid waste. The owner or operator shall provide 30 days prior notice of the effective date of the waste-to-fuel switch. The notification shall identify:

(i) The name of the owner or operator of the CISWI unit, the location of the source, the emissions unit(s) that will cease burning solid waste, and the date of the notice;

(ii) The currently applicable subcategory under this rule, and any 40 CFR part 63 subpart and subcategory that will be applicable after the combusting of solid waste is ceased;

(iii) The fuel(s), non-waste material(s) and solid waste(s) the CISWI unit is currently combusting and has combusted over the past 6 months, and the fuel(s) or non-waste materials the unit will commence combusting;

(iv) The date on which the unit became subject to the currently applicable emission limits;

(v) The date upon which combusting solid waste is ceased, and the date (if different) that any new requirements to become applicable (i.e., the effective date of the waste-to-fuel switch), consistent with subparagraphs (9)(a)2. and 3. of this paragraph.

5. All air pollution control equipment necessary for compliance with any newly applicable emissions limits which apply as a result of the cessation or commencement or recommencement of combusting solid waste shall be installed and operational as of the effective date of the waste-to-fuel, or fuel-to-waste switch.

6. All monitoring systems necessary for compliance with any newly applicable monitoring requirements which apply as a result of the cessation or commencement or recommencement of combusting solid waste shall be installed and operational as of the effective date of the waste-to-fuel, or fuel-to-waste switch. All calibration and drift checks shall be performed as of the effective date of the waste-to-fuel, or fuel-to waste switch. Relative accuracy tests shall be performed as of the performance test deadline for PM CEMS (if PM CEMS are elected to demonstrate continuous compliance with the particulate matter emission limits). Relative accuracy testing for other CEMS need not be repeated if that testing was previously performed consistent with section 112 monitoring requirements or monitoring requirements under this rule.

(b) The owner or operator shall conduct an annual performance test for the pollutants listed in table 1 or tables 5 through 8 of this rule and opacity for each CISWI unit as required under paragraph (7) of this rule. The annual performance test shall be conducted using the test methods listed in Table 1 or table 5 through 8 of this rule and the procedures in paragraph (7) of this rule. Opacity shall be measured using EPA Reference Method 9 at 40 CFR part 60. Annual performance tests are not required if the owner or operator uses CEMS or continuous opacity monitoring systems to determine compliance.

(c) The owner or operator shall continuously monitor the operating parameters specified in subparagraph (6)(b) or established under subparagraph (6)(c) of this rule and as specified in subparagraph (10)(d) of this rule. Operation above the established maximum or below the established minimum operating limits constitutes a deviation from the established operating limits. Three-hour block average values are used to determine compliance (except for baghouse leak detection system alarms) unless a different averaging period is established under subparagraph (6)(c) of this rule or, for energy recovery units, where the averaging time for each operating parameter is a 30-day rolling, calculated each hour as the average of the previous 720 operating hours. Operation above the established maximum, below the established minimum, or outside the allowable range of the operating limits specified in subparagraph (9)(a) of this paragraph constitutes a deviation from the operating limits established under this rule, except during performance tests conducted to determine compliance with the emission and operating limits or to establish new operating limits. Operating limits are confirmed or reestablished during performance tests.

(d) The owner or operator shall burn only the same types of waste and fuels used to establish subcategory applicability (for ERUs) and operating limits during the performance test.

(e) For energy recovery units, incinerators, and small remote units, the owner or operator shall perform annual visual emissions test for ash handling.

(f) For energy recovery units, the owner or operator shall conduct an annual performance test for opacity using EPA Reference Method 9 at 40 CFR part 60 (except where particulate matter continuous monitoring system or continuous parameter monitoring systems are used) and the pollutants listed in table 6 of this rule.

(g) For facilities using a CEMS to demonstrate compliance with the carbon monoxide emission limit, compliance with the carbon monoxide emission limit may be demonstrated by using the CEMS according to the following requirements:

1. The owner or operator shall measure emissions according to §60.13 to calculate 1-hour arithmetic averages corrected to 7 percent oxygen. CEMS data during startup and shutdown, as defined in this rule, are not corrected to 7 percent oxygen, and are measured at stack oxygen content. The owner or operator shall demonstrate initial compliance with the carbon monoxide emissions limit using a 30-day rolling average of the 1-hour arithmetic average emission concentrations, including CEMS data during startup and shutdown as

defined in this rule, calculated using equation 19-19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A-7.

2. Operate the carbon monoxide continuous emissions monitoring system in accordance with the applicable requirements of performance specification 4A of appendix B and the quality assurance procedures of appendix F of 40 CFR part 60.

(h) Coal and liquid/gas energy recovery units with annual average heat input rates greater than 250 MMBtu/hr may elect to demonstrate continuous compliance with the particulate matter emissions limit using a particulate matter CEMS according to the procedures in subparagraph (10)(n) of this rule, instead of the continuous parameter monitoring system specified in subparagraph (9)(i) of this paragraph. Coal and liquid/gas energy recovery units with annual average heat input rates less than 250 MMBtu/hr, incinerators, and small remote incinerators may also elect to demonstrate compliance using a particulate matter CEMS according to the procedures in subparagraph (10)(n) of this rule, instead of particulate matter testing with EPA Method 5 at 40 CFR part 60, appendix A-3 and, if applicable, the continuous opacity monitoring requirements in subparagraph (9)(i) of this paragraph.

(i) For energy recovery units with annual average heat input rates greater than or equal to 10 MMBTU/hour but less than 250 MMBtu/hr the owner or operator shall install, operate, certify and maintain a continuous opacity monitoring system (COMS) according to the procedures in paragraph (10) in this rule.

(j) For waste-burning kilns, the owner or operator shall conduct an annual performance test for the pollutants (except mercury and particulate matter, and hydrogen chloride if no acid gas wet scrubber is used) listed in table 7 of this rule. If the waste-burning kiln is not equipped with an acid gas wet scrubber or dry scrubber, the owner or operator shall determine compliance with the hydrogen chloride emission limit according to the requirements in subparagraph (j)1. of this rule. The owner or operator shall determine compliance with the mercury emissions limit using a mercury CEMS according to subparagraph (j)2. of this rule. The owner or operator shall determine compliance with particulate matter using CPMS:

1. If compliance is monitored with the HCl emissions limit by operating an HCl CEMS, the owner or operator shall do so in accordance with Performance Specification 15 (PS 15) of appendix B to 40 CFR part 60, or, PS 18 of appendix B to 40 CFR part 60. The owner or operator shall operate, maintain, and quality assure a HCl CEMS installed and certified under PS 15 according to the quality assurance requirements in Procedure 1 of appendix F to 40 CFR part 60 except that the Relative Accuracy Test Audit requirements of Procedure 1 must be replaced with the validation requirements and criteria of sections 11.1.1 and 12.0 of PS 15. The owner or operator shall operate, maintain and quality assure a HCl CEMS installed and certified under PS 18 according to the quality assurance requirements in Procedure 6 of appendix F to 40 CFR part 60. For any performance specification used, the owner or operator shall use Method 321 of appendix A to 40 CFR part 63 as the reference

test method for conducting relative accuracy testing. The span value and calibration requirements in subparagraphs (j)1.(i) and (ii) of this paragraph apply to all HCl CEMS used under this rule:

(i) The owner or operator shall use a measurement span value for any HCl CEMS of 0-10 ppmvw unless the monitor is installed on a kiln without an inline raw mill. Kilns without an inline raw mill may use a higher span value sufficient to quantify all expected emissions concentrations. The HCl CEMS data recorder output range must include the full range of expected HCl concentration values which would include those expected during "mill off" conditions. The corresponding data recorder range shall be documented in the site-specific monitoring plan and associated records; and

(ii) In order to quality assure data measured above the span value, the owner or operator shall use one of the three options in subparagraphs (j)1.(ii)(I) through (III) of this paragraph:

(I) Include a second span that encompasses the HCl emission concentrations expected to be encountered during "mill off" conditions. This second span may be rounded to a multiple of 5 ppm of total HCl. The requirements of the appropriate HCl monitor performance specification shall be followed for this second span with the exception that a RATA with the mill off is not required;

(II) Quality assure any data above the span value by proving instrument linearity beyond the span value established in subparagraph (j)1.(i) of this paragraph using the following procedure. Conduct a weekly "above span linearity" calibration challenge of the monitoring system using a reference gas with a certified value greater than the highest expected hourly concentration or greater than 75% of the highest measured hourly concentration. The "above span" reference gas must meet the requirements of the applicable performance specification and must be introduced to the measurement system at the probe. Record and report the results of this procedure as would be done for a daily calibration. The "above span linearity" challenge is successful if the value measured by the HCl CEMS falls within 10 percent of the certified value of the reference gas. If the value measured by the HCl CEMS during the above span linearity challenge exceeds 10 percent of the certified value of the reference gas, the monitoring system must be evaluated and repaired and a new "above span linearity" challenge met before returning the HCl CEMS to service, or data above span from the HCl CEMS must be subject to the quality assurance procedures established in (j)1.(ii)(IV) of this paragraph. In this manner values measured by the HCl CEMS during the above span linearity challenge exceeding  $\pm 20$  percent of the certified value of the reference gas must be normalized using equation 6;

(III) Quality assure any data above the span value established in subparagraph (j)1.(i) of this paragraph using the following procedure. Any time two consecutive one-hour average measured concentration of HCl exceeds the span value the owner or operator shall, within 24 hours before or after, introduce a higher, "above span" HCl reference gas standard to the HCl CEMS. The "above span" reference gas shall meet the requirements of the applicable

performance specification and target a concentration level between 50 and 150 percent of the highest expected hourly concentration measured during the period of measurements above span, and shall be introduced at the probe. While this target represents a desired concentration range that is not always achievable in practice, it is expected that the intent to meet this range is demonstrated by the value of the reference gas. Expected values may include above span calibrations done before or after the above-span measurement period. Record and report the results of this procedure as would be done for a daily calibration. The “above span” calibration is successful if the value measured by the HCl CEMS is within 20 percent of the certified value of the reference gas. If the value measured by the HCl CEMS is not within 20 percent of the certified value of the reference gas, then the owner or operator shall normalize the stack gas values measured above span as described in paragraph (j) 1.(ii)(IV) of this paragraph. If the “above span” calibration is conducted during the period when measured emissions are above span and there is a failure to collect the one data point in an hour due to the calibration duration, then the owner or operator shall determine the emissions average for that missed hour as the average of hourly averages for the hour preceding the missed hour and the hour following the missed hour. In an hour where an “above span” calibration is being conducted and one or more data points are collected, the emissions average is represented by the average of all valid data points collected in that hour; and

(IV) In the event that the “above span” calibration is not successful (*i.e.*, the HCl CEMS measured value is not within 20 percent of the certified value of the reference gas), then the owner or operator shall normalize the one-hour average stack gas values measured above the span during the 24-hour period preceding or following the “above span” calibration for reporting based on the HCl CEMS response to the reference gas as shown in equation 6:

$$\text{(Eq. 6) } \frac{\text{Certified reference gas value}}{\text{Measured value of reference gas}} = \text{Measured stack gas} = \text{Normalized stack gas result}$$

2. Compliance with the mercury emissions limit must be determined using a mercury CEMS according to the following requirements:

(i) The owner or operator shall operate a CEMS in accordance with performance specification 12A at 40 CFR part 60, appendix B or a sorbent trap based integrated monitor in accordance with performance specification 12B at 40 CFR part 60, appendix B. The duration of the performance test shall be a calendar month. For each calendar month in which the waste-burning kiln operates, hourly mercury concentration data and stack gas volumetric flow rate data must be obtained. The owner or operator shall demonstrate compliance with the mercury emissions limit using a 30-day rolling average of these 1-hour mercury concentrations, including CEMS data during startup and shutdown as defined in this subpart, calculated using equation 19-19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A-7. CEMS data during startup and shutdown, as defined in this rule, are not corrected to 7 percent oxygen, and are measured at stack oxygen content;

(ii) Owners or operators using a mercury continuous emissions monitoring systems shall install, operate, calibrate and maintain an instrument

for continuously measuring and recording the mercury mass emissions rate to the atmosphere according to the requirements of performance specifications 6 and 12A at 40 CFR part 60, appendix B and quality assurance procedure 5 at 40 CFR part 60, appendix F; and

(iii) The owner or operator of a waste-burning kiln shall demonstrate initial compliance by operating a mercury CEMS while the raw mill of the in-line kiln/raw mill is operating under normal conditions and including at least one period when the raw mill is off.

(k) If the owner or operators uses an air pollution control device to meet the emission limitations in this rule, an initial and annual inspection of the air pollution control device shall be conducted. The inspection shall include, at a minimum, the following:

1. Inspect air pollution control device(s) for proper operation.

2. Develop a site-specific monitoring plan according to the requirements in subparagraph (9)(l) of this paragraph. This requirement also applies if the owner or operator petition the Administrator for alternative monitoring parameters under §60.13(i) of 40 CFR part 60.

(l) For each CMS required in this paragraph, the owner or operator shall develop and submit to the Administrator for approval a site-specific monitoring plan according to the requirements of this subparagraph (l) that addresses subparagraphs (9)(l)1.(i) through (vi) of this paragraph.

1. The owner or operator shall submit this site-specific monitoring plan at least 60 days before the initial performance evaluation of the continuous monitoring system.

- (i) Installation of the continuous monitoring system sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (e.g., on or downstream of the last control device).

- (ii) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer and the data collection and reduction systems.

- (iii) Performance evaluation procedures and acceptance criteria (e.g., calibrations).

- (iv) Ongoing operation and maintenance procedures in accordance with the general requirements of §60.11(d).

- (v) Ongoing data quality assurance procedures in accordance with the general requirements of §60.13.

(vi) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of §60.7(b), (c), (c)(1), (c)(4), (d), (e), (f) and (g).

2. The owner or operator shall conduct a performance evaluation of each continuous monitoring system in accordance with the site-specific monitoring plan.

3. The owner or operator shall operate and maintain the continuous monitoring system in continuous operation according to the site-specific monitoring plan.

(m) If the owner or operator has an operating limit that requires the use of a flow monitoring system, the owner or operator shall meet the requirements in subparagraphs (9)(l) and (9)(m)1. through 4. of this paragraph.

1. Install the flow sensor and other necessary equipment in a position that provides a representative flow.

2. Use a flow sensor with a measurement sensitivity at full scale of no greater than 2 percent.

3. Minimize the effects of swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

4. Conduct a flow monitoring system performance evaluation in accordance with the monitoring plan at the time of each performance test but no less frequently than annually.

(n) If the owner or operator has an operating limit that requires the use of a pressure monitoring system, the owner or operator shall meet the requirements in subparagraphs (9)(l) and (9)(n)1. through 6. Of this paragraph.

1. Install the pressure sensor(s) in a position that provides a representative measurement of the pressure (e.g., PM scrubber pressure drop).

2. Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

3. Use a pressure sensor with a minimum tolerance of 1.27 centimeters of water or a minimum tolerance of 1 percent of the pressure monitoring system operating range, whichever is less.

4. Perform checks at the frequency outlined in the site-specific monitoring plan to ensure pressure measurements are not obstructed (e.g., check for pressure tap pluggage daily).

5. Conduct a performance evaluation of the pressure monitoring system in accordance with the monitoring plan at the time of each performance test but no less frequently than annually.

6. If at any time the measured pressure exceeds the manufacturer's specified maximum operating pressure range, conduct a performance

evaluation of the pressure monitoring system in accordance with the monitoring plan and confirm that the pressure monitoring system continues to meet the performance requirements in the monitoring plan. Alternatively, install and verify the operation of a new pressure sensor.

(o) If the owner or operator has an operating limit that requires a pH monitoring system, the owner or operator shall meet the requirements in subparagraphs (9)(l) and (9)(o)1. through 4. of this paragraph.

1. Install the pH sensor in a position that provides a representative measurement of scrubber effluent pH.

2. Ensure the sample is properly mixed and representative of the fluid to be measured.

3. Conduct a performance evaluation of the pH monitoring system in accordance with the monitoring plan at least once each process operating day.

4. Conduct a performance evaluation (including a two-point calibration with one of the two buffer solutions having a pH within 1 of the pH of the operating limit) of the pH monitoring system in accordance with the monitoring plan at the time of each performance test but no less frequently than quarterly.

(p) If the owner or operator has an operating limit that requires a secondary electric power monitoring system for an electrostatic precipitator, the owner or operator shall meet the requirements in subparagraphs (9)(l) and (9)(p)1. through 2. of this paragraph.

1. Install sensors to measure (secondary) voltage and current to the precipitator collection plates.

2. Conduct a performance evaluation of the electric power monitoring system in accordance with the monitoring plan at the time of each performance test but no less frequently than annually.

(q) If the owner or operator has an operating limit that requires the use of a monitoring system to measure sorbent injection rate (e.g., weigh belt, weigh hopper, or hopper flow measurement device), the owner or operator shall meet the requirements in subparagraphs (9)(l) and (9)(q)1. through 2. of this paragraph.

1. Install the system in a position(s) that provides a representative measurement of the total sorbent injection rate.

2. Conduct a performance evaluation of the sorbent injection rate monitoring system in accordance with the monitoring plan at the time of each performance test but no less frequent than annually.

(r) If the owner or operator elect to use a fabric filter bag leak detection system to comply with the requirements of this rule, the owner or operator shall install, calibrate, maintain, and continuously operate a bag leak detection

system as specified in subparagraphs (9)(l) and (9)(r)1. through 5. of this paragraph.

1. Install a bag leak detection sensor(s) in a position(s) that will be representative of the relative or absolute particulate matter loadings for each exhaust stack, roof vent, or compartment (e.g., for a positive pressure fabric filter) of the fabric filter.

2. Use a bag leak detection system certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

3. Conduct a performance evaluation of the bag leak detection system in accordance with the monitoring plan and consistent with the guidance provided in EPA-454/R-98-015 (incorporated by reference, see §60.17).

4. Use a bag leak detection system equipped with a device to continuously record the output signal from the sensor.

5. Use a bag leak detection system equipped with a system that will sound an alarm when an increase in relative particulate matter emissions over a preset level is detected. The alarm shall be located where it is observed readily by plant operating personnel.

(s) For facilities using a CEMS to demonstrate compliance with the sulfur dioxide emission limit, compliance with the sulfur dioxide emission limit may be demonstrated by using the CEMS specified in paragraph (10) of this rule to measure sulfur dioxide. CEMS data during startup and shutdown, as defined in this rule, are not corrected to 7 percent oxygen, and are measured at stack oxygen content. The owner or operator shall calculate a 30-day rolling average of the 1-hour arithmetic average emission concentrations, including CEMS data during startup and shutdown as defined in this rule, using Equation 19-19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A-7. The sulfur dioxide CEMS shall be operated according to performance specification 2 in appendix B of 40 CFR part 60 and shall follow the procedures and methods specified in this subparagraph. For sources that have actual inlet emissions less than 100 parts per million dry volume, the relative accuracy criterion for inlet sulfur dioxide CEMS should be no greater than 20 percent of the mean value of the reference method test data in terms of the units of the emission standard, or 5 parts per million dry volume absolute value of the mean difference between the reference method and the CEMS, whichever is greater.

1. During each relative accuracy test run of the CEMS required by performance specification 2 in appendix B of 40 CFR part 60, collect sulfur dioxide and oxygen (or carbon dioxide) data concurrently (or within a 30- to 60-minute period) with both the CEMS and the test methods specified in subparagraphs (9)(s)1.(i) and (ii) of this paragraph.

(i) For sulfur dioxide, EPA Reference Method 6 or 6C, or as an alternative ANSI/ASME PTC 19.10-1981 (incorporated by reference, see §60.17) shall be used.

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B, or as an alternative ANSI/ASME PTC 19.10-1981 (incorporated by reference, see §60.17), as applicable, shall be used.

2. The span value of the CEMS at the inlet to the sulfur dioxide control device shall be 125 percent of the maximum estimated hourly potential sulfur dioxide emissions of the unit subject to this rule. The span value of the CEMS at the outlet of the sulfur dioxide control device shall be 50 percent of the maximum estimated hourly potential sulfur dioxide emissions of the unit subject to this rule.

3. Conduct accuracy determinations quarterly and calibration drift tests daily in accordance with procedure 1 in appendix F of 40 CFR part 60.

(t) For facilities using a CEMS to demonstrate continuous compliance with the nitrogen oxides emission limit, compliance with the nitrogen oxides emission limit may be demonstrated by using the CEMS specified in paragraph (10) to measure nitrogen oxides. CEMS data during startup and shutdown as defined in this rule, are not corrected to 7 percent oxygen, and are measured at stack oxygen content. The owner or operator shall calculate a 30-day rolling average of the 1-hour arithmetic average emission concentration using Equation 19-19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A-7. The nitrogen oxides CEMS shall be operated according to performance specification 2 in appendix B of 40 CFR part 60 and shall follow the procedures and methods specified in subparagraphs (9)(t)1. through 5. of this paragraph.

1. During each relative accuracy test run of the CEMS required by performance specification 2 of appendix B of 40 CFR part 60, collect nitrogen oxides and oxygen (or carbon dioxide) data concurrently (or within a 30- to 60-minute period) with both the CEMS and the test methods specified in subparagraphs (9)(t)1.(i) and (ii) of this paragraph.

(i) For nitrogen oxides, EPA Reference Method 7 or 7E at 40 CFR part 60, appendix A-4 shall be used.

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B, or as an alternative ANSI/ASME PTC 19.10-1981 (incorporated by reference, see §60.17), as applicable, shall be used.

2. The span value of the CEMS shall be 125 percent of the maximum estimated hourly potential nitrogen oxide emissions of unit.

3. Conduct accuracy determinations quarterly and calibration drift tests daily in accordance with procedure 1 in appendix F of 40 CFR part 60.

4. The owner or operator of an affected facility may request that compliance with the nitrogen oxides emission limit be determined using carbon

dioxide measurements corrected to an equivalent of 7 percent oxygen. If carbon dioxide is selected for use in diluents corrections, the relationship between oxygen and carbon dioxide levels shall be established during the initial performance test according to the procedures and methods specified in subparagraphs (9)(t)4.(i) through (iv) of this paragraph below. This relationship may be reestablished during performance compliance tests.

(i) The fuel factor equation in Method 3B shall be used to determine the relationship between oxygen and carbon dioxide at a sampling location. Method 3A, 3B, or as an alternative ANSI/ASME PTC 19.10-1981 (incorporated by reference, see §60.17), as applicable, shall be used to determine the oxygen concentration at the same location as the carbon dioxide monitor.

(ii) Samples shall be taken for at least 30 minutes in each hour.

(iii) Each sample shall represent a 1-hour average.

(iv) A minimum of 3 runs shall be performed.

(u) For facilities using a continuous emissions monitoring system to demonstrate continuous compliance with any of the emission limits of this rule, the owner or operator shall complete the following:

1. Demonstrate compliance with the appropriate emission limit(s) using a 30-day rolling average of 1-hour arithmetic average emission concentrations, including CEMS data during startup and shutdown, as defined in this rule, calculated using Equation 19-19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A-7. CEMS data during startup and shutdown, as defined in this rule, are not corrected to 7 percent oxygen, and are measured at stack oxygen content.

2. Operate all CEMS in accordance with the applicable procedures under appendices B and F of 40 CFR part 60.

(v) Use of the bypass stack at any time is an emissions standards deviation for particulate matter, HCl, Pb, Cd, Hg, NO<sub>x</sub>, SO<sub>2</sub>, and dioxin/furans.

(w) For energy recovery units with a design heat input capacity of 100MMBtu per hour or greater that do not use a carbon monoxide CEMS, the owner or operator shall install, operate, and maintain an oxygen analyzer system as defined in paragraph (1) of this rule according to the procedures in subparagraph (9)(w)1. through 4. below.

1. The oxygen analyzer system shall be installed by the initial performance test date specified in subparagraph (6)(b) of this rule.

2. The owner or operator shall operate the oxygen trim system within compliance with subparagraph (9)(w)3. of this paragraph below at all times.

3. The owner or operator shall maintain the oxygen level such that the 30-day rolling average that is established as the operating limit for oxygen is

not below the lowest hourly average oxygen concentration measured during the most recent CO performance test.

4. The owner or operator shall calculate and record a 30-day rolling average oxygen concentration using Equation 19-19 in section 12.4.1 of EPA Reference Method 19 of Appendix A-7 of 40 CFR part 60.

(x) For energy recovery units with annual average heat input rates greater than or equal to 250 MMBtu/hour and waste-burning kilns, the owner or operator shall install, calibrate, maintain, and operate a PM CPMS and record the output of the system as specified in subparagraphs (9)(x)1. through 8. of this paragraph below. For other energy recovery units, the owner or operator may elect to use PM CPMS operated in accordance with this paragraph. PM CPMS are suitable in lieu of using other CMS for monitoring PM compliance (e.g., bag leak detectors, ESP secondary power, PM scrubber pressure).

1. Install, calibrate, operate, and maintain the PM CPMS according to the procedures in the approved site-specific monitoring plan developed in accordance with subparagraphs (9)(l) and (9)(x)1.(i) through (iii) of this paragraph.

(i) The operating principle of the PM CPMS shall be based on in-stack or extractive light scatter, light scintillation, beta attenuation, or mass accumulation of the exhaust gas or representative sample. The reportable measurement output from the PM CPMS shall be expressed as milliamps.

(ii) The PM CPMS shall have a cycle time (i.e., period required to complete sampling, measurement, and reporting for each measurement) no longer than 60 minutes.

(iii) The PM CPMS shall be capable of detecting and responding to particulate matter concentrations of no greater than 0.5 mg/actual cubic meter.

2. During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, the owner or operator shall adjust the site-specific operating limit in accordance with the results of the performance test according to the procedures specified in subparagraph (6)(b) of this rule.

3. Collect PM CPMS hourly average output data for all energy recovery unit or waste-burning kiln operating hours. Express the PM CPMS output as milliamps.

4. Calculate the arithmetic 30-day rolling average of all of the hourly average PM CPMS output collected during all energy recovery unit or waste-burning kiln operating hours data (milliamps).

5. The owner or operator shall collect data using the PM CPMS at all times the energy recovery unit or waste-burning kiln is operating and at the intervals specified in subparagraph (9)(x)1.(ii) of this paragraph, except for periods of monitoring system malfunctions, repairs associated with monitoring

system malfunctions, required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments), and any scheduled maintenance as defined in the site-specific monitoring plan.

6. The owner or operator shall use all the data collected during all energy recovery unit or waste-burning kiln operating hours in assessing the compliance with the operating limit except:

(i) Any data collected during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or quality control activities conducted during monitoring system malfunctions are not used in calculations (report any such periods in the annual deviation report);

(ii) Any data collected during periods when the monitoring system is out of control as specified in your site-specific monitoring plan, repairs associated with periods when the monitoring system is out of control, or required monitoring system quality assurance or quality control activities conducted during out-of-control periods are not used in calculations (report emissions or operating levels and report any such periods in the annual deviation report);

(iii) Any PM CPMS data recorded during periods of CEMS data during startup and shutdown, as defined in this rule.

7. The owner or operator shall record and make available upon request results of PM CPMS system performance audits, as well as the dates and duration of periods from when the PM CPMS is out of control until completion of the corrective actions necessary to return the PM CPMS to operation consistent with the site-specific monitoring plan.

8. For any deviation of the 30-day rolling average PM CPMS average value from the established operating parameter limit, the owner or operator shall:

(i) Within 48 hours of the deviation, visually inspect the air pollution control device;

(ii) If inspection of the air pollution control device identifies the cause of the deviation, take corrective action as soon as possible and return the PM CPMS measurement to within the established value; and

(iii) Within 30 days of the deviation or at the time of the annual compliance test, whichever comes first, conduct a PM emissions compliance test to determine compliance with the PM emissions limit and to verify. Within 45 days of the deviation, the owner or operator shall re-establish the CPMS operating limit. Conducting of additional testing for any deviations that occur between the time of the original deviation and the PM emissions compliance test required under this subparagraph is not required.

(iv) PM CPMS deviations leading to more than four required performance tests in a 12-month process operating period (rolling monthly) constitute a violation of this rule.

(y) When there is an alkali bypass and/or an in-line coal mill that exhaust emissions through a separate stack(s), the combined emissions are subject to the emission limits applicable to waste-burning kilns. To determine the kiln-specific emission limit for demonstrating compliance, the owner or operator shall:

1. Calculate a kiln-specific emission limit using equation 7:

$$\text{(Eq. 7) } C_{ks} = ((\text{Emission Limit} \times (Q_{ab} + Q_{cm} + Q_{ks})) - (Q_{ab} \times C_{ab}) - (Q_{cm} \times C_{cm})) / Q_{ks}$$

Where:

$C_{ks}$  = Kiln stack concentration (ppmvd, mg/dscm, ng/dscm, depending on pollutant. Each corrected to 7% O<sub>2</sub>.)

$Q_{ab}$  = Alkali bypass flow rate (volume/hr)

$C_{ab}$  = Alkali bypass concentration (ppmvd, mg/dscm, ng/dscm, depending on pollutant. Each corrected to 7% O<sub>2</sub>.)

$Q_{cm}$  = In-line coal mill flow rate (volume/hr)

$C_{cm}$  = In-line coal mill concentration (ppmvd, mg/dscm, ng/dscm, depending on pollutant. Each corrected to 7% O<sub>2</sub>.)

$Q_{ks}$  = Kiln stack flow rate (volume/hr)

2. Particulate matter concentration shall be measured downstream of the in-line coal mill. All other pollutant concentrations shall be measured either upstream or downstream of the in-line coal mill.

3. For purposes of determining the combined emissions from kilns equipped with an alkali bypass or that exhaust kiln gases to a coal mill that exhausts through a separate stack, instead of installing a CEMS or PM CPMS on the alkali bypass stack or in-line coal mill stack, the results of the initial and subsequent performance test can be used to demonstrate compliance with the relevant emissions limit. A performance test shall be conducted on an annual basis (between 11 and 13 calendar months following the previous performance test).

(z) The owner or operator shall conduct annual performance tests between 11 and 13 months of the previous performance test.

(aa) On an annual basis (no more than 12 months following the previous annual air pollution control device inspection), the owner or operator shall complete the air pollution control device inspection as described in subparagraphs (8)(e) and (f) of this rule.

(bb) The owner or operator shall conduct annual performance tests according to the schedule specified in subparagraph (9)(z) in this paragraph, with the following exceptions:

1. The owner or operator may conduct a repeat performance test at any time to establish new values for the operating limits to apply from that point forward, as specified in subparagraphs (9)(cc) and (dd) of this paragraph. The Director may request a repeat performance test at any time.

2. The owner or operator shall repeat the performance test within 60 days of a process change, as defined in paragraph (1) of this rule.

3. If the initial or any subsequent performance test for any pollutant in table 1 or tables 5 through 8 of this rule, as applicable, demonstrates that the emission level for the pollutant is no greater than the emission level specified in subparagraph (9)(bb)3.(i) or (bb)3.(ii) of this paragraph, as applicable, and the owner or operator is not required to conduct a performance test for the pollutant in response to a request by the Director in subparagraph (9)(bb)1. of this paragraph or a process change in subparagraph (9)(bb)2. of this paragraph, the owner or operator may elect to skip conducting a performance test for the pollutant for the next 2 years. The owner or operator shall conduct a performance test for the pollutant during the third year and no more than 37 months following the previous performance test for the pollutant. For cadmium and lead, both cadmium and lead shall be emitted at emission levels no greater than their respective emission levels specified in subparagraph (9)(bb)3.(i) of this paragraph to qualify for less frequent testing under this paragraph.

(i) For particulate matter, hydrogen chloride, mercury, carbon monoxide, nitrogen oxides, sulfur dioxide, cadmium, lead, and dioxins/furans, the emission level equal to 75 percent of the applicable emission limit in table 1 or tables 5 through 8 of this rule, as applicable, to this rule.

(ii) For fugitive emissions, visible emissions (of combustion ash from the ash conveying system) for 2 percent of the time during each of the three 1-hour observation periods.

4. If the owner or operator is conducting less frequent testing for a pollutant as provided in subparagraph (9)(bb)3. of this paragraph and a subsequent performance test for the pollutant indicates that the CISWI unit does not meet the emission level specified in subparagraph (9)(bb)3.(i) or (9)(bb)3.(ii) of this paragraph, as applicable, the owner or operator shall conduct annual performance tests for the pollutant according to the schedule specified in subparagraph (9)(bb) of this paragraph until qualification for less frequent testing for the pollutant as specified in subparagraph (9)(bb)3. of this paragraph.

(cc) The owner or operator may conduct a repeat performance test at any time to establish new values for the operating limits. The Director may request a repeat performance test at any time.

(dd) The owner or operator shall repeat the performance test if the feed stream is different than the feed streams used during any performance test used to demonstrate compliance.

(10) Monitoring.

(a) If a wet scrubber is used to comply with the emission limitation under subparagraph (6)(a) of this rule, the owner or operator shall install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in Table 2 of this rule. These devices (or methods) must measure and record the values for these operating parameters at the frequencies indicated in Table 2 of this rule at all times except as specified in subparagraph (t)1.(i) of this paragraph.

(b) If a fabric filter is used to comply with the requirements of this rule, the owner or operator shall install, calibrate, maintain, and continuously operate a bag leak detection system as specified in subparagraphs (b)1. through 8. of this rule.

1. The owner or operator shall install and operate a bag leak detection system for each exhaust stack of the fabric filter.

2. Each bag leak detection system shall be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

3. The bag leak detection system shall be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

4. The bag leak detection system sensor shall provide output of relative or absolute particulate matter loadings.

5. The bag leak detection system shall be equipped with a device to continuously record the output signal from the sensor.

6. The bag leak detection system shall be equipped with an alarm system that will alert automatically an operator when an increase in relative particulate matter emissions over a preset level is detected. The alarm shall be located where it is observed easily by plant operating personnel.

7. For positive pressure fabric filter systems, a bag leak detection system shall be installed in each baghouse compartment or cell. For negative pressure or induced air fabric filters, the bag leak detector shall be installed downstream of the fabric filter.

8. Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(c) If a device other than a wet scrubber, activated carbon, selective non-catalytic reduction, an electrostatic precipitator, or a dry scrubber is used to comply with the emission limitations under subparagraph (6)(a) of this rule, the owner or operator shall install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in subparagraph (6)(c) of this rule.

(d) If activated carbon injection is used to comply with the emission limitations in this rule, the owner or operator shall measure the minimum sorbent flow rate once per hour.

(e) If selective noncatalytic reduction is used to comply with the emission limitations, the owner or operator shall complete the following:

1. Following the date on which the initial performance test is completed or is required to be completed under paragraph (7) of this rule, whichever date comes first, ensure that the affected facility does not operate above the maximum charge rate, or below the minimum secondary chamber temperature (if applicable to your CISWI unit) or the minimum reagent flow rate measured as 3-hour block averages at all times.

2. Operation of the affected facility above the maximum charge rate, below the minimum secondary chamber temperature and below the minimum reagent flow rate simultaneously constitute a violation of the nitrogen oxides emissions limit.

(f) If an electrostatic precipitator is used to comply with the emission limits of this rule, the owner or operator shall monitor the secondary power to the electrostatic precipitator collection plates and maintain the 3-hour block averages at or above the operating limits established during the mercury or particulate matter performance test.

(g) For waste-burning kilns not equipped with a wet scrubber or dry scrubber, in place of hydrogen chloride testing with EPA Method 321 at 40 CFR part 63, appendix A, an owner or operator shall install, calibrate, maintain, and operate a CEMS for monitoring hydrogen chloride emissions discharged to the atmosphere and record the output of the system. To demonstrate continuous compliance with the hydrogen chloride emissions limit for units other than waste-burning kilns not equipped with a wet scrubber or dry scrubber, a facility may substitute use of a hydrogen chloride CEMS for conducting the hydrogen chloride annual performance test, monitoring the minimum hydrogen chloride sorbent flow rate, monitoring the minimum scrubber liquor pH.

(h) To demonstrate continuous compliance with the particulate matter emissions limit, a facility may substitute use of either a particulate matter CEMS or a particulate matter CPMS for conducting the particulate matter annual performance test and other CMS monitoring for PM compliance (e.g., bag leak detectors, ESP secondary power, PM scrubber pressure).

(i) To demonstrate continuous compliance with the dioxin/furan emissions limit, a facility may substitute use of a continuous automated sampling system for the dioxin/furan annual performance test. The owner or operator shall record the output of the system and analyze the sample according to EPA Method 23 at 40 CFR part 60, appendix A-7. This option to use a continuous automated sampling system takes effect on the date a final performance specification applicable to dioxin/furan from continuous monitors is published in the Federal Register. The owner or operator who elects to continuously sample dioxin/furan emissions instead of sampling and testing

using EPA Method 23 at 40 CFR part 60, appendix A-7 shall install, calibrate, maintain and operate a continuous automated sampling system and shall comply with the requirements specified in § 60.58b(p) and (q). A facility may substitute continuous dioxin/furan monitoring for the minimum sorbent flow rate, if activated carbon sorbent injection is used solely for compliance with the dioxin/furan emission limit.

(j) To demonstrate continuous compliance with the mercury emissions limit, a facility may substitute use of a continuous automated sampling system for the mercury annual performance test. The owner or operator shall record the output of the system and analyze the sample at set intervals using any suitable determinative technique that can meet performance specification 12B criteria. This option to use a continuous automated sampling system takes effect on the date a final performance specification applicable to mercury from monitors is published in the Federal Register. The owner or operator who elects to continuously sample mercury emissions instead of sampling and testing using EPA Method 29 or 30B at 40 CFR part 60, appendix A-8, ASTM D6784-02 (Reapproved 2008) (incorporated by reference, see § 60.17), or an approved alternative method for measuring mercury emissions, shall install, calibrate, maintain and operate a continuous automated sampling system and shall comply with the requirements specified in § 60.58b(p) and (q). A facility may substitute continuous mercury monitoring for the minimum sorbent flow rate, if activated carbon sorbent injection is used solely for compliance with the mercury emission limit. The owner or operators of waste-burning kilns shall install, calibrate, maintain, and operate a mercury CEMS as specified in subparagraph(9)(j) of this rule.

(k) To demonstrate continuous compliance with the nitrogen oxides emissions limit, a facility may substitute use of a CEMS for the nitrogen oxides annual performance test to demonstrate compliance with the nitrogen oxides emissions limits.

1. Install, calibrate, maintain and operate a CEMS for measuring nitrogen oxides emissions discharged to the atmosphere and record the output of the system. The requirements under performance specification 2 of appendix B of 40 CFR part 60, the quality assurance procedure 1 of appendix F of 40 CFR part 60 and the procedures under § 60.13 shall be followed for installation, evaluation and operation of the CEMS.

2. Following the date that the initial performance test for nitrogen oxides is completed or is required to be completed under paragraph (7) of this rule, compliance with the emission limit for nitrogen oxides required under § 60.52b(d) shall be determined based on the 30-day rolling average of the hourly emission concentrations using CEMS outlet data. The 1-hour arithmetic averages shall be expressed in parts per million by volume corrected to 7 percent oxygen (dry basis) and used to calculate the 30-day rolling average concentrations. CEMS data during startup and shutdown, as defined in this rule, are not corrected to 7 percent oxygen, and are measured at stack oxygen content. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2).

(l) To demonstrate continuous compliance with the sulfur dioxide emissions limit, a facility may substitute use of a continuous automated sampling system for the sulfur dioxide annual performance test to demonstrate compliance with the sulfur dioxide emissions limits.

1. Install, calibrate, maintain and operate a CEMS for measuring sulfur dioxide emissions discharged to the atmosphere and record the output of the system. The requirements under performance specification 2 of appendix B of 40 CFR part 60, the quality assurance requirements of procedure 1 of appendix F of 40 CFR part 60 and the procedures under § 60.13 must be followed for installation, evaluation and operation of the CEMS.

2. Following the date that the initial performance test for sulfur dioxide is completed or is required to be completed under paragraph (7) of this rule, compliance with the sulfur dioxide emission limit may be determined based on the 30-day rolling average of the hourly arithmetic average emission concentrations using CEMS outlet data. The 1-hour arithmetic averages shall be expressed in parts per million corrected to 7 percent oxygen (dry basis) and used to calculate the 30-day rolling average emission concentrations. CEMS data during startup and shutdown, as defined in this rule, are not corrected to 7 percent oxygen, and are measured at stack oxygen content. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2).

(m) For energy recovery units 10 MMBtu/hr but less than 250 MMBtu/hr annual average heat input rates that do not use a wet scrubber, fabric filter with bag leak detection system, or particulate matter CEMS, the owner or operator shall install, operate, certify and maintain a continuous opacity monitoring system according to the procedures in subparagraphs (10)(m)1. through 5. of this paragraph by the compliance date specified in paragraph (6) of this rule. Energy recovery units that use a particulate matter CEMS to demonstrate initial and continuing compliance according to the procedures in subparagraph (10)(n) are not required to install a continuous opacity monitoring system and shall perform the annual performance tests for opacity consistent with subparagraph (9)(f) of this rule.

1. Install, operate and maintain each continuous opacity monitoring system according to performance specification 1 at 40 CFR part 60, appendix B.

2. Conduct a performance evaluation of each continuous opacity monitoring system according to the requirements in § 60.13 and according to performance specification 1 at 40 CFR part 60, appendix B.

3. As specified in § 60.13(e)(1), each continuous opacity monitoring system shall complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

4. Reduce the continuous opacity monitoring system data as specified in § 60.13(h)(1).

5. Determine and record all the 6-minute averages (and 1-hour block averages as applicable) collected.

(n) For coal and liquid/gas energy recovery units, incinerators, and small remote incinerators, an owner or operator may elect to install, calibrate, maintain and operate a CEMS for monitoring particulate matter emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility who continuously monitors particulate matter emissions instead of conducting performance testing using EPA Method 5 at 40 CFR part 60, appendix A-3 or, as applicable, monitor with a particulate matter CPMS according to subparagraph (10)(r) of this paragraph, shall install, calibrate, maintain and operate a CEMS and shall comply with the requirements specified in subparagraphs (10)(n)1. through 13. of this paragraph below.

1. Notify the Director 1 month before starting use of the system.

2. Notify the Director 1 month before stopping use of the system.

3. The monitor shall be installed, evaluated and operated in accordance with the requirements of performance specification 11 of appendix B of 40 CFR part 60 and quality assurance requirements of procedure 2 of appendix F of 40 CFR part 60 and § 60.13.

4. The initial performance evaluation shall be completed no later than 180 days after the final compliance date for meeting the amended emission limitations, as specified under paragraph (7) of this rule or within 180 days of notification to the Director of use of the continuous monitoring system if the owner or operator was previously determining compliance by Method 5 at 40 CFR part 60, appendix A-3 performance tests, whichever is later.

5. The owner or operator of an affected facility may request that compliance with the particulate matter emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established according to the procedures and methods specified in subparagraphs (9)(s)5.(i) through (iv).

6. The owner or operator of an affected facility shall conduct an initial performance test for particulate matter emissions as required under paragraph (7) of this rule. Compliance with the particulate matter emission limit, if PM CEMS are elected for demonstrating compliance, shall be determined by using the CEMS specified in subparagraph (10)(n) of this paragraph to measure particulate matter. The owner or operator shall calculate a 30-day rolling average of 1-hour arithmetic average emission concentrations, including CEMS data during startup and shutdown, as defined in this rule, using Equation 19-19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A-7.

7. Compliance with the particulate matter emission limit shall be determined based on the 30-day rolling average calculated using Equation 19-

19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, Appendix A-7 from the 1-hour arithmetic average of the CEMS outlet data.

8. At a minimum, valid continuous monitoring system hourly averages shall be obtained as specified subparagraph (10)(t) of this paragraph.

9. The 1-hour arithmetic averages required under subparagraph (10)(n)7. of this paragraph shall be expressed in milligrams per dry standard cubic meter corrected to 7 percent oxygen (or carbon dioxide)(dry basis) and shall be used to calculate the 30-day rolling average emission concentrations. CEMS data during startup and shutdown, as defined in this rule, are not corrected to 7 percent oxygen, and are measured at stack oxygen content. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2).

10. All valid CEMS data shall be used in calculating average emission concentrations even if the minimum CEMS data requirements of subparagraph (10)(n)8. of this paragraph are not met.

11. The CEMS shall be operated according to performance specification 11 in appendix B of 40 CFR part 60.

12. During each relative accuracy test run of the CEMS required by performance specification 11 in appendix B of 40 CFR part 60, particulate matter and oxygen (or carbon dioxide) data shall be collected concurrently (or within a 30-to 60-minute period) by both the CEMS and the following test methods.

(i) For particulate matter, EPA Reference Method 5 at 40 CFR part 60, appendix A-3 shall be used.

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B at 40 CFR part 60, appendix A-2, as applicable, shall be used.

13. Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 2 in appendix F of 40 CFR part 60.

(o) To demonstrate continuous compliance with the carbon monoxide emissions limit, a facility may substitute use of a continuous automated sampling system for the carbon monoxide annual performance test to demonstrate compliance with the carbon monoxide emissions limits.

1. Install, calibrate, maintain, and operate a CEMS for measuring carbon monoxide emissions discharged to the atmosphere and record the output of the system. The requirements under performance specification 4B of appendix B of 40 CFR part 60, the quality assurance procedure 1 of appendix F of 40 CFR part 60 and the procedures under § 60.13 shall be followed for installation, evaluation, and operation of the CEMS.

2. Following the date that the initial performance test for carbon monoxide is completed or is required to be completed under paragraph (7) of

this rule, compliance with the carbon monoxide emission limit may be determined based on the 30-day rolling average of the hourly arithmetic average emission concentrations, including CEMS data during startup and shutdown as defined in this rule, using CEMS outlet data. Except for CEMS data during startup and shutdown, as defined in this rule, the 1-hour arithmetic averages shall be expressed in parts per million corrected to 7 percent oxygen (dry basis) and used to calculate the 30-day rolling average emission concentrations. CEMS data collected during startup or shutdown, as defined in this rule, are not corrected to 7 percent oxygen, and are measured at stack oxygen content. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2).

(p) The owner/operator of an affected source with a bypass stack shall install, calibrate (to manufacturers' specifications), maintain and operate a device or method for measuring the use of the bypass stack including date, time and duration.

(q) For energy recovery units with a design heat input capacity of 100 MMBtu per hour or greater that do not use a carbon monoxide CEMS, the owner or operator shall install, operate and maintain an oxygen analyzer system as defined in paragraph (1) of this rule according to the procedures in subparagraphs (10)(q)1. through 4. of this paragraph below.

1. The oxygen analyzer system shall be operated by the initial performance test date specified in subparagraph (6)(b) of this rule.

2. The owner or operator shall operate the oxygen trim system within compliance with subparagraph (q)3. below at all times.

3. The owner or operator shall maintain the oxygen level such that the 30-day rolling average that is established as the operating limit for oxygen according to subparagraph (q)4. below is not below the lowest hourly average oxygen concentration measured during the most recent CO performance test..

4. The owner or operator shall calculate and record a 30-day rolling average oxygen concentration using Equation 19-19 in section 12.4.1 of EPA Reference Method 19 of Appendix A-7 of 40 CFR part 60.

(r) For energy recovery units with annual average heat input rates greater than or equal to 250 MMBtu/hour and waste-burning kilns, the owner or operator shall install, calibrate, maintain, and operate a PM CPMS and record the output of the system as specified in subparagraphs (10)(r)1. through 8. of this paragraph below. For other energy recovery units, the owner or operator may elect to use PM CPMS operated in accordance with this paragraph. PM CPMS are suitable in lieu of using other CMS for monitoring PM compliance (e.g., bag leak detectors, ESP secondary power, PM scrubber pressure).

1. Install, calibrate, operate, and maintain the PM CPMS according to the procedures in the approved site-specific monitoring plan developed in accordance with paragraph (9)(l) and subparagraphs (10)(r)1.(i) through (iii) of this rule.

(i) The operating principle of the PM CPMS shall be based on in-stack or extractive light scatter, light scintillation, beta attenuation, or mass accumulation of the exhaust gas or representative sample. The reportable measurement output from the PM CPMS shall be expressed as milliamps.

(ii) The PM CPMS shall have a cycle time (i.e., period required to complete sampling, measurement, and reporting for each measurement) no longer than 60 minutes.

(iii) The PM CPMS shall be capable of detecting and responding to particulate matter concentrations of no greater than 0.5 mg/actual cubic meter.

2. During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, the owner or operator shall adjust the site-specific operating limit in accordance with the results of the performance test according to the procedures specified in subparagraph (6)(b) of this rule.

3. Collect PM CPMS hourly average output data for all energy recovery unit or waste-burning kiln operating hours. Express the PM CPMS output as milliamps.

4. Calculate the arithmetic 30-day rolling average of all of the hourly average PM CPMS output collected during all energy recovery unit or waste-burning kiln operating hours data (milliamps).

5. The owner or operator shall collect data using the PM CPMS at all times the energy recovery unit or waste-burning kiln is operating and at the intervals specified in subparagraph (10)(r)1.(ii) of this paragraph, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments), and any scheduled maintenance as defined in the site-specific monitoring plan.

6. The owner or operator shall use all the data collected during all energy recovery unit or waste-burning kiln operating hours in assessing the compliance with the operating limit except:

(i) Any data collected during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or quality control activities conducted during monitoring system malfunctions are not used in calculations (report any such periods in the annual deviation report);

(ii) Any data collected during periods when the monitoring system is out of control as specified in the site-specific monitoring plan, repairs associated with periods when the monitoring system is out of control, or required monitoring system quality assurance or quality control activities conducted during out-of-control periods are not used in calculations (report emissions or operating levels and report any such periods in the annual deviation report);

(iii) Any PM CPMS data recorded during periods of CEMS data during startup and shutdown, as defined in this rule.

7. The owner or operator shall record and make available upon request results of PM CPMS system performance audits, as well as the dates and duration of periods from when the PM CPMS is out of control until completion of the corrective actions necessary to return the PM CPMS to operation consistent with the site-specific monitoring plan.

8. For any deviation of the 30-day rolling average PM CPMS average value from the established operating parameter limit, the owner or operator shall:

(i) Within 48 hours of the deviation, visually inspect the air pollution control device;

(ii) If inspection of the air pollution control device identifies the cause of the deviation, take corrective action as soon as possible and return the PM CPMS measurement to within the established value; and

(iii) Within 30 days of the deviation or at the time of the annual compliance test, whichever comes first, conduct a PM emissions compliance test to determine compliance with the PM emissions limit and to verify. Within 45 days of the deviation, the owner or operator shall re-establish the CPMS operating limit. It is not required to conduct additional testing for any deviations that occur between the time of the original deviation and the PM emissions compliance test required under this subparagraph.

(iv) PM CPMS deviations leading to more than four required performance tests in a 12-month process operating period (rolling monthly) constitute a violation of this rule.

(s) If a dry scrubber is used to comply with the emission limits of this rule, the owner or operator shall monitor the injection rate of each sorbent and maintain the 3-hour block averages at or above the operating limits established during the hydrogen chloride performance test.

(t) The minimum amount of monitoring data obtained is determined as follows:

1. For each continuous monitoring system required or optionally allowed under paragraph (10) of this rule, the owner or operator shall monitor and collect data according to subparagraphs (10)(t)1.(i) through (iii) below:

(i) The owner or operator shall operate the monitoring system and collect data at all required intervals at all times compliance is required except for periods of monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods (as specified in subparagraph (11)(cc)15. of this rule), and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system

failures that are caused in part by poor maintenance or careless operation are not malfunctions. The owner or operator is required to effect monitoring system repairs in response to monitoring system malfunctions or out-of-control periods and to return the monitoring system to operation as expeditiously as practicable.

(ii) The owner or operator may not use data recorded during the monitoring system malfunctions, repairs associated with monitoring system malfunctions or out-of-control periods, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. The owner or operator shall use all the data collected during all other periods in assessing the operation of the control device and associated control system.

(iii) Except for periods of monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments, failure to collect required data is a deviation of the monitoring requirements.

(11) Recordkeeping and Reporting. The following items shall be maintained (as applicable) as specified in subparagraphs (a), (b), and (e) through (w) of this paragraph for a period of at least 5 years:

(a) Calendar date of each record.

(b) Records of the data described in subparagraphs (b)1. through 6. of this paragraph:

1. The CISWI unit charge dates, times, weights, and hourly charge rates.

2. Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable.

3. Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable.

4. Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable.

5. For affected CISWI units that establish operating limits for controls other than wet scrubbers under subparagraph (6)(b)4. through 7. or (6)(c) of this rule, the owner or operator shall maintain data collected for all operating parameters used to determine compliance with the operating limits. For energy recovery units using activated carbon injection or a dry scrubber, the owner or operator shall also maintain records of the load fraction and corresponding sorbent injection rate records.

6. If a fabric filter is used to comply with the emission limitations, the owner or operator shall record the date, time, and duration of each alarm and the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. The owner or operator shall also record the percent of operating time during each 6-month period that the alarm sounds, calculated as specified in subparagraph (6)(b)3. of this rule.

(c) Reserved.

(d) Reserved.

(e) Identification of calendar dates and times for which data show a deviation from the operating limits in Table 2 of this rule or a deviation from other operating limits established under subparagraph (6)(b)4. through 7. or (6)(c) of this rule with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

(f) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable. Retain a copy of the complete test report including calculations.

(g) Records showing the names of CISWI unit operators who have completed review of the information in subparagraph (5)(g)1. as required by subparagraph (5)(g)2. of this rule, including the date of the initial review and all subsequent annual reviews.

(h) Records showing the names of the CISWI operators who have completed the operator training requirements, met the criteria for qualification, and maintained or renewed their qualification under paragraph (5) of this rule. Records shall include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(i) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

(j) Records of calibration of any monitoring devices as required under paragraph (10) of this rule.

(k) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

(l) The information listed in subparagraph (5)(g) of this rule.

(m) On a daily basis, keep a log of the quantity of waste burned and the types of waste burned (always required).

(n) Maintain records of the annual air pollution control device inspections that are required for each CISWI unit subject to the emissions limits in table 1 of this rule or tables 5 through 8 of this rule, any required

maintenance and any repairs not completed within 10 days of an inspection or the timeframe established by the Director.

(o) For continuously monitored pollutants or parameters, the owner or operator shall document and keep a record of the following parameters measured using continuous monitoring systems.

1. All 6-minute average levels of opacity.

2. All 1-hour average concentrations of sulfur dioxide emissions. The owner or operator shall indicate which data are CEMS data during startup and shutdown.

3. All 1-hour average concentrations of nitrogen oxides emissions. The owner or operator shall indicate which data are CEMS data during startup and shutdown.

4. All 1-hour average concentrations of carbon monoxide emissions. The owner or operator shall indicate which data are CEMS data during startup and shutdown.

5. All 1-hour average concentrations of particulate matter emissions. The owner or operator shall indicate which data are CEMS data during startup and shutdown.

6. All 1-hour average concentrations of mercury emissions. The owner or operator shall indicate which data are CEMS data during startup and shutdown.

7. All 1-hour average concentrations of hydrogen chloride emissions. The owner or operator shall indicate which data are CEMS data during startup and shutdown.

8. All 1-hour average percent oxygen concentrations.

9. All 1-hour average PM CPMS readings or particulate matter CEMS outputs.

(p) Records indicating use of the bypass stack, including dates, times and durations.

(q) If choosing to stack test less frequently than annually, consistent with subparagraph (9)(bb) of this rule, the owner or operator shall keep annual records that document that the emissions in the previous stack test(s) were less than 75 percent of the applicable emission limit and document that there was no change in source operations including fuel composition and operation of air pollution control equipment that would cause emissions of the relevant pollutant to increase within the past year.

(r) Records of the occurrence and duration of each malfunction of operation ( i.e. , process equipment) or the air pollution control and monitoring equipment.

(s) Records of all required maintenance performed on the air pollution control and monitoring equipment.

(t) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 60.11(d) of 40 CFR part 60, including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(u) For operating units that combust non-hazardous secondary materials that have been determined not to be solid waste pursuant to § 241.3(b)(1), the owner or operator shall keep a record which documents how the secondary material meets each of the legitimacy criteria under § 241.3(d)(1). If the owner or operator combusts a fuel that has been processed from a discarded non-hazardous secondary material pursuant to § 241.3(b)(4), the owner or operator shall keep records as to how the operations that produced the fuel satisfies the definition of processing in § 241.2 and each of the legitimacy criteria in § 241.3(d)(1). If the fuel received a non-waste determination pursuant to the petition process submitted under § 241.3(c), the owner or operator shall keep a record that documents how the fuel satisfies the requirements of the petition process. For operating units that combust non-hazardous secondary materials as fuel per § 241.4, the owner or operator shall keep records documenting that the material is a listed non-waste under § 241.4(a).

(v) Records of the criteria used to establish that the unit qualifies as a small power production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) and that the waste material the unit is proposed to burn is homogeneous.

(w) Records of the criteria used to establish that the unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)) and that the waste material the unit is proposed to burn is homogeneous.

(x) All records shall be available onsite in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the Director.

(y) A summary of the reporting requirements can be found in Table 4 of this rule.

(z) The waste management plan shall be submitted no later than the date specified in subparagraph (3)(a)1. of this rule for submittal of the final control plan.

(aa) The information specified in subparagraphs (aa)1. through 3. of this paragraph below shall be submitted no later than 60 days following the initial performance test. All reports shall be signed by the responsible official.

1. The complete test report for the initial performance test results obtained under paragraph (8) of this rule, as applicable.

2. The values for the site-specific operating limits established in subparagraphs (6)(b) or (c) of this rule.

3. If a fabric filter is being used to comply with the emission limitations, documentation that a bag leak detection system has been installed and is being operated, calibrated, and maintained as required by subparagraph (10)(b) of this rule.

(bb) An annual report shall be submitted no later than 12 months following the submission of the information in subparagraph (aa) of this paragraph above. Subsequent reports shall be submitted no more than 12 months following the previous report. (If the unit is subject to permitting requirements under title V of the Clean Air Act, the owner or operator may be required by the permit to submit these reports more frequently.)

(cc) The annual report required under subparagraph (bb) of this paragraph above shall include the ten items listed in subparagraphs (cc)1. through 10. of this paragraph below. If there is a deviation from the operating limits or the emission limitations, deviation reports shall also be submitted as specified in subparagraph (dd) of this paragraph below.

1. Company name and address.
2. Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.
3. Date of report and beginning and ending dates of the reporting period.
4. The values for the operating limits established pursuant to subparagraphs (6)(b) or (6)(c) of this rule.
5. If no deviation from any emission limitation or operating limit that applies has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period.
6. The highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.
7. Information recorded under subparagraphs (b)6. and (e) of this paragraph for the calendar year being reported.
8. If a performance test was conducted during the reporting period, the results of that test.
9. If the requirements of subparagraphs (9)(bb) were met, and did not conduct a performance test during the reporting period, the owner or operator shall state that the requirements of subparagraphs (9)(bb) were met, and, therefore, were not required to conduct a performance test during the reporting period.

10. Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours, but less than 2 weeks.

11. If there was a malfunction during the reporting period, the compliance report shall include the number, duration, and a brief description for each type of malfunction that occurred during the reporting period and that caused or may have caused any applicable emission limitation to be exceeded. The report shall also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 60.11(d), including actions taken to correct a malfunction.

12. For each deviation from an emission or operating limitation that occurs for a CISWI unit for which a CMS is not being used to comply with the emission or operating limitations in this rule, the annual report shall contain the following information.

(i) The total operating time of the CISWI unit at which the deviation occurred during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

13. If there were periods during which the continuous monitoring system, including the CEMS, was out of control as specified in subparagraph (11)(cc)15. of this paragraph, the annual report shall contain the following information for each deviation from an emission or operating limitation occurring for a CISWI unit for which a continuous monitoring system is being used to comply with the emission and operating limitations in this rule.

(i) The date and time that each malfunction started and stopped.

(ii) The date, time, and duration that each CMS was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system was out-of-control, including start and end dates and hours and descriptions of corrective actions taken.

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period, and the total duration of continuous monitoring system downtime as a percent of the total operating time of the CISWI unit at which the continuous monitoring system downtime occurred during that reporting period.

(viii) An identification of each parameter and pollutant that was monitored at the CISWI unit.

(ix) A brief description of the CISWI unit.

(x) A brief description of the continuous monitoring system.

(xi) The date of the latest continuous monitoring system certification or audit.

(xii) A description of any changes in continuous monitoring system, processes, or controls since the last reporting period.

14. If there were periods during which the continuous monitoring system, including the CEMS, was not out of control as specified in subparagraph (ll)(cc)15. of this paragraph, a statement that there were not periods during which the continuous monitoring system was out of control during the reporting period.

15. A continuous monitoring system is out of control if any of the following occur.

(i) The zero (low-level), mid-level (if applicable), or high-level calibration drift exceeds two times the applicable calibration drift specification in the applicable performance specification or in the relevant standard.

(ii) The continuous monitoring system fails a performance test audit ( e.g. , cylinder gas audit), relative accuracy audit, relative accuracy test audit, or linearity test audit.

(iii) The continuous opacity monitoring system calibration drift exceeds two times the limit in the applicable performance specification in the relevant standard.

16. For energy recovery units, include the annual heat input and average annual heat input rate of all fuels being burned in the unit to verify which subcategory of energy recovery unit applies.

(dd) Reporting of deviations from the operating limits or the emission limitations.

1. A deviation report shall be submitted if any recorded 3-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under this rule, if the bag leak detection system alarm sounds for more than 5 percent of the operating time for the 6-month

reporting period, or if a performance test was conducted that deviated from any emission limitation.

2. The deviation report shall be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data collected during the second half of the calendar year (July 1 to December 31).

3. In each report required under this subparagraph, for any pollutant or parameter that deviated from the emission limitations or operating limits specified in this rule, include the items described in subparagraphs (dd)3.(i) through (iv) of this paragraph below.

(i) The calendar dates and times the CISWI unit deviated from the emission limitations or operating limit requirements.

(ii) The averaged and recorded data for those dates.

(iii) Duration and causes of the following:

(I) Each deviation from emission limitations or operating limits and corrective actions taken.

(II) Bypass events and corrective actions taken.

(iv) A copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels.

4. If all qualified operators are not accessible for 2 weeks or more, the two actions in subparagraphs (dd)4.(i) and (ii) of this paragraph below shall be taken.

(i) Submit a notification of the deviation within 10 days that includes the three items in subparagraphs (dd)4.(i)(I) through (III) of this paragraph below.

(I) A statement of what caused the deviation.

(II) A description of what actions are being taken to ensure that a qualified operator is accessible.

(III) The date when it is anticipated that a qualified operator will be available.

(ii) Submit a status report to the Director every 4 weeks that includes the three items in subparagraphs (dd)4.(ii)(I) through (III) of this paragraph below.

(I) A description of what actions are being taken to ensure that a qualified operator is accessible.

(II) The date when it is anticipated that a qualified operator will be accessible.

(III) Request approval from the Director to continue operation of the CISWI unit.

(iii) If the CISWI unit was shut down by the Administrator, under the provisions of subparagraph (5)(h)2.(ii) of this rule, due to a failure to provide an accessible qualified operator, the owner or operator shall notify the Administrator that operations will resume once a qualified operator is accessible.

(ee) Notifications provided by 40 CFR, § 60.7 [as incorporated by reference under ADEM Admin. Code r. 335-3-10-.02(1)] shall be submitted.

(ff) If the owner or operator cease combusting solid waste but continue to operate, the owner or operator shall provide 30 days prior notice of the effective date of the waste-to-fuel switch, consistent with paragraph (9)(a) of this rule. The notification must identify:

1. The name of the owner or operator of the CISWI unit, the location of the source, the emissions unit(s) that will cease burning solid waste, and the date of the notice;

2. The currently applicable subcategory under this rule, and any 40 CFR part 63 subpart and subcategory that will be applicable after combusting solid waste is ceased;

3. The fuel(s), non-waste material(s) and solid waste(s) the CISWI unit is currently combusting and has combusted over the past 6 months, and the fuel(s) or non-waste materials the unit will commence combusting;

4. The date on which the unit became subject to the currently applicable emission limits;

5. The date upon which the unit will cease combusting solid waste, and the date (if different) that the owner or operator intend for any new requirements to become applicable (i.e., the effective date of the waste-to-fuel switch), consistent with subparagraphs (ff)2. and 3. of this paragraph.

(gg) Initial, annual, and deviation reports shall be submitted electronically or in paper format, postmarked on or before the submittal due dates. Submit the reports to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>.) Use the appropriate electronic report in CEDRI for this rule or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the CEDRI Web site (<https://www3.epa.gov/ttn/chief/cedri/index.html>), once the XML schema is available. If the reporting form specific to this rule is not available in CEDRI at the time that the report is due, submit the report to the Administrator at the appropriate address listed in 40 CFR, §60.4. Once the form has been available in CEDRI for 90 calendar days, the owner or operator shall begin submitting all

subsequent reports via CEDRI. The reports shall be submitted by the deadlines specified in this rule, regardless of the method in which the report is submitted.

(hh) Submit results of performance tests and CEMS performance evaluation tests as follows.

1. Within 60 days after the date of completing each performance test as required by this rule, the owner or operator shall submit the results of the performance tests following the procedure specified in either subparagraph (hh)1.(i) or (hh)1.(ii) of this paragraph:

(i) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site ([https://www3.epa.gov/ttn/chief/ert/ert\\_info.html](https://www3.epa.gov/ttn/chief/ert/ert_info.html)) at the time of the test, the owner or operator shall submit the results of the performance test to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX (<https://cdx.epa.gov/>).) Performance test data shall be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the XML schema listed on the EPA's ERT Web site. If the owner or operator claim that some of the performance test information being submitted is confidential business information (CBI), the owner or operator shall submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this subparagraph; and

(ii) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, the owner or operator shall submit the results of the performance test to the Administrator at the appropriate address listed in 40 CFR, §60.4.

2. Within 60 days after the date of completing each CEMS performance evaluation the owner or operator shall submit the results of the performance evaluation following the procedure specified in either subparagraph (hh)1. Or (hh)2. of this paragraph:

(i) For performance evaluations of continuous monitoring systems measuring relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the evaluation, the owner or operator shall submit the results of the performance evaluation to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX.) Performance evaluation data shall be submitted in a file format generated through the use of the EPA's ERT or an alternate file format consistent with the XML schema listed on the EPA's ERT Web site. If the owner or operator claim that some of the performance evaluation information being submitted is CBI, the owner or operator shall submit a complete file generated through the use of

the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic storage media shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this subparagraph; and

(ii) For any performance evaluations of continuous monitoring systems measuring RATA pollutants that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the evaluation, the owner or operator shall submit the results of the performance evaluation to the Administrator at the appropriate address listed in 40 CFR, §60.4.

(ii) The Director may change the semiannual or annual reporting dates. Procedures for seeking approval to change reporting dates are found in 40 CFR, § 60.19(c) [as incorporated by reference under ADEM Admin. Code r. 335-3-10-.02(1)].

(12) Major Source Operating Permits. Each CISWI unit and air curtain incinerator subject to standards under this rule (excluding rules in paragraph (13) below) shall operate pursuant to the requirements of chapter 335-3-16 by December 1, 2003.

(13) Air Curtain Incinerators.

(a) An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

(b) Air curtain incinerators that burn only the materials listed in subparagraphs (b)1. through 3. of this paragraph below are only required to meet the requirements under this paragraph.

1. 100 percent wood waste.
2. 100 percent clean lumber.
3. 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(c) For owners or operators planning to achieve compliance more than one year following the effective date of EPA's approval of these rules, the two increments of progress specified in subparagraphs (c)1. and 2. of this paragraph below shall be met.

1. Submit a final control plan no later than one year following the effective date of EPA's approval of these rules.

2. Achieve final compliance no later than December 1, 2005.

(d) The owner or operator shall submit to the Director, notifications for achieving increments of progress. The notifications shall be postmarked no later than 10 business days after the compliance date for the increment. These notifications shall include the three items specified in subparagraphs (d)1. through 3. of this paragraph below:

1. Notification that the increment of progress has been achieved.
2. Any items required to be submitted with each increment of progress.
3. Signature of the owner or operator of the incinerator unit.

(e) If an owner or operator fails to meet an increment of progress, a notification to the Director shall be submitted and postmarked within 10 business days after the date for that increment of progress in subparagraph (c) of this paragraph above. The owner or operator shall inform the Director that the increment was not met, and reports shall be submitted each subsequent calendar month until the increment of progress is met.

(f) For the control plan increment of progress, the owner or operator shall satisfy the two requirements specified in subparagraphs (f)1. and 2. of this paragraph below.

1. Submit the final control plan, including a description of any devices for air pollution control and any process changes that will be used to comply with the emission limitations and other requirements of this paragraph.

2. Maintain an onsite copy of the final control plan.

(g) For the final compliance increment of progress, the owner or operator shall complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected incinerator is brought online, all necessary process changes and air pollution control devices would operate as designed.

(h) Closing and restarting an air curtain incinerator.

1. If the incinerator is closed but will be restarted prior to the final compliance date of December 1, 2005, the increments of progress specified in subparagraph (c) of this paragraph shall be met.

2. If the incinerator is to restart after the final compliance date, the owner or operator shall complete emission control retrofits and meet the emission limitations on the date the incinerator restarts operation.

(i) Permanent closure of an air curtain incinerator. If the owner or operator plans to close the incinerator rather than comply with this rule, submit a closure

notification, including the date of closure, to the Director within 90 days after EPA approval of these rules.

(j) Emission limitations for air curtain incinerators.

1. After the date the initial stack test is required or completed (whichever is earlier), the owner or operator shall meet the limitations in subparagraphs (j)1.(i) and (ii) of this paragraph below.

(i) Maintain opacity to less than or equal to 10 percent opacity (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values), except as described in subparagraph (j)1.(ii) of this paragraph below.

(ii) Maintain opacity to less than or equal to 35 percent opacity (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values) during the startup period that is within the first 30 minutes of operation.

(k) Monitoring opacity for air curtain incinerators.

1. Use Method 9 of 40 CFR 60, Appendix A to determine compliance with the opacity limitation.

2. Conduct an initial test for opacity as specified in 40 CFR, § 60.8 no later than 180 days after the final compliance date.

3. After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of the previous test.

(l) Recordkeeping and reporting requirements for air curtain incinerators.

1. Keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format, unless the Director approves another format, for at least 5 years.

2. Make all records available for submittal to the Director or for an inspector's onsite review.

3. Submit an initial report no later than 60 days following the initial opacity test that includes the information specified in subparagraphs (l)3.(i) and (ii) of this paragraph below.

(i) The types of materials planned to be combusted in the air curtain incinerator.

(ii) The results (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values) of the initial opacity tests.

4. Submit annual opacity test results within 12 months following the previous report.

5. Submit initial and annual opacity test reports as electronic or paper copy on or before the applicable submittal date and keep a copy onsite for a period of 5 years.

**TABLE 1. EMISSION LIMITS FOR INCINERATORS THAT COMMENCED CONSTRUCTION ON OR BEFORE NOVEMBER 30, 1999, AND WERE NOT MODIFIED OR RECONSTRUCTED AFTER JUNE 1, 2001**

<b>Pollutant</b>	<b>Units (7 percent oxygen, dry basis, except opacity)</b>	<b>Averaging Time</b>	<b>Compliance Method 40 CFR 60 Appendix A</b>
Cadmium	0.004 Milligrams per dry standard cubic meter	3-run average (1 hour minimum sample time per run)	Method 29
Carbon Monoxide	157 Parts per million by dry volume	3-run average (1 hour minimum sample time per run)	Methods 10, 10A, or 10B
Dioxins/furans (toxic equivalency basis)	0.41 Nanograms per dry standard cubic meter	3-run average (1 hour minimum sample time per run)	Method 23
Hydrogen Chloride	62 Parts per million by dry volume	3-run average (For Method 26, collect a minimum volume of 120 liters per run. For Method 26A, collect a minimum volume of 1 dry standard cubic meter per run)	Method 26 or 26A
Lead	0.04 Milligrams per dry standard cubic meter	3-run average (1 hour minimum sample time per run)	Method 29
Mercury	0.47 Milligrams per dry standard cubic meter	3-run average (1 hour minimum sample time per run)	Method 29 or 30B or ASTM D6784-02 (Reapproved 2008)
Nitrogen Oxides	388 Parts per million by dry volume	3-run average (1 hour minimum sample time per run)	Methods 7 or 7E
Particulate Matter	70 Milligrams per dry standard cubic meter	3-run average (1 hour minimum sample time per run)	Method 5 or 29
Sulfur Dioxide	20 Parts per million by dry volume	3-run average (1 hour minimum sample time per run)	Method 6 or 6c
Opacity	10 Percent	Three 1-hour blocks consisting of ten 6-minute average opacity values	Method 9

**TABLE 2. OPERATING LIMITS FOR WET SCRUBBERS**

<b>For these operating parameters</b>	<b>Establish these operating limits</b>	<b>And Monitor Using These Minimum Frequencies</b>		
		<b>Data Measurement</b>	<b>Data Recording</b>	<b>Averaging Time (Calculated each hour as the average of the previous 3 operating hours.)</b>
Charge rate.	Maximum charge rate.	Continuous	Every hour	Daily (batch units). 3-hour rolling (continuous and intermittent units).
Pressure drop across the wet scrubber or amperage to wet scrubber.	Minimum pressure drop or amperage.	Continuous	Every 15 minutes	3-hour rolling.
Scrubber liquor flow rate.	Minimum flow rate.	Continuous	Every 15 minutes	3-hour rolling.
Scrubber liquor pH.	Minimum pH.	Continuous	Every 15 minutes	3-hour rolling.

**TABLE 3. TOXIC EQUIVALENCY FACTORS**

<b>Dioxin/Furan Isomer</b>	<b>Toxic Equivalency Factor</b>
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8- pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.001
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
octachlorinated dibenzofuran	0.001

**TABLE 4. REPORTING REQUIREMENTS**

<b>Report</b>	<b>Due Date</b>	<b>Contents</b>	<b>Reference 335-3-.05</b>
Waste Management Plan	No later than the date specified for submittal of the final control plan.	<ul style="list-style-type: none"> <li>•Waste Management Plan.....</li> </ul>	(11)(z)
Initial Test Report	No later than 60 days following the initial performance test.	<ul style="list-style-type: none"> <li>•Complete test report for the initial performance test.</li> <li>•The values for the site-specific operating limits.</li> <li>•Installation of bag leak detection systems for fabric filters.</li> </ul>	(11)(aa)
Annual Report	<p>No later than 12 months following the submission of the initial test report.</p> <p>Subsequent reports are to be submitted no more than 12 months following the previous report.</p>	<ul style="list-style-type: none"> <li>•Name and address.....</li> <li>•Statement and signature by responsible official.</li> <li>•Date of report.</li> <li>•Values for the operating limits.</li> <li>•Highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.</li> <li>•If a performance test was conducted during the reporting period, the results of the test.</li> <li>•If a performance test was not conducted during the reporting period, a statement that the requirements of (9)(e) were met.</li> <li>•Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours but less than 2 weeks.</li> <li>•If performance tests are being conducted once every 3 years consistent with (9)(aa), the date of the last 2 performance tests, a comparison of the emission level achieved in the last 2 performance tests to the 75 percent emission limit threshold required in (9)(aa) and a statement as to whether there have been any operational changes since the last performance test that could increase emissions</li> </ul>	(11)(bb) & (cc)
Emission Limitation or Operating Limit Deviation Report	<p>By August 1 of that year for data collected during the first half of the calendar year.</p> <p>By February 1 of the following year for data collected during the second half of the calendar year.</p>	<ul style="list-style-type: none"> <li>•Dates and times of deviations.....</li> <li>•Averaged and recorded data for these dates.</li> <li>•Duration and causes for each deviation and the corrective actions taken.</li> <li>•Copy of operating limit monitoring data and any test reports.</li> <li>•Dates, times, and causes for monitor downtime incidents.</li> <li>•</li> </ul>	(11)(t)1. - 3.

**TABLE 4. REPORTING REQUIREMENTS CONT'D**

<b>Report</b>	<b>Due Date</b>	<b>Contents</b>	<b>Reference 335-3-.05</b>
Qualified Operator Deviation Notification.	Within 10 days of deviation.	<ul style="list-style-type: none"><li>•Statement of cause of deviation.</li><li>•Description of efforts to have an accessible qualified operator.</li><li>•The date a qualified operator will be accessible.</li></ul>	(11)(dd)4.(i)
Qualified Operator Deviation Status Report.	Every 4 weeks following deviation.	<ul style="list-style-type: none"><li>•Description of efforts to have an accessible qualified operator.</li><li>•The date a qualified operator will be accessible.</li><li>•Request for approval to continue operation.</li></ul>	(11)(dd)4.(ii)
Qualified Operator Deviation Notification of Resumed Operation.	Prior to resuming operation.	<ul style="list-style-type: none"><li>•Notification that operation will resume.</li></ul>	(11)(dd)4.(iii)

**TABLE 5. EMISSION LIMITS FOR INCINERATORS THAT COMMENCED CONSTRUCTION AFTER NOVEMBER 30, 1999, BUT NO LATER THAN JUNE 4, 2010, OR COMMENCED MODIFICATION OR RECONSTRUCTION AFTER JUNE 1, 2001 BUT NO LATER THAN AUGUST 7, 2013**

<b>Pollutant</b>	<b>Emission Limitation</b>	<b>Averaging Time</b>	<b>Compliance Method 40 CFR 60 Appendix A</b>
Cadmium	0.0026 Milligrams per dry standard cubic meter	3-run average (collect a minimum volume of 2 dry standard cubic meters)	Method 29 (Use ICPMS for the analytical finish.)
Carbon Monoxide	17 Parts per million dry volume	3-run average (1 hour minimum sample time per run)	Methods 10
Dioxins/furans (toxic mass basis)	4.6 Nanograms per dry standard cubic meter	3-run average (collect a minimum volume of 2 dry standard cubic meters)	Method 23
Dioxins/furans (toxic equivalency basis)	0.13 Nanograms per dry standard cubic meter	3-run average (collect a minimum volume of 2 dry standard cubic meters)	Method 23
Hydrogen Chloride	29 Parts per million dry volume	3-run average (For Method 26, collect a minimum volume of 60 liters per run. For Method 26A, collect a minimum volume of 1 dry standard cubic meter per run)	Method 26 or 26A
Lead	0.015 Milligrams per dry standard cubic meter	3-run average (collect a minimum volume of 2 dry standard cubic meters)	Method 29 (Use ICPMS for the analytical finish.)
Mercury	0.0048 Milligrams per dry standard cubic meter	3-run average (For Method 29 an ASTM D6784-02 (Reapproved 2008), collect a minimum volume of 2 dry standard cubic meters. For Method 30B, collect a minimum sample as specified in Method 30B)	Method 29 or 30B or ASTM D6784-02 (Reapproved 2008)

Nitrogen Oxides	53 Parts per million dry volume	3-run average (for Method 7E, 1 hour minimum sample time per run)	Methods 7 or 7E
Particulate Matter	34 Milligrams per dry standard cubic meter	3-run average (collect a minimum volume of 1 dry standard cubic meter)	Method 5 or 29
Sulfur Dioxide	11 Parts per million by dry volume	3-run average (1 hour minimum sample time per run)	Method 6 or 6c
Fugitive ash	Visible emissions for no more than 5% of the hourly observation period	Three 1-hour observation periods	Method 22 (Visible emission test)

**TABLE 6. EMISSION LIMITS FOR ENERGY RECOVERY UNITS THAT COMMENCED CONSTRUCTION ON OR BEFORE JUNE 4, 2010, OR THAT COMMENCED RECONSTRUCTION OR MODIFICATION AFTER JUNE 4, 2010 BUT NO LATER THAN AUGUST 7, 2013**

<b>Pollutant</b>	<b>Emission Limit (Liquid/Gas)</b>	<b>Emission Limit (Solids)</b>	<b>Averaging Time</b>	<b>Compliance Method 40 CFR 60 Appendix A</b>
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Cadmium	0.023 Milligrams per dry standard cubic meter	Biomass—0.0014 milligrams per dry standard cubic meter. Coal—0.0017 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters)	Method 29 (Use ICPMS for the analytical finish.)
Carbon Monoxide	35 Parts per million dry volume	Biomass—260 parts per million dry volume Coal—95 parts per million dry volume	3-run average (1 hour minimum sample time per run)	Methods 10
Dioxins/furans (total mass basis)	2.9 nanograms per dry standard cubic meter	Biomass—0.52 nanograms per dry standard cubic meter. Coal—5.1 nanograms per dry standard cubic meter. c	3-run average (collect a minimum volume of 4 dry standard cubic meter)	Method 23
Dioxins/furans (toxic equivalency basis)	0.32 Nanograms per dry standard cubic meter	Biomass—0.12 nanograms per dry standard cubic meter Coal—0.075 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters)	Method 23
Hydrogen Chloride	14 Parts per million by dry volume	Biomass—0.20 parts per million dry volume Coal—58 parts per million dry volume	3-run average (for Method 26, collect a minimum of 120 liters; for Method 26A, collect a minimum volume of 1 dry standard cubic meter)	Method 26 or 26A
Lead	0.096 Milligrams per dry standard cubic meter	Biomass—0.014 milligrams per dry standard cubic meter. Coal—0.057 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters)	Method 29 (Use ICPMS for the analytical finish.)

Mercury	0.0024 Milligrams per dry standard cubic meter	Biomass—0.0022 milligrams per dry standard cubic meter Coal—0.013 milligrams per dry standard cubic meter	3-run average (For Method 29 and ASTM D6784-02 (Reapproved 2008) d, collect a minimum volume of 2 dry standard cubic meters per run. For Method 30B, collect a minimum sample as specified in Method 30B.	Method 29 or 30B or ASTM D6784- 02 (Reapproved 2008)
Nitrogen Oxides	76 Parts per million dry volume	Biomass—290 parts per million dry volume Coal—460 parts per million dry volume	3-run average (for Method 7E, 1 hour minimum sample time per run)	Methods 7 or 7E
Particulate Matter Filterable	110 milligrams per dry standard cubic meter	Biomass—11 milligrams per dry standard cubic meter Coal—130 milligrams per dry standard cubic meter	3-run average (collect a minimum volume of 1 dry standard cubic meter)	Method 5 or 29 if the unit has an annual average heat input rate less than or equal to 250 MMBtu/hr; or PM CPMS (as specified in § 60.2710(x)) if the unit has an annual average heat input rate greater than 250 MMBtu/hr.
Sulfur Dioxide	720 Parts per million dry volume	Biomass—7.3 parts per million dry volume Coal—850 parts per million dry volume	3-run average (1 hour minimum sample time per run)	Method 6 or 6c
Fugitive ash	Visible emissions for no more than 5 percent of the hourly observation period	Visible emissions for no more than 5 percent of the hourly observation period	Three 1-hour observation periods	Method 22 (Visible emission test)

**TABLE 7. EMISSION LIMITS FOR WASTE-BURNING KILNS THAT COMMENCED CONSTRUCTION ON OR BEFORE JUNE 4, 2010, OR THAT COMMENCED RECONSTRUCTION OR MODIFICATION AFTER JUNE 4, 2010 BUT NO LATER THAN AUGUST 7, 2013**

<b>Pollutant</b>	<b>Emission Limitation</b>	<b>Averaging Time</b>	<b>Compliance Method 40 CFR 60 Appendix A</b>
Cadmium	0.0014 Milligrams per dry standard cubic meter	3-run average (collect a minimum volume of 2 dry standard cubic meters)	Method 29
Carbon Monoxide	110 (long kilns)/790 (preheater/precalciner) parts per million dry volume	3-run average (1 hour minimum sample time per run)	Methods 10
Dioxins/furans (total mass basis)	1.3 Nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters)	Method 23
Dioxins/furans (toxic equivalency basis)	0.075 Nanograms per dry standard cubic meter	3-run average (collect a minimum volume of 4 dry standard cubic meters)	Method 23
Hydrogen Chloride	3.0 Parts per million by dry volume	3-run average (collect a minimum volume of 1 dry standard cubic meter) or 30-day rolling average if HCl CEMS is being used	Performance test (Method 321 at 40 CFR part 63, appendix A of this part) or HCl CEMS if a wet scrubber or dry scrubber is not used, as specified in §60.2710(fj).
Lead	0.014 Milligrams per dry standard cubic meter	3-run average (collect a minimum volume of 2 dry standard cubic meters)	Method 29

Mercury	0.011 Milligrams per dry standard cubic meter	30-day rolling average	Mercury CEMS or sorbent trap monitoring system (performance specification 12A or 12B, respectively, of appendix B of 40 CFR 60.)
Nitrogen Oxides	630 Parts per million by dry volume	3-run average (for Method 7E, 1 hour minimum sample time per run)	Methods 7 or 7E
Particulate Matter Filterable	13.5 Milligrams per dry standard cubic meter	30-day rolling average	PM CPMS (as specified in 60.2710(x))
Sulfur Dioxide	600 Parts per million by dry volume	3-run average (for Method 6, collect a minimum of 20 liters; for Method 6C, 1 hour minimum sample time per run)	Method 6 or 6c

**TABLE 8. EMISSION LIMITS FOR SMALL, REMOTE INCINERATORS THAT COMMENCED CONSTRUCTION ON OR BEFORE JUNE 4, 2010, OR THAT COMMENCED RECONSTRUCTION OR MODIFICATION AFTER JUNE 4, 2010 BUT NO LATER THAN AUGUST 7, 2013**

<b>Pollutant</b>	<b>Units (7 percent oxygen, dry basis, except opacity)</b>	<b>Averaging Time</b>	<b>Compliance Method 40 CFR 60 Appendix A</b>
Cadmium	0.95 milligrams per dry standard cubic meter	3-run average (collect a minimum volume of 1 dry standard cubic meters per run)	Method 29
Carbon Monoxide	64 parts per million dry volume	3-run average (1 hour minimum sample time per run)	Methods 10
Dioxins/furans (total mass basis)	4,400 nanograms per dry standard cubic meter b	3-run average (collect a minimum volume of 1 dry standard cubic meters per run)	Method 23

Dioxins/furans (toxic equivalency basis)	180 nanograms per dry standard cubic meter b	3-run average (collect a minimum volume of 1 dry standard cubic meters)	Method 23
Hydrogen Chloride	300 parts per million dry volume	3-run average (For Method 26, collect a minimum volume of 120 liters per run. For Method 26A, collect a minimum volume of 1 dry standard cubic meter per run)	Method 26 or 26A
Lead	2.1 milligrams per dry standard cubic meter	3-run average (collect a minimum volume of 1 dry standard cubic meters)	Method 29 (Use ICPMS for the analytical finish.
Mercury	0.0053 milligrams per dry standard cubic meter	3-run average (For Method 29 and ASTM D6784-02 (Reapproved 2008), collect a minimum volume of 2 dry standard cubic meters per run. For Method 30B, collect a minimum sample as specified in Method 30B at 40 CFR part 60, appendix A)	Method 29 or 30B or ASTM D6784-02 (Reapproved 2008)
Nitrogen Oxides	190 parts per million dry volume	3-run average (for Method 7E, 1 hour minimum sample time per run)	Methods 7 or 7E
Particulate Matter (Filterable)	270 milligrams per dry standard cubic meter	3-run average (collect a minimum volume of 1 dry standard cubic meters)	Method 5 or 29
Sulfur Dioxide	150 parts per million dry volume	3-run average (for Method 6, collect a minimum of 20 liters per run; for Method 6C, 1 hour minimum sample time per run)	Method 6 or 6c
Fugitive Ash	Visible emissions for no more than 5 percent of the hourly observation period	Three 1-hour observation periods	Method 22 (Visible emissions test)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: March 14, 2002.

**Amended:** October 2, 2003; July 11, 2006; April 1, 2014;XXXXXX, 2017.

**ADEM Admin. Code Rule 335-3-4-.08**

### **335-3-4-.08 Wood Waste Boilers.**

(1) Applicability. This rule applies to boilers and other indirect heat exchangers using not less than thirty percent (30%) wood waste or wood by-products as fuel measured by heat input.

(2) Except as provided in paragraph (3) of this rule, no person shall cause or permit the emission of particulate matter from any existing wood waste boilers in excess of 0.30 grains per standard dry cubic foot adjusted to fifty percent (50%) excess air. Provided that: for any existing wood waste boiler which must be modified in order to meet the emission limitations of this rule, no person shall cause or permit the emission of particulates in excess of:

(a) 0.17 grains per standard dry cubic foot, adjusted to fifty percent (50%) excess air for combination gas and wood waste boilers.

(b) 0.20 grains per standard dry cubic foot, adjusted to 50 percent excess air for combination oil and wood waste boilers.

(c) 0.23 grains per standard dry cubic foot, adjusted to fifty percent (50%) excess air for combination coal and wood waste boilers.

(d) 0.20 grains per standard dry cubic foot, adjusted to fifty percent (50%) excess air for boilers using wood waste only.

~~(3) In lieu of the particulate emission limitations contained in paragraph (2) of this rule for existing wood waste boilers at pulp mills in Talladega County having a rated capacity greater than 300 million BTU per hour:~~

~~(a) The allowable particulate emission limit shall be 0.60 grains per standard dry cubic foot adjusted to 50% excess air, with the additional requirement that total mass particulate emissions shall not exceed 347 pounds per hour.~~

~~(b) In lieu of the opacity limits contained in rule 335-3-4-.01, such units shall not discharge into the atmosphere particulate of an opacity greater than that designated as seventy six percent (76%) opacity, as determined by fixed one hour averages (the average of each ten six minute averages per discrete clock hour).~~

~~(c) The transmissometer system for continuous measurement of the opacity of stack emissions shall be the technique for determining compliance with opacity limits. The transmissometer shall comply with the requirements of 40 CFR 60, Appendix B, Performance Specification 1. If the opacity monitoring system is not operating properly, the EPA Reference Method 9 (40 CFR 60, Appendix A), utilizing one hour averages, shall serve as the compliance technique.~~

**Author:** James W. Cooper and John E. Daniel.

**Statutory Authority:** Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: July 26, 1972.

**Amended:** January 27, 1981; December 9, 1983; October 10, 1984; November 21, 1996; September 7, 2000-;XXXXXX, 2017.

**ADEM Admin. Code Rules 335-3-8-.39 through 335-3-8-.43,  
335-3-8-.45, 335-3-8-.46, 335-3-8-.48 through 335-3-8-.53,  
335-3-8-.55 through 335-3-8-.63, 335-3-8-.65 through 335-3-8-.70**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
AIR DIVISION - AIR POLLUTION CONTROL PROGRAM**

**CHAPTER 335-3-8  
CONTROL OF NITROGEN OXIDES EMISSIONS**

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**335-3-8-.39 TR NO<sub>x</sub> Ozone Season Group 2 Trading Program – Purpose and Definitions.**

(1) Purpose. Rules 335-3-8-.39 through 335-3-8-.70 set forth the general, designated representative, allowance, and monitoring provisions for the Transport Rule (TR) NO<sub>x</sub> Ozone Season Group 2 Trading Program under section 110 of the Clean Air Act, as a means of mitigating interstate transport of ozone and nitrogen oxides.

(2) Definitions. For the purpose of rules 335-3-8-.39 through 335-3-8-.70 the definitions listed in 40 CFR §97.802, Subpart ~~BBBBB~~ EEEE as of ~~July 1, 2016,~~ and October 26, 2016 (81 FR 74504), will apply.

(a) “Department” shall mean the Alabama Department of Environmental Management.

(b) Word, Phrase, and Rule Substitutions. For the purpose of rule 335-3-8-.39 substitute:

1. Adem Administrative Code r. 335-3-8-.40 for 40 CFR §97.804.
2. Adem Administrative Code r. 335-3-8-.40(1)(b)2.(ii) and (iii) for 40 CFR §§97.804(b)(2)(i)(B) and (ii).
3. Adem Administrative Code r. 335-3-8-.41 for 40 CFR §97.805.
4. Adem Administrative Code r. 335-3-8-.45(1) for 40 CFR §97.810(a).
5. Adem Administrative Code r. 335-3-8-.45(2) for 40 CFR §97.810(b).
6. Adem Administrative Code r. 335-3-8-.46 for 40 CFR §97.811.
7. Adem Administrative Code r. 335-3-8-.46 for 40 CFR §97.812.

(3) Measurements, Abbreviations, and Acronyms. Measurements, abbreviations, and acronyms used in this rule and in rules 335-3-8-.39 through 335-3-8-.70 are defined as follows:

- (a) Btu - British thermal unit.
- (b) CO<sub>2</sub> – carbon dioxide
- (c) H<sub>2</sub>O – water
- (d) hr – hour
- (e) kW – kilowatt electrical
- (f) kWh – kilowatt hour
- (g) lb – pound

- (h) mmBtu – million Btu
- (i) MWe – megawatt electrical
- (j) MWh – megawatt hour
- (k) NO<sub>x</sub> – nitrogen oxides
- (l) O<sub>2</sub> – oxygen
- (m) ppm – parts per million
- (n) scfh – standard cubic feet per hour
- (o) SO<sub>2</sub> – sulfur dioxide
- (p) yr – year

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015; XXXXXX, 2017.

**335-3-8-.40 TR NO<sub>x</sub> Ozone Season Group 2 Trading Program – Applicability.**

(1) Applicability.

(a) Except as provided in subparagraph (b) of this paragraph:

1. The following units in the State of Alabama shall be TR NO<sub>x</sub> Ozone Season Group 2 units, and any source that includes one or more such units shall be a TR NO<sub>x</sub> Ozone Season Group 2 source, subject to the requirements of rules 335-3-8-.39 through 335-3-8-.70: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, on or after January 1, 2005, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

2. If a stationary boiler or stationary combustion turbine that, under subparagraph (a)1. of this paragraph, is not a TR NO<sub>x</sub> Ozone Season Group 2 unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a TR NO<sub>x</sub> Ozone Season Group 2 unit as provided in subparagraph (a)1. of this paragraph on the first date on which it both combusts fossil fuel and serves such generator.

(b) Any unit in the State that otherwise is a TR NO<sub>x</sub> Ozone Season Group 2 unit under subparagraph (a) of this paragraph and that meets the requirements set forth in subparagraphs (b)1.(i) and (ii) or 2.(i) and (ii) of this paragraph shall not be a TR NO<sub>x</sub> Ozone Season Group 2 unit:

1. Any unit:

(i) Qualifying as a cogeneration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(ii) Not supplying in 2005 or any calendar year thereafter more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(iii) If, after qualifying under subparagraphs (b)1.(i) and (ii) of this paragraph as not being a TR NO<sub>x</sub> Ozone Season Group 2 unit, a unit subsequently no longer meets all the requirements of subparagraphs (b)1.(i) and (ii) of this paragraph, the unit shall become a TR NO<sub>x</sub> Ozone Season Group 2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of subparagraph (b)1.(ii) of this paragraph. The unit shall thereafter continue to be a TR NO<sub>x</sub> Ozone Season Group 2 unit.

2. Any unit:

(i) Qualifying as a solid waste incineration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces

electricity and continuing to qualify as a solid waste incineration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(ii) With an average annual fuel consumption of fossil fuel for the first 3 consecutive calendar years of operation starting no earlier than 2005 of less than 20 percent (on a Btu basis) and an average annual fuel consumption of fossil fuel for any 3 consecutive calendar years thereafter of less than 20 percent (on a Btu basis).

(iii) If, after qualifying under subparagraphs (b)2.(i) and (ii) of this paragraph as not being a TR NO<sub>x</sub> Ozone Season Group 2 unit, a unit subsequently no longer meets all the requirements of subparagraphs (b)2.(i) and (ii) of this paragraph, the unit shall become a TR NO<sub>x</sub> Ozone Season Group 2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 2005 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more. The unit shall thereafter continue to be a TR NO<sub>x</sub> Ozone Season Group 2 unit.

(c) A certifying official of an owner or operator of any unit or other equipment may submit a petition (including any supporting documents) to the Administrator at any time for a determination concerning the applicability, under subparagraphs (a) and (b) of this paragraph, to the unit or other equipment. The certifying official of an owner or operator of any unit or other equipment shall submit a copy of the petition (including any supporting documents) to the Department.

1. Petition content. The petition shall be in writing and include the identification of the unit or other equipment and the relevant facts about the unit or other equipment. The petition and any other documents provided to the Department and the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: "I am authorized to make this submission on behalf of the owners and operators of the unit or other equipment 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."

2. Response. The Administrator will issue a written response to the petition and may request supplemental information determined by the Administrator to be relevant to such petition. The Administrator's determination concerning the applicability, under subparagraphs (1)(a) and (b) of this rule, of the TR NO<sub>x</sub> Ozone Season Group 2 Trading Program to the unit or other equipment shall be binding on Alabama, the Department, and any

other State or permitting authority unless the Administrator determines that the petition contained significant, relevant errors or omissions.

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015.

**335-3-8-.41 TR NO<sub>x</sub> Ozone Season Group 2 Trading Program – Retired Unit Exemption.**

(1) Any TR NO<sub>x</sub> Ozone Season Group 2 unit that is permanently retired shall be exempt from 40 CFR §§97.806(b) and (c)(1), rule 335-3-8-.59, and rules 335-3-8-.65 through 335-3-8-.70.

(a) The exemption under paragraph (1) of this rule shall become effective the day on which the TR NO<sub>x</sub> Ozone Season Group 2 unit is permanently retired. Within 30 days of the unit's permanent retirement, the designated representative shall submit a statement to the Administrator. The statement shall state, in a format prescribed by the Administrator, that the unit was permanently retired on a specified date and will comply with the requirements of paragraph (2) of this rule. The designated representative shall submit a copy of the statement to the Department.

(2) Special provisions.

(a) A unit exempt under paragraph (1) of this rule shall not emit any NO<sub>x</sub>, starting on the date that the exemption takes effect.

(b) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (1) of this rule shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(c) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under paragraph (1) of this rule shall comply with the requirements of the TR NO<sub>x</sub> Ozone Season Group 2 Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(d) A unit exempt under paragraph (1) of this rule shall lose its exemption on the first date on which the unit resumes operation. Such unit shall be treated, for purposes of applying allocation, monitoring, reporting, and recordkeeping requirements under TR NO<sub>x</sub> Ozone Season Group 2 Trading Program, as a unit that commences commercial operation on the first date on which the unit resumes operation.

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.42 TR NO<sub>x</sub> Ozone Season Group 2 Trading Program – Standard Requirements.**

(1) General. The Environmental Protection Agency's Standard Requirements for TR NO<sub>x</sub> Ozone Season Group 2 Sources ~~sources~~, are incorporated by reference as they exist in 40 CFR §97.806, Subpart ~~BBBBB~~ EEEE as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

(2) Word, Phrase, and Rule Substitutions. For the purpose of rule 335-3-8-42 substitute:

(a) Adem Administrative Code r. 335-3-16-.13(3) for 40 CFR §70.7(e)(2).

(b) Adem Administrative Code r. 335-3-16-.13(3)(a)2. for 40 CFR §70.7(e)(2)(i)(B).

(c) Adem Administrative Code r. 335-3-8-.46 for 40 CFR §§97.811(a)(2) and (b).

(d) Adem Administrative Code r. 335-3-8-.46 for 40 CFR §97.812.

(e) Only in 40 CFR §97.806(e) substitute "Administrator or the Department" for "Administrator."

(f) Adem Administrative Code r. 335-3-8-.41 for 40 CFR §97.805.

(g) Adem Administrative Code r. 335-3-8-.45(1) for §97.810(a).

(h) Adem Administrative Code r. 335-3-8-.45(2) for §97.810(b).

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.43 TR NO<sub>x</sub> Ozone Season Group 2 Trading Program –  
Computation of Time.**

(1) General. The Environmental Protection Agency Regulations governing Computation of Time under the TR NO<sub>x</sub> Ozone Season Group 2 Trading Program, are incorporated by reference as they exist in 40 CFR §97.807, Subpart ~~BBBBB~~ EEEE as of ~~July 1, 2016 and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.45 NO<sub>x</sub> Ozone Season Group 2 Trading Budgets and Variability Limits.**

- (1) The State NO<sub>x</sub> ~~O~~ozone ~~season~~-Season trading budgets for allocations of TR NO<sub>x</sub> Ozone Season Group 2 allowances for the control periods in 2017 and thereafter is 13,211 tons.
- (2) The State NO<sub>x</sub> ~~e~~Ozone ~~s~~Season variability limit for the State NOX Ozone ~~s~~Season trading budgets for the control periods in 2017 and thereafter is 2,774 tons.

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.46 TR NO<sub>x</sub> Ozone Season Group 2 Allowance Allocations.**

(1) State NO<sub>x</sub> Ozone Season Group 2 Trading Program Budget. The State trading budget for annual allocations of Transport Rule (TR) NO<sub>x</sub> ~~e~~Ozone ~~s~~Season Group 2 allowances for the control periods 2017 and thereafter is 13,211 tons.

(2) Timing Requirements for TR NO<sub>x</sub> Ozone Season Group 2 Allowance Allocations.

~~(a) By June 1, 2016, the Department will submit to the Administrator, in a format prescribed by the Administrator, the NO<sub>x</sub> ozone season allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in 2017 and 2018.~~

~~(b)~~ (b) By June 1, 2017, the Department will submit to the Administrator, in a format prescribed by the Administrator, the TR NO<sub>x</sub> ~~e~~Ozone ~~S~~Season Group 2 allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in 2019 and 2020.

~~(c)~~ (c) By June 1, 2018, the Department will submit to the Administrator, in a format prescribed by the Administrator, the TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season Group 2 allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in 2021 and 2022.

~~(d)~~ (d) By June 1, 2019, and every other year thereafter, the Department shall submit to the Administrator, in a format prescribed by the Administrator, the TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season Group 2 allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in the two years that are four and five years after the year of the applicable deadline for submission under this paragraph.

(3) TR NO<sub>x</sub> Ozone Season Group 2 Allowance Allocations.

(a) Definitions. For the purpose of this rule, the following definitions apply:

1. Baseline TR NO<sub>x</sub> Ozone Season Unit. A TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season Group 2 unit that either:

(i) Commenced operation on or before May 1, 2014; or

(ii) Submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before May 1, 2014.

2. New TR NO<sub>x</sub> Ozone Season Unit. A TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season Group 2 unit that does not meet the definition of a Baseline TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season unit as defined in subparagraph (3)(a)1. of this paragraph.

(b) Determination of Heat Input.

1. The heat input (in mmBtu) used for calculating TR NO<sub>x</sub> eOzone sSeason Group 2 allowance allocations under subparagraph (2)(a) of this rule that are to be submitted to the Administrator by June 1, ~~2016~~2017, will be:

(i) For a Baseline TR NO<sub>x</sub> eOzone sSeason unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated, in ~~2010~~, 2011, 2012, 2013, 2014, and 2015; or

(ii) For a Baseline TR NO<sub>x</sub> eOzone sSeason unit that did not commence operation on or before May 1, 2014, but had submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before May 1, 2014, the expected actual ozone season heat input based on actual utilization data of similar sources.

(iii) For a New TR NO<sub>x</sub> eOzone sSeason unit, the expected actual ozone season heat input based on actual utilization data of similar sources.

2. The heat input (in mmBtu) used for calculating TR NO<sub>x</sub> eOzone sSeason Group 2 allowance allocations under subparagraph (2)(b) of this rule that are to be submitted to the Administrator by June 1, ~~2017~~8, will be:

(i) For a Baseline TR NO<sub>x</sub> eOzone sSeason unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated, in ~~2011~~, 2012, 2013, 2014, 2015, and 2016; or

(ii) For a Baseline TR NO<sub>x</sub> eOzone sSeason unit that did not commence operation on or before May 1, 2015, but had submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before May 1, 2014, the expected actual ozone season heat input based on actual utilization data of similar sources.

(iii) For a New TR NO<sub>x</sub> eOzone sSeason unit that commenced operation on or before May 1, ~~2016~~5, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated in 20145 and 20156.

(iv) For a New TR NO<sub>x</sub> eOzone sSeason unit that did not commence operation on or before May 1, ~~2015~~6, the expected actual ozone season heat input based on actual utilization data of similar sources.

~~3. The heat input (in mmBtu) used for calculating TR NO<sub>x</sub> eOzone sSeason Group 2 allowance allocations under subparagraph (2)(c) of this rule that are to be submitted to the Administrator by June 1, ~~2018~~9, will be:~~

~~(i) For a Baseline TR NO<sub>x</sub> eOzone sSeason unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated in 2012, 2013, 2014, 2015, and 2016, and 2017.~~

~~(ii) For a New TR NO<sub>x</sub> Ozone Season unit that commenced operation on or before May 1, 2016<sup>7</sup>, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated in 2014, 2015, and 2016, and 2017.~~

~~(iii) For a New TR NO<sub>x</sub> Ozone Season unit that did not commence operation on or before May 1, 2016<sup>7</sup>, the expected actual ozone season heat input based on actual utilization data of similar sources.~~

34. The heat input (in mmBtu) used for calculating TR NO<sub>x</sub> Ozone Season Group 2 allowance allocations under subparagraph (2)(c) of this rule that are to be submitted to the Administrator by June 1, 2019, and all subsequent allocation years will be:

(i) For a Baseline TR NO<sub>x</sub> Ozone Season unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated for the five most recent control periods available prior to the deadline submission year.

(ii) For a New TR NO<sub>x</sub> Ozone Season unit that commenced operation prior to May 1 of the most recent control period available prior to the submission year, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated, for the five most recent control periods available prior to the submission year; or

(iii) For a New TR NO<sub>x</sub> Ozone Season unit that did not commence operation prior to May 1 of the most recent control period available prior to the submission year, the expected actual ozone season heat input based on actual utilization data of similar sources.

45. The unit's total heat input for the control period in each year specified under subparagraph (b) of this paragraph will be determined in accordance with 40 CFR 75 if the TR NO<sub>x</sub> Ozone Season Group 2 unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the Administrator and the Department for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75 for the year.

(c) Establishment of Baseline and Retired Unit Allowance Pools. At the time Transport Rule (TR) NO<sub>x</sub> Ozone Season NO<sub>x</sub>-Group 2 allowances are initially allocated to Baseline TR NO<sub>x</sub> Ozone Season units under subparagraph (2)(a) of this rule, each unit's allocation will be permanently recorded as that unit's "Baseline Allowance". This value will be used to calculate the following:

1. Baseline Allowance Pool. The Baseline Allowance Pool shall be calculated each time TR NO<sub>x</sub> Ozone Season Group 2 allowances are allocated under paragraph (2) of this rule and shall equal the State Ozone Season Group 2 Trading Program Budget minus the total of the Baseline Allowances for all

bBaseline TR NO<sub>x</sub> eOzone sSeason units that have retired in accordance with 335-3-8-.41.

2. Retired Unit Allowance Pool. The Retired Unit Allowance Pool shall be calculated each time TR NO<sub>x</sub> eOzone sSeason Group 2 allowances are allocated under paragraph (2) of this rule and shall equal the sum of the Baseline Allowances for all TR NO<sub>x</sub> eOzone sSeason Group 2 units that have retired in accordance with 335-3-8-.41.

(d) Maximum Historic Emission Cap. The ~~m~~Maximum ~~historic~~ Historic eEmission eCap is identified by using an 8 year historic emission period for each TR NO<sub>x</sub> eOzone sSeason Group 2 unit. The last year of the 8 year period will be the same year as the last year used for determination of heat input under subparagraph (3)(b) of this paragraph. The ~~m~~Maximum ~~h~~Historic eEmission Cap is the maximum NO<sub>x</sub> emissions (in tons) that occurred during any control period during the 8 year historic emission period. Data used for this purpose shall be obtained from the EPA Clean Air Markets Division (CAMD). An additional emission cap may be applied if a TR NO<sub>x</sub> eOzone sSeason Group 2 unit has an enforcement action or permit limit in place. The 8 year historic emission values will update every two years to coincide with the allocation control period.

(e) Calculation of TR NO<sub>x</sub> Ozone Season Group 2 Allowances for Baseline TR NO<sub>x</sub> Ozone Season Units.

1. For each control period under paragraph (2) of this rule, the Department will allocate TR NO<sub>x</sub> eOzone sSeason Group 2 allowances from the Baseline Allowance Pool to all bBaseline TR NO<sub>x</sub> eOzone sSeason units in accordance with the following procedures:

(i) The Department will allocate TR NO<sub>x</sub> eOzone sSeason Group 2 allowances to each TR NO<sub>x</sub> eOzone sSeason Group 2 unit under 335-3-8-.40(1)(a) in an amount equaling the unit's share of the State's total 3 year average of heat input determined in accordance with subparagraph (b) of this paragraph, multiplied by the bBaseline aAllowance pPool. If a TR NO<sub>x</sub> eOzone sSeason Group 2 unit has an initial historic heat input based allocation that exceeds its maximum historic emission cap as defined in subparagraph (3)(e) of this paragraph, then its allocation will equal the maximum historic emission cap for that TR NO<sub>x</sub> eOzone sSeason Group 2 unit.

(ii) Allocations remaining after the application of the maximum historic emission cap are reapportioned on the same basis to Baseline TR NO<sub>x</sub> eOzone sSeason units whose historic heat input based allocation does not exceed its maximum historic emission cap, if applicable. These steps are repeated until the entire Baseline Allocation Pool is allocated. The resulting TR NO<sub>x</sub> eOzone sSeason Group 2 allocation value is rounded to the nearest whole ton.

(f) Calculation of NO<sub>x</sub> Allowances for New TR NO<sub>x</sub> Ozone Season Units. For each control period under paragraph (2) of this rule, after calculating NO<sub>x</sub> allowances for all Baseline TR NO<sub>x</sub> eOzone sSeason units that have not retired

in accordance with 335-3-8-.41, the Department will allocate NO<sub>x</sub> allowances in the Retired Unit Allowance Pool to all ~~n~~New TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season units, in accordance with the following procedures:

1. For each ~~n~~New TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season unit under 335-3-8-.40(1)(a), that commenced operation or submitted a permit application affirmatively deemed complete by the Department in writing on or before March 1 of the year allocations are to be submitted to the Administrator under paragraph (2) of this rule, the number of TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season Group 2 allowances allocated for each applicable control period will be equal to the unit's share of the State's total 3 year average of heat input for all ~~n~~New TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season units, determined in accordance with subparagraph (b) of this paragraph multiplied by the Retired Unit Allowance Pool. If a ~~n~~New TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season unit has an initial historic heat input based allocation that exceeds its maximum historic emission cap as defined in subparagraph (3)(e) of this paragraph, then its allocation equals the maximum historic emission cap for that TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season Group 2 unit .

2. Allocations remaining after application of the maximum historic emission cap are reapportioned on the same basis to ~~n~~New TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season units whose historic heat input based allocation does not exceed its maximum historic emission cap, if applicable. These steps are repeated until the entire Retired Unit Allowance Pool is allocated or until all new units receive allocations equal to its maximum historic emission cap. The resulting TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season Group 2 allocation value is rounded to the nearest whole ton.

(g) Adjustment of Baseline NO<sub>x</sub> Allowance Allocations. If TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season Group 2 allowances remain in the Retired Unit Allowance Pool after allocations are made to all ~~n~~New TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season units in accordance with subparagraph (g) of this paragraph, these NO<sub>x</sub> allowances will be allocated on a pro rata basis to the ~~B~~baseline TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season units where historic heat input based allocation does not exceed its maximum historic emission cap, for the applicable control periods.

(h) NO<sub>x</sub> allowances allocated to ~~B~~baseline TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season units based on heat inputs determined in accordance with subparagraph (b)1.(ii) or (b)2.(ii) of this paragraph will be held in the State's general account until the unit commences operation, prior to or during the control period for which NO<sub>x</sub> allowances were allocated. If the unit does not commence operations, the NO<sub>x</sub> allowances will be transferred by the Department pro rata to Baseline TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season units that were allocated NO<sub>x</sub> allowances in accordance with subparagraph (b)1.(i) or (b)2.(i) of this paragraph, and whose historic heat input based allocation does not exceed its maximum historic emission cap if applicable. By January 30 of the following year, the Department shall notify the Administrator of the appropriate NO<sub>x</sub> allowance transfers.

1. NO<sub>x</sub> allowances allocated to ~~n~~New TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season units based on heat inputs determined in accordance with subparagraphs (b)1.(iii), (b)2.(iv), (b)3.(iii), or (b)4.(iii) of this paragraph will be held in the State's general

account until the unit commences operation, prior to or during the control period for which NO<sub>x</sub> allowances were allocated. If the unit does not commence operations, the NO<sub>x</sub> allowances will be transferred by the Department pro rata to Baseline TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season units that were allocated NO<sub>x</sub> allowances in accordance with subparagraphs (b)1.(i) and (ii), (b)2.(i) and (ii), (b)3.(i), or (b)4.(i) of this paragraph, and whose historic heat input based allocation does not exceed its maximum historic emission cap if applicable. By January 30 of the following year, the Department shall notify the Administrator of the appropriate NO<sub>x</sub> allowance transfers.

2. NO<sub>x</sub> allowances will not be allocated to TR NO<sub>x</sub> ~~O~~ozone ~~S~~season Group 2 units that retire under 335-3-8-.41 prior to the date NO<sub>x</sub> allowance allocations are submitted to the Administrator under subparagraphs (2)(a), (b), (c), or (d) of this rule.

3. The total TR NO<sub>x</sub> ~~e~~Ozone ~~s~~Season Group 2 allowances allocated for any control period in accordance with subparagraphs (3)(f), and (g) of this paragraph shall not exceed the State Ozone Season Group 2 Trading Program Budget as determined by the applicable, approved State Implementation Plan.

(i) Units Incorrectly Allocated TR NO<sub>x</sub> Ozone Season Group 2 Allowances. The procedures for addressing units that were incorrectly allocated TR NO<sub>x</sub> Ozone Season Group 2 allowances are incorporated by reference as they exist in 40 CFR §97.811(c), Subpart ~~BBBBB-EEEE~~ as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504) except for the provisions found in 40 CFR §§97.811(c)(5)(ii) and (iii). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.48 Authorization of Designated Representative and Alternate Designated Representative.**

(1) General. The Environmental Protection Agency Regulations governing the Authorization of Designated Representative and Alternate Designated Representative for TR NO<sub>x</sub> Ozone Season Group 2 Sources, are incorporated by reference as they exist in 40 CFR §97.813, Subpart ~~BBBBB~~ EEEE as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.49 Responsibilities of Designated Representative and Alternate Designated Representative.**

(1) General. The Environmental Protection Agency Regulations governing the Responsibilities of Designated Representative and Alternate Designated Representative for TR NO<sub>x</sub> Ozone Season Group 2 Sources, are incorporated by reference as they exist in 40 CFR §97.814, Subpart ~~BBBBB~~ EEEE as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.50 Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source.**

(1) General. The Environmental Protection Agency Regulations governing Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source for TR NO<sub>x</sub> Ozone Season Group 2 Sources, are incorporated by reference as they exist in 40 CFR §97.815, Subpart ~~BBBBB-EEEE~~ as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.51 Certificate of Representation.**

(1) General. The Environmental Protection Agency Regulations governing Certificate of Representation for TR NO<sub>x</sub> Ozone Season Group 2 Sources, are incorporated by reference as they exist in 40 CFR §97.816, Subpart ~~BBBBB-EEEE~~ as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.52 Objections Concerning Designated Representative and Alternate Designated Representative.**

(1) General. The Environmental Protection Agency Regulations governing Objections Concerning Designated Representative and Alternate Designated Representative, are incorporated by reference as they exist in 40 CFR §97.817, Subpart ~~BBBBB-EEEE~~ as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

(2) Word, Phrase, and Rule Substitutions. For the purpose of rule 335-3-8-.52 substitute:

(a) Only in 40 CFR §97.817(c) substitute "Neither the Administrator nor the Department shall" for "The Administrator will not."

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.53 Delegation by Designated Representative and Alternate Designated Representative.**

(1) General. The Environmental Protection Agency Regulations governing Delegation by Designated Representative and Alternate Designated Representative, are incorporated by reference as they exist in 40 CFR §97.818, Subpart ~~BBBBB~~ EEEE as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.55 Establishment of Compliance Accounts, Assurance Accounts, and General Accounts.**

(1) General. The Environmental Protection Agency Regulations governing Establishment of Compliance Accounts, Assurance Accounts, and General Accounts, are incorporated by reference as they exist in 40 CFR §97.820, Subpart ~~BBBBB~~ EEEE as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

(2) Word, Phrase, and Rule Substitutions. For the purpose of rule 335-3-8-.55 substitute:

(a) Only in 40 CFR §97.820(c)(4)(iii) substitute "Neither the Administrator nor the Department shall" for "The Administrator will not."

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.56 Recordation of TR NO<sub>x</sub> Ozone Season Group 2 Allowance Allocations and Auction Results.**

(1) General. The Environmental Protection Agency Regulations governing Recordation of TR NO<sub>x</sub> Ozone Season Group 2 Allowance Allocations and Auction Results, are incorporated by reference as they exist in 40 CFR §97.821, Subpart ~~BBBBB~~ EEEE as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504), except for the provisions found in 40 CFR §§97.821(a), (b), ~~(g)~~, (h), (i), and (j). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.57 Submission of TR NO<sub>x</sub> Ozone Season Group 2 Allowance Transfers.**

(1) General. The Environmental Protection Agency Regulations governing Submission of TR NO<sub>x</sub> Ozone Season Group 2 Allowance Transfers, are incorporated by reference as they exist in 40 CFR §97.822, Subpart ~~BBBBB~~ EEEE as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.58 Recordation of TR NO<sub>x</sub> Ozone Season Group 2 Allowance Transfers.**

(1) General. The Environmental Protection Agency Regulations governing Recordation of TR NO<sub>x</sub> Ozone Season Group 2 Allowance Transfers, are incorporated by reference as they exist in 40 CFR §97.823, Subpart ~~BBBBB~~ EEEE as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.59 Compliance with TR NO<sub>x</sub> Ozone Season Group 2 Emissions Limitation.**

(1) General. The Environmental Protection Agency Regulations governing Compliance with TR NO<sub>x</sub> Ozone Season Group 2 Emissions Limitation, are incorporated by reference as they exist in 40 CFR §97.824, Subpart ~~BBBBB~~ EEEE as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.60 Compliance with TR NO<sub>x</sub> Ozone Season Group 2 Assurance Provisions.**

(1) General. The Environmental Protection Agency Regulations governing Compliance with TR NO<sub>x</sub> Ozone Season Group 2 Assurance Provisions, are incorporated by reference as they exist in 40 CFR §97.825, Subpart ~~BBBBB~~-EEEE as of ~~July 1, 2016,~~ and October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.61 Banking.**

(1) General. The Environmental Protection Agency Regulations governing Banking for TR NO<sub>x</sub> Ozone Season Group 2 Allowance, are incorporated by reference as they exist in 40 CFR §97.826, Subpart ~~AAAAA~~ EEEE as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

(2) Word, Phrase, and Rule Substitutions. For the purpose of rule 335-3-8-.61 substitute:

(a) Adem Administrative Code r. 335-3-8-.46(3)(~~i~~) for 40 CFR §97.811(c).

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.62 TR NO<sub>x</sub> Ozone Season Group 2 Trading Program - Account Error.**

(1) General. The Environmental Protection Agency Regulations governing Account Error, are incorporated by reference as they exist in 40 CFR §97.827, Subpart ~~BBBBB~~EEEE as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.63 TR NO<sub>x</sub> Ozone Season Group 2 Trading Program - Administrator's Action on Submissions.**

(1) General. The Environmental Protection Agency Regulations governing Administrator's Action on Submissions, are incorporated by reference as they exist in 40 CFR §97.828, Subpart ~~BBBBB~~EEEE as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.65 General Monitoring, Recordkeeping, and Reporting Requirements.**

(1) General. The Environmental Protection Agency Regulations governing General Monitoring, Recordkeeping, and Reporting Requirements, are incorporated by reference as they exist in 40 CFR §97.830, Subpart ~~BBBBB~~ EEEE as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

(2) Word, Phrase, and Rule Substitutions. For the purpose of rule 335-3-8-.65 substitute:

(a) Adem Administrative Code r. 335-3-8-.41 for 40 CFR §97.805.

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.66 Initial Monitoring System Certification and Recertification Procedures.**

(1) General. The Environmental Protection Agency Regulations governing Initial Monitoring System Certification and Recertification Procedures, are incorporated by reference as they exist in 40 CFR §97.831, Subpart ~~BBBBB-EEEE~~ as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

2) Word, Phrase, and Rule Substitutions. For the purpose of rule 335-3-8-.66 substitute:

(a) In §97.831(d)(3)(i) insert “, the Department” after “Office.”

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.67 Monitoring System Out-of-Control Periods.**

(1) General. The Environmental Protection Agency Regulations governing Monitoring System Out-of-Control Periods, are incorporated by reference as they exist in 40 CFR §97.832, Subpart ~~BBBBB-EEEE~~ as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.68 Notifications Concerning Monitoring.**

(1) General. The Environmental Protection Agency Regulations governing Notifications Concerning Monitoring, are incorporated by reference as they exist in 40 CFR §97.833, Subpart ~~BBBBB~~EEEE as of ~~July 1, 2016,~~ ~~and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.69 Recordkeeping and Reporting.**

(1) General. The Environmental Protection Agency Regulations governing Recordkeeping and Reporting, are incorporated by reference as they exist in 40 CFR §97.834, Subpart ~~BBBBB-EEEE~~ as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**335-3-8-.70 Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements.**

(1) General. The Environmental Protection Agency Regulations governing Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements, are incorporated by reference as they exist in 40 CFR §97.835, Subpart ~~BBBBB-EEEE~~ as of ~~July 1, 2016, and~~ October 26, 2016 (81 FR 74504). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015;XXXXXX, 2017.

**ADEM Admin. Code Rules 335-3-10-.01, 335-3-10-.02, 335-3-10-.03**

### **335-3-10-.01 General.**

(1) The Environmental Protection Agency Regulations, and the Appendices applicable thereto, governing Standards of Performance for New Stationary Sources (40 CFR 60 and Appendices) designated in rules 335-3-10-.02 and -.03 are incorporated by reference as they exist in 40 CFR 60 (July 1, ~~2015~~2016), [and 81 FR 44212 \[07/07/2016, amendments to Subpart III\]](#), [81 FR 45232 \[07/13/2016, amendments to Subpart Ja\]](#), [81 FR 59332 \[08/29/2016, amendments to Subpart XXX\]](#), and [81 FR 59800 \[08/30/2016, amendments to Subparts A, JJJJ, and Appendix A\]](#) as amended by the word or phrase substitutions given in rule 335-3-10-.04. References for specific documents containing the complete text of subject regulations are given in Appendix C to these Regulations. Authorities which are not delegable to the state are also listed in Appendix C.

**[NOTE: The standards pertaining to the Consolidated Federal Air rule are located in chapter 335-3-11A.]**

(a) The materials incorporated by reference are available for purchase and inspection at the Department's offices at 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

(2) The emission standards in this chapter shall supercede the emission standards in chapters 335-3-3, -4, -5, -6, -7, and -8 if both of the following criteria are met:

(a) the source category is subject to the regulations in this chapter for the specific pollutants to which an emission standard under this chapter applies, and

(b) the emission standard under chapters 335-3-3, -4, -5, -6, -7, and -8 is more stringent than the emission standard in this chapter for the specific pollutants regulated.

(3) Definitions. For purposes of this chapter, the definitions listed in 40 CFR §60.2 will apply.

**Author:**

**Statutory Authority:** Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8, and 41-22-9.

**History:** Effective Date: May 25, 1976.

**Amended:** February 13, 1985; June 9, 1987; June 16, 1988; September 21, 1989; November 1, 1990; March 28, 1991; July 31, 1991; September 19, 1991; October 24, 1991; December 28, 1993; April 27, 1995; November 21, 1996; September 25, 1997; March 27, 1998; July 15, 1999; January 13, 2000; September 7, 2000; March 14, 2002; October 3, 2002; April 3, 2003; October 2, 2003; March 22, 2005; December 12, 2005; July 11, 2006; April 3, 2007; January 22, 2008; August 5, 2008;

January 19, 2009; March 30, 2010; May 23, 2011; May 29, 2012; January 22,  
| 2013; May 28, 2013; September 24, 2013: November 24, 2015; [XXXXXX, 2017.](#)

**335-3-10-.02 Designated Standards of Performance.**

(1) Subpart A - General Provisions.

(2) Subpart D - Fossil Fuel-Fired Steam Generators for which construction is commenced after August 17, 1971.

(a) Subpart Da - Electric Utility Steam Generating Units for which construction is commenced after September 18, 1978.

(b) Subpart Db - Industrial-Commercial-Institutional Steam Generating Units.

(c) Subpart Dc - Small Industrial-Commercial-Institutional Steam Generating Units.

(3) Subpart E - Incinerators.

(a) Subpart Ea - Municipal Waste Combustors for which construction is commenced after December 20, 1989 and on or before September 20, 1994.

(b) Subpart Eb - Municipal Waste Combustors for which construction is commenced after September 20, 1994.

(c) Subpart Ec - Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for which construction is commenced after June 20, 1996.

(4) Subpart F - Portland Cement Plants.

(5) Subpart G - Nitric Acid Plants.

(a) Subpart Ga - Nitric Acid Plants for which Construction, Reconstruction, or Modification Commenced After October 14, 2011.

(6) Subpart H - Sulfuric Acid Plants.

(7) Subpart I - Hot Mix Asphalt Facilities.

(8) Subpart J - Petroleum Refineries.

(a) Subpart Ja - Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After May 14, 2007.

(9) Subpart K - Storage Vessels for Petroleum Liquids constructed after June 11, 1973 and prior to May 19, 1978.

(a) Subpart Ka - Storage Vessels for Petroleum Liquids constructed after May 18, 1978.

(b) Subpart Kb - Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 12, 1984.

(10) Reserved.

(11) Reserved.

(12) Subpart L - Secondary Lead Smelters.

(13) Subpart M - Secondary Brass and Bronze Ingot Production Plants.

(14) Subpart N - Primary Emissions from Basic Oxygen Process Furnaces for which construction is commenced after June 11, 1973.

(a) Subpart Na - Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for which construction is commenced after January 20, 1983.

(15) Subpart O - Sewage Treatment Plants.

(16) Subpart P - Primary Copper Smelters.

(17) Subpart Q - Primary Zinc Smelters.

(18) Subpart R - Primary Lead Smelters.

(19) Subpart S - Primary Aluminum Reduction Plants.

(20) Subpart T - Wet Process Phosphoric Acid Plants.

(21) Subpart U - Superphosphoric Acid Plants.

(22) Subpart V - Diammonium Phosphate Plants.

(23) Subpart W - Triple Superphosphate Plants.

(24) Subpart X - Granular Triple Superphosphate Storage Facilities.

(25) Subpart Y - Coal Preparation Plants.

(26) Subpart Z - Ferroalloy Production Facilities.

(27) Subpart AA - Steel Plants (Electric arc furnaces and dust-handling equipment).

(a) Subpart AAa - Steel Plants: Electric Arc Furnaces and Argon Oxygen-Decarburization Vessels.

(28) Subpart BB - Kraft Pulp Mills.

(a) Subpart BBa – Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013.

(29) Subpart CC - Standards of Performance for Glass Manufacturing Plants.

(30) Subpart DD - Grain Elevators.

(31) Subpart EE - Surface Coating of Metal Furniture.

(32) Subpart FF - Reserved.

(33) Subpart GG - Stationary Gas Turbines.

(34) Subpart HH - Lime Manufacturing Plants.

(35) Subpart II - Reserved.

(36) Subpart JJ - Reserved.

(37) Subpart KK - Lead-Acid Battery Manufacture.

(38) Subpart LL - Metallic Mineral Processing Plants.

(39) Subpart MM - Automobile and Light-Duty Truck Surface Coating Operations.

(40) Subpart NN - Phosphate Rock Plants.

(41) Subpart OO - Reserved.

(42) Subpart PP - Ammonium Sulfate Manufacturing.

(43) Subpart QQ - Graphic Arts Industry: Publication Rotogravure Printing.

(44) Subpart RR - Pressure Sensitive Tape and Label Surface Coating Industry.

(45) Subpart SS - Industrial Surface Coating - Large Appliances.

(46) Subpart TT - Metal Coil Surface Coating Operations.

(47) Subpart UU - Asphalt Processing and Asphalt Roofing Manufacture.

(48) Subpart VV - Equipment Leaks of VOC in the Synthetic Organic Chemical Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006.

(a) Subpart VVa – Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After November 7, 2006.

(49) Subpart WW - Beverage Can Surface Coating Industry.

(50) Subpart XX - Bulk Gasoline Terminals.

(51) Subpart YY - Reserved.

(52) Subpart ZZ - Reserved.

(53) Subpart AAA - Reserved.

(54) Subpart BBB - Rubber Tire Manufacturing Industry.

(55) Subpart CCC - Reserved.

(56) Subpart DDD - Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.

(57) Subpart EEE - Reserved.

(58) Subpart FFF - Flexible Vinyl and Urethane Coating and Printing.

(59) Subpart GGG - Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006.

(a) Subpart GGGa – Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After November 7, 2006.

(60) Subpart HHH - Synthetic Fiber Production Facilities.

(61) Subpart III - VOC Emissions from SOCFI Air Oxidation Unit Processes.

(62) Subpart JJJ - Petroleum Dry Cleaners.

(63) Subpart KKK - Equipment Leaks of VOC from Onshore Natural Gas Processing Plants for which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011.

(64) Subpart LLL - Standards of Performance for Onshore Natural Gas Processing for which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011: SO<sub>2</sub> Emissions.

(65) Subpart MMM - Reserved.

(66) Subpart NNN - VOC Emissions from SOCFI Distillation Operations.

- (67) Subpart OOO - Nonmetallic Mineral Processing Plants.
- (68) Subpart PPP - Wool Fiberglass Insulation Manufacturing Plants.
- (69) Subpart QQQ - VOC Emissions from Petroleum Refinery Wastewater Systems.
- (70) Subpart RRR - Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry Reactor Processes.
- (71) Subpart SSS - Magnetic Tape Manufacturing Industry.
- (72) Subpart TTT - Industrial Surface Coating; Plastic Parts for Business Machines.
- (73) Subpart UUU - Calciners and Dryers in Mineral Industries.
- (74) Subpart VVV - Polymeric Coating of Supporting Substrates.
- (75) Subpart WWW - Municipal Waste Landfills.
- (76) Subpart XXX - ~~Reserved.~~ Municipal Solid Waste Landfills that commenced construction, reconstruction, or modification after July 17, 2014.
- (77) Subpart YYY - Reserved.
- (78) Subpart ZZZ - Reserved.
- (79) Subpart AAAA - Small Municipal Waste Combustion Units for which construction is commenced after August 30, 1999 or for which modification or reconstruction is commenced After June 6, 2001.
- (80) Subpart BBBB - Reserved.
- (81) Subpart CCCC - Commercial and Industrial Solid Waste Incineration Units for which construction is commenced after June 4, 2010 or for which modification or reconstruction is commenced on or after August 7, 2013.
- (82) Subpart DDDD - Reserved.
- (83) Subpart EEEE - Reserved.
- (84) Subpart FFFF - Reserved.
- (85) Subpart GGGG - Reserved.
- (86) Subpart HHHH - Reserved.
- (87) Subpart IIII - Stationary Compression Ignition Internal Combustion Engines.

(88) Subpart JJJJ – Stationary Spark Ignition Internal Combustion Engines.

(89) Subpart KKKK – Stationary Combustion Turbines.

(90) Subpart LLLL – New Sewage Sludge Incineration Units.

(91) Subpart OOOO – Crude Oil and Natural Gas Production, Transmission and Distribution.

(91)(a) Subpart OOOOa – Crude Oil and Natural Gas Facilities for which construction, modification or reconstruction commenced after September 18, 2015.

(92) Subpart PPPP – Reserved.

(93) Subpart QQQQ – Reserved.

(94) Subpart RRRR – Reserved.

(95) Subpart SSSS – Reserved.

(96) Subpart TTTT – Greenhouse Gas Emissions from Electric Generating Units.

**Author:**

**Statutory Authority:** Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8, and 41-22-9.

**History:** Effective Date: May 25, 1976.

**Amended:** June 23, 1981; February 13, 1985; April 15, 1987; June 16, 1988; September 21, 1989; November 1, 1990; March 28, 1991; July 31, 1991; September 19, 1991; October 24, 1991; December 28, 1993; April 27, 1995; November 21, 1996; September 25, 1997; March 27, 1998; July 15, 1999; January 13, 2000; September 7, 2000; March 14, 2002; October 3, 2002; April 3, 2003; October 2, 2003; March 22, 2005; December 12, 2005; July 11, 2006; November 14, 2006; April 3, 2007; January 22, 2008; August 5, 2008; January 19, 2009; March 30, 2010; May 23, 2011; May 29, 2012; January 22, 2013; May 28, 2013; September 24, 2013; November 24, 2015; XXXXXX, 2017.

**335-3-10-.03 Appendices to 40 CFR 60.**

- (1) Appendix A - Reference Method.
- (2) Appendix B - Performance Specifications.
- (3) Appendix F - Quality Assurance Procedures.

**Author:** Robert Cowne.

**Statutory Authority:** Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8, and 41-22-9.

**History:** Effective Date: June 16, 1988.

**Amended:** November 1, 1990; March 28, 1991; July 31, 1991; September 19, 1991; October 24, 1991; December 28, 1993; November 21, 1996; March 27, 1998; January 13, 2000; September 7, 2000; March 14, 2002; October 3, 2002; March 22, 2005; November 14, 2006; April 3, 2007; January 22, 2008; January 19, 2009; March 30, 2010, May 23, 2011; May 28, 2013; November 24, 2015; ~~XXXXXX~~, 2017.

**ADEM Admin. Code Rules 335-3-11-.01, 335-3-11-.02,  
335-3-11-.03, 335-3-11-.06, 335-3-11-.07**

### **335-3-11-.01 General.**

(1) The Environmental Protection Agency Regulations, and the Appendices applicable thereto, governing Hazardous Air Pollutants, 40 CFR, Part 61 and Appendices, designated in rules 335-3-11-.02 and 335-3-11-.03 and 40 CFR Part 63, and Appendices designated in rules 335-3-11-.06 and 335-3-11-.07 are incorporated by reference as they exist in 40 CFR 61 (~~2015~~2016), and 81 FR 59800 [08/30/2016, amendments to Subparts A and Appendix B], and 40 CFR 63 (July 1, ~~2015~~2016), and 81 FR 45232 [07/13/2016, amendments to Subparts CC and UUU], 81 FR 48356 [07/25/2016, amendments to Subpart LLL], 81 FR 51114 [08/03/2016, amendments to Subpart GG], 81 FR 52348 [08/08/2016, amendments to Appendix B], and 81 FR 59800 [08/30/2016, amendments to Subpart A and Appendix A], as amended by the word or phrase substitutions given in rule 335-3-11-.04. References for specific documents containing the complete text of subject regulations are given in Appendix C to these Regulations. Authorities which are not delegable to the state are also listed in Appendix C.

**[NOTE: The standards pertaining to the Consolidated Federal Air rule are located in chapter 335-3-11A.]**

(a) The materials incorporated by reference are available for purchase and inspection at the Department's offices at 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

(2) In the event of any conflict between the regulations contained in this chapter and regulations contained in other chapters, the more stringent regulations will take precedence.

(3) Definitions. For purposes of this chapter, the definitions listed in 40 CFR 61.02, Subpart A will apply in rules 335-3-11-.02 and 335-3-11-.03 and the definitions listed in 40 CFR 63.2, Subpart A will apply in rules 335-3-11-.06 and 335-3-11-.07.

**Author:**

**Statutory Authority:** Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8, and 41-22-9.

**History:** Effective Date: May 25, 1976.

**Amended:** February 13, 1985; June 9, 1987; June 16, 1988; November 1, 1990; March 28, 1991; July 31, 1991; September 19, 1991; October 30, 1992; December 28, 1993; November 23, 1995; November 21, 1996; September 25, 1997; March 27, 1998; November 19, 1998; July 15, 1999; January 13, 2000; September 7, 2000; March 14, 2002; October 3, 2002; April 3, 2003; October 2, 2003; March 22, 2005; December 12, 2005; July 11, 2006; April 3, 2007; January 22, 2008; August 5, 2008; January 19, 2009; March 30, 2010; May 23, 2011; May 29, 2012; January 22, 2013; May, 28, 2013; September 24, 2013; November 24, 2015-~~XXXXXX~~, [2017](#).

**335-3-11-.02 Designated Emission Standards.**

- (1) Subpart A - General Provisions.
- (2) Subpart C - Beryllium.
- (3) Subpart D - Beryllium Rocket Motor Firing.
- (4) Subpart E - Mercury.
- (5) Subpart F - Vinyl Chloride.
- (6) Reserved.
- (7) Reserved.
- (8) Reserved.
- (9) Subpart J - Benzene Equipment Leaks.
- (10) Reserved.
- (11) Subpart L - Benzene Emissions from Coke By-Product Recovery Plants.
- (12) Subpart M - Asbestos.
- (13) Subpart N - Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants.
- (14) Subpart O - Standard for Inorganic Arsenic Emissions from Primary Copper Smelters.
- (15) Subpart P - Standard for Inorganic Arsenic Emission from Arsenic Trioxide and Metallic Arsenic Production Facilities.
- (16) Reserved.
- (17) Reserved.
- (18) Reserved.
- (19) Reserved.
- (20) Reserved.
- (21) Subpart V - Equipment Leaks (Fugitive Emission Sources).

- (22) Reserved.
- (23) Reserved.
- (24) Subpart Y - Benzene Emissions from Benzene Storage Vessels.
- (25) Reserved.
- (26) Reserved.
- (27) Subpart BB - Benzene Emissions from Benzene Transfer Operations.
- (28) Reserved.
- (29) Reserved.
- (30) Reserved.
- (31) Subpart FF - Benzene Emissions from Benzene Waste Operations.

**Author:**

**Statutory Authority:** Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8, and 41-22-9.

**History:** Effective Date: May 25, 1976.

**Amended:** June 23, 1981; February 13, 1985; June 9, 1987; November 1, 1990; March 28, 1991; July 31, 1991; September 19, 1991; October 30, 1992; December 28, 1993; January 13, 2000; March 14, 2002; October 2, 2003; March 22, 2005; December 12, 2005; January 22, 2008; November 24, 2015; ~~XXXXXX~~, 2017.

**335-3-11-.03 Appendices to 40 CFR 61.**

(1) Appendix B - Test Methods.

**Author:** Robert W. Cowne.

**Statutory Authority:** Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8, and 41-22-9.

**History:** Effective Date: June 16, 1988

**Amended:** March 28, 1991; November 21, 1996; March 14, 2002; November 24, 2015; XXXXXX, 2017.

**335-3-11-.06 National Emission Standards for Hazardous Air Pollutants for Source Categories.**

(1) Subpart A - General Provisions.

(2) Subpart B - Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j).

**[NOTE: The requirements for implementation of §112(g) are found in rule 335-3-14-.06]**

(3) Subpart D - Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants.

(4) Reserved.

(5) Subpart F - National Emission Standards for Hazardous Air Pollutants From Synthetic Organic Chemical Manufacturing Industry.

(6) Subpart G - National Emission Standards for Organic Hazardous Air Pollutants From Synthetic Organic Chemical Manufacturing Industry Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

(7) Subpart H - National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.

(8) Subpart I - National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

(9) Reserved.

(10) Reserved.

(11) Subpart L - National Emission Standards for Coke Oven Batteries.

(12) Subpart M - National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.

(13) Subpart N - National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

(14) Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities.

(15) Reserved.

(16) Subpart Q - National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.

(17) Subpart R - National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).

(18) Subpart S - National Emission Standards for Hazardous Air Pollutants for Pulp and Paper Production.

(19) Subpart T - National Emission Standards for Halogenated Solvent Cleaning.

(20) Subpart U - National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.

(21) Reserved.

(22) Subpart W - National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production.

(23) Subpart X - National Emission Standards from Secondary Lead Smelting.

(24) Subpart Y - National Emission Standards for Marine Tank Vessel Loading Operations [with the exceptions of those subsections referencing the Valdez Marine Terminal (VMT) in Alaska].

(25) Reserved.

(26) Subpart AA - National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing Plants.

(27) Subpart BB - National Emission Standards for Hazardous Air Pollutants from Phosphate Fertilizers Production Plants.

(28) Subpart CC - National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.

(29) Subpart DD - National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(30) Subpart EE - National Emission Standards for Magnetic Tape Manufacturing Operations.

(31) Reserved.

(32) Subpart GG - National Emission Standards for Aerospace Manufacturing and Rework Facilities.

(33) Subpart HH - National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities.

(34) Subpart II - National Emission Standards for Shipbuilding and Ship Repair (Surface Coating) Operations.

(35) Subpart JJ - National Emission Standards for Wood Furniture Manufacturing Operations.

(36) Subpart KK - National Emission Standards for the Printing and Publishing Industry.

(37) Reserved.

(38) Subpart MM - National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfitic, and Stand-Alone Semicheical Pulp Mills.

(39) Reserved.

(40) Subpart OO - National Emission Standards for Tanks - Level 1.

(41) Subpart PP - National Emission Standards for Containers.

(42) Subpart QQ - National Emission Standards for Surface Impoundments.

(43) Subpart RR - National Emission Standards for Individual Drain Systems.

(44) Subpart SS - National Emission Standards Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

(45) Subpart TT - National Emission Standards for Equipment Leaks - Control Level 1.

(46) Subpart UU - National Emission Standards for Equipment Leaks - Control Level 2 Standards.

(47) Subpart VV National Emission Standards for Oil-Water Separators and Organic-Water Separators.

(48) Subpart WW - National Emission Standards for Storage Vessels (Tanks) - Control Level 2.

(49) Subpart XX - National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.

(50) Subpart YY - National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards.

(51) Reserved.

(52) Reserved.

(53) Reserved.

(54) Subpart CCC – National Emission Standards for Hazardous Air Pollutants for Steel Pickling – HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(55) Subpart DDD – National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

(56) Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.

(57) Reserved.

(58) Subpart GGG - National Emission Standards for Hazardous Air Pollutants for Source Categories: Pharmaceuticals Production.

(59) Subpart HHH – National Emission Standards for Hazardous Air Pollutants from Natural Gas Transmission and Storage Facilities.

(60) Subpart III - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.

(61) Subpart JJJ - National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins.

(62) Reserved.

(63) Subpart LLL - National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry.

(64) Subpart MMM – National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(65) Subpart NNN – National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(66) Subpart OOO – National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production.

(67) Subpart PPP – National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(68) Reserved.

(69) Subpart RRR – National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(70) Reserved.

(71) Reserved.

(72) Subpart UUU – National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(73) Subpart VVV – National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(74) Reserved.

(75) Subpart XXX – National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese.

(76) Reserved.

(77) Reserved.

(78) Subpart AAAA – National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills.

(79) Reserved.

(80) Subpart CCCC – National Emission Standards for Hazardous Air Pollutants: Nutritional Yeast.

(81) Subpart DDDD – National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products.

(82) Subpart EEEE – National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline).

(83) Subpart FFFF – National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing.

(84) Subpart GGGG – National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production.

(85) Subpart HHHH – National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production.

(86) Subpart IIII – National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks.

(87) Subpart JJJJ – National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating.

(88) Subpart KKKK – National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans.

(89) Reserved.

(90) Subpart MMMM – National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.

(91) Subpart NNNN – National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances.

(92) Subpart OOOO – National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles.

(93) Subpart PPPP – National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.

(94) Subpart QQQQ – National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products.

(95) Subpart RRRR – National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture.

(96) Subpart SSSS – National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil.

(97) Reserved.

(98) Reserved.

(99) Subpart VVVV – National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing.

(100) Subpart WWWW – National Emission Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production.

(101) Subpart XXXX – National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing.

(102) Subpart YYYY – National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.

(103) Subpart ZZZZ – National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (major source provisions only).

(104) Subpart AAAAA – National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.

(105) Subpart BBBBB – National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.

(106) Subpart CCCCC – National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.

(107) Subpart DDDDD – National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters.

(108) Subpart EEEEE – National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.

(109) Subpart FFFFF – National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities.

(110) Subpart GGGGG – National Emission Standards for Hazardous Air Pollutants: Site Remediation.

(111) Subpart HHHHH – National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing.

(112) Subpart IIII – National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants.

(113) ~~Reserved.~~ [Subpart JJJJJ – National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.](#)

(114) ~~Reserved.~~ [Subpart KKKKK – National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.](#)

(115) Subpart LLLLL – National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing.

(116) Reserved.

(117) Subpart NNNNN – National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production.

(118) Reserved.

(119) Subpart PPPPP – National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Standards.

(120) Subpart QQQQQ – National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities

(121) Subpart RRRRR – National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing.

(122) Reserved.

(123) Subpart TTTTT – National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.

(124) Subpart UUUUU- National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-Fired Electric Utility Steam Generating Units.

(125) Reserved.

(126) Reserved.

(127) Reserved.

(128) Subpart YYYYY- National Emission Standards for Hazardous Air Pollutants for Electric arc Furnace Steelmaking Facilities Area Sources .

(129) Subpart ZZZZZ – National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.

(130) Reserved.

(131) Reserved.

(132) Reserved.

(133) Subpart DDDDDD – National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.

(134) Subpart EEEEE – National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.

(135) Subpart FFFFF – National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.

(136) Subpart GGGGG – National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources – Zinc, Cadmium, and Beryllium.

(137) Reserved.

(138) Reserved.

(139) Reserved.

(140) Reserved.

(141) Subpart LLLLL – National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.

(142) Subpart MMMMM – National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.

(143) Reserved.

(144) ~~Reserved~~. Subpart OOOOOO – National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.

(145) Reserved.

(146) Subpart QQQQQQ – National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.

(147) Reserved.

(148) Reserved.

(149) Subpart TTTTTT– National Emission Standards for Hazardous Air Pollutants for Secondary nonferrous Metals Processing Area Sources.

(150) Reserved.

(151) Subpart VVVVVV– National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.

(152) Reserved.

(153) Reserved.

(154) Subpart YYYYYY– National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production Facilities Area Sources .

(155) Subpart ZZZZZZ – National Emission Standards for Hazardous Air Pollutants for Aluminum, Copper, and Other Nonferrous Foundries Area Sources.

(156) Subpart AAAAAA – National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing Area Sources

(157) Reserved.

(158) Subpart CCCCCC – National Emission Standards for Hazardous Air Pollutants for Paints and Allied Products Manufacturing Area Sources.

(159) Subpart DDDDDD – National Emission Standards for Hazardous Air Pollutants for Prepared Feeds Manufacturing Area Sources.

(160) Reserved.

(161) Reserved.

(162) Reserved.

(163) Subpart HHHHHHHH – National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production.

**Author:** Richard E. Grusnick.

**Statutory Authority:** Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8, and 41-22-9.

**History:** Effective Date: November 23, 1995.

**Amended:** November 21, 1996; September 25, 1997; March 27, 1998; November 19, 1998; July 15, 1999; January 13, 2000; September 7, 2000; March 14, 2002; October 3, 2002; April 3, 2003; October 2, 2003; March 22, 2005; December 12, 2005; July 11, 2006; April 3, 2007; January 22, 2008; August 5, 2008; January 19, 2009; March 30, 2010; May 23, 2011; May 29, 2012; January 22, 2013; May 28, 2013; September 24, 2013; November 24, 2015; XXXXXX, 2017.

**335-3-11-.07 Appendices to 40 CFR 63.**

- (1) Appendix A - Test Methods.
- (2) Appendix B - Sources Defined for Early Reduction Provisions.
- (3) Appendix C - Determination of the Fraction Biodegraded ( $F_{bio}$ ) in a Biological Treatment Unit.
- (4) Appendix D - Alternative Validation Procedure for EPA Waste and Wastewater Methods.
- (5) Appendix E - Monitoring Procedure for Nonthoroughly Mixed Open Biological Treatment System Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions.

**Author:** Richard E. Grusnick.

**Statutory Authority:** Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8, and 41-22-9.

**History:** Effective Date: November 23, 1995.

**Amended:** November 21, 1996; September 25, 1997; November 19, 1998; July 15, 1999; January 13, 2000; March 14, 2002; March 30, 2010; May 23, 2011; May 28, 2013; November 24, 2015; ~~XXXXXX~~, 2017.

**ADEM Admin. Code Rules 335-3-14-.01, 335-3-14-.04, 335-3-14-.05, 335-3-14-.06**

**335-3-14-.01 General Provisions.**

(1) Air Permit.

(a) Any person building, erecting, altering, or replacing any article, machine, equipment, or other contrivance, the use of which may cause the issuance of or an increase in the issuance of air contaminants or the use of which may eliminate or reduce or control the issuance of air contaminants, shall submit an application for an Air Permit at least 10 days prior to construction.

(b) Before any article, machine, equipment, or other contrivance described in subparagraph (a) of this paragraph may be operated or used, authorization shall be obtained from the Director in the form of an Air Permit. No Permit shall be granted for any article, machine, equipment or contrivance described in subparagraph (a) of this paragraph, constructed or installed without notification as required by subparagraph (a) of this paragraph, until the information required is presented to the Director and such article, machine, equipment or contrivance is altered, if necessary, and made to conform to the standards established by the Department.

(c) Any article, machine, equipment, or other contrivance described in subparagraph (a) of this paragraph which is presently operating (or which is not presently operating but which is capable of being operated) without an Air Permit may continue to operate (or may restart) only if its owner or operator obtains an Air Permit prior to a date to be set by the Director (or prior to restarting).

(d) Display of Air Permit. A person who has been granted an Air Permit for any article, machine, equipment, or other contrivance shall keep such permit under file or on display at all times at the site where the article, machine, equipment, or other contrivance is located and will make such a permit readily available for inspection by any and all persons who may request to see it.

(e) The Director shall have the authority to decide cases where an article, machine, equipment, or other contrivance is not clearly subject to nor exempt from the application of this rule. In addition, the Director may rule that a particular article, machine, equipment, or other contrivance is subject to the application of this rule even though it is exempt from the system according to subparagraph (a) of this paragraph and paragraph (5) of this rule. The operator or builder of such an article, machine, equipment, or other contrivance may appeal the Director's classification to the Commission, which shall overrule the Director only if it is shown that he acted arbitrarily and contrary to the purposes of the Act.

(f) Upon completion of construction by a new facility, the Director shall, within a reasonable period of time, dispatch an inspector to the facility in

question. If the inspector determines that the facility has been constructed according to the specifications as set forth under the Air Permit or that any changes to the facility would reduce or affect to an insubstantial degree that quantity of air contaminants emitted by the facility, and if a reviewing officer of the Division agrees with this conclusion, then the Director shall authorize initial operation of the facility until an official inspection of the facility under actual operating conditions can be made and the results reviewed or until the Air Permit is suspended or revoked by the Director. The Director may authorize initial operation of the facility without an inspection if upon completion of the construction, an owner or operator familiar with the application for an Air Permit submits a letter to the Director, testifying that the construction under application has been completed and is in accordance with the specification as set down in the Air Permit. The Director is empowered to reject that testimony if the Director decides that the owner or operator's qualifications are insufficient to allow him to accurately and completely assess the equipment in question. An owner or operator may appeal any such judgment to the Commission.

(g) The Director may issue an Air Permit subject to conditions which will bring the operation of any article, machine, equipment, or other contrivance within the standards of rule 335-3-14-.03(1) in which case the conditions shall be specified in writing. Commencing construction or operation under such an Air Permit shall be deemed acceptance of all the conditions specified. The Director shall issue an Air Permit with revised conditions upon receipt of a new application, if the applicant demonstrates that the article, machine, equipment, or other contrivance can operate within the standards of rule 335-3-14-.03(1) under the revised conditions.

(h) Reserved.

(i) Reserved.

(j) Reserved.

(k) An existing facility which holds a Synthetic Minor Operating Permit issued under chapter 335-3-15 or an Operating Permit issued under chapter 335-3-16 is exempt from the requirements of this chapter provided that:

1. the Synthetic Minor Operating Permit is modified as required by chapter 335-3-15 prior to the initial operation of any new or modified sources, or

2. the Operating Permit is modified as required by chapter 335-3-16 and any modifications are not subject to the requirements of rule 335-3-14-.04, or

3. for a modification which is subject to the requirements of rule 335-3-14-.04, the Operating Permit is issued prior to commencement of construction of the modification, and the Operating Permit fulfills all requirements of rule 335-3-14-.04, or

4. the Operating Permit is modified as required by chapter 335-3-16 and any modifications are not subject to the requirements of rule 335-3-14-.05, or

5. for a modification which is subject to the requirements of rule 335-3-14-.05, the Operating Permit is issued prior to commencement of construction of the modification, and the Operating Permit fulfills all requirements of rule 335-3-14-.05.

(2) Provision of Sampling and Testing Facilities. A person operating or using any article, machine, equipment or other contrivance for which these rules and regulations require a permit shall provide and maintain such sampling and testing facilities as specified in the Air Permit.

(3) The holder of a Permit under this rule shall comply with conditions contained in such Permit as well as all applicable provisions of these rules and regulations.

(4) Transfer. An Air Permit shall not be transferable whether by operation of law or otherwise, either from one location to another, from one piece of equipment to another, or from one person to another.

(5) Exemptions. From time to time the Director may specify certain classes or sizes of articles, machines, equipment, or other contrivances which would normally be subject to the requirements to apply for an Air Permit as being exempt from the requirement to apply for such permits. Exempt sources are subject in every other way to these rules and regulations.

(6) Delegation of Air Permit requirements to Local Air Pollution Control Programs.

(a) Local air pollution control programs may receive delegation of authority from the Director to administer the general Air Permit requirements of paragraph (1) of this rule within their jurisdiction provided the local air pollution control program:

1. adopts regulations insuring applicants are required to satisfy the same requirements as contained in the Department's regulations; and

2. adopts regulations which require the Director to be provided with an opportunity to review the permit application, the analysis of the permit, and proposed permit conditions at least 10 days prior to issuance of an Air Permit.

(b) Local air pollution control programs may receive delegation of authority from the Director to administer the Air Permit requirements of rules 335-3-14-.05 and 335-3-14-.04 within their jurisdiction provided:

1. the requirements of subparagraph (a)1. of this paragraph are met;  
and

2. the local air pollution control program demonstrates that it has the necessary manpower and technical expertise to implement the requirements of said regulations; and

3. the local air pollution control program adopts regulations which require that the local air pollution control program shall provide the Director a copy of preliminary determinations and public comment notices for all permits issued pursuant to rules 335-3-14-.05 and 335-3-14-.04 before the notice is issued.

(c) If the Director of ADEM determines that local program procedures for implementing all the portions of rules 335-3-14-.01(1), 335-3-14-.04, and 335-3-14-.05 are inadequate, or are not being effectively carried out, any authority delegated to the local programs to administer rules 335-3-14-.01(1), 335-3-14-.04, and 335-3-14-.05 may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the local air pollution control program.

(d) The Director reserves the authority contained in rule 335-3-14-.02(4), to revoke any Air Permit issued pursuant to this rule.

(e) Any Air Permit issued by a local air pollution control program, including all conditions contained therein, is enforceable by the ADEM.

(7) Public Participation.

(a) Notice shall be given under the following circumstances:

1. Construction at a Greenfield Site.

(i) For the purposes of this paragraph, a "Greenfield Site" shall mean a new development or the initial operation of a new facility.

2. The Director, at his discretion, may require Public Notification for any application received in accordance with subparagraph (1)(a) of this rule.

(b) Notices issued in accordance with rule 335-3-14-.01(7) (a) shall be posted for the duration of the public comment period on the Department's web site, and shall include:

1. A notice of availability of the proposed permit for public comment;

2. A link to the proposed permit; and,

3. Information on how to access the administrative record for the proposed permit on the Department's web site.

(c) Notices issued in accordance with rule 335-3-14-.01(7) (a) shall also be transmitted to a list developed by the Department for persons desiring notice of permit action, including persons who have requested in writing to be on such a list.

(d) Public comments will be received by the Department for a period of 15 days following the posting of the public notice.

(e) Public Notice will be held in accordance with the requirements of rules 335-3-14-.04, 335-3-14-.05, or 335-3-14-.06 for any application which is subject to the requirements of rules 335-3-14-.04, 335-3-14-.05, or 335-3-14-.06, respectively.

(f) Construction of any article, machine, equipment, or other contrivance as described in subparagraph (1)(a) of this rule shall not commence until after an Air Permit is issued if a public notice is required under this rule.

**Author:** James W. Cooper and John E. Daniel.

**Statutory Authority:** Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: January 18, 1972.

**Amended:** April 3, 1979; February 13, 1985; December 28, 1993; November 21, 1996; March 27, 1998; XXXXXX, 2017.

**335-3-14-.04 Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)]**

(1) Applicability.

(a) The requirements of this rule apply to the construction of any new major stationary source (as defined in subparagraph (2)(a) of this rule) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Clean Air Act.

(b) The requirements of paragraphs (9) through (17) of this rule apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this rule otherwise provides.

(c) No new major stationary source or major modification to which the requirements of paragraphs (9) through (17)(c) of this rule apply shall begin construction without a permit that states that the major stationary source or major modification will meet those requirements.

(d) Except as otherwise provided in subparagraph (1)(j) of this rule, and consistent with the definition of major modification contained in subparagraph (2)(b) of this rule, a project is a major modification for a regulated NSR pollutant only if it causes two types of emissions increases – a significant emissions increase [as defined in subparagraph (2)(mm) of this rule], and a significant net emissions increase [as defined in subparagraphs (2)(c) and (2)(w) of this rule].

(e) Before beginning actual construction, the procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being modified, according to subparagraphs (1)(f) through (i) of this rule. The procedure for calculating whether a significant net emissions increase will occur at the major stationary source is contained in the definition in subparagraph (2)(c) of this rule. Regardless of any such preconstruction projections, a major modification can result only if the project causes a significant emissions increase and a significant net emissions increase.

(f) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference(s) between the projected actual emissions [as defined in subparagraph (2)(nn) of this rule] and the baseline actual emissions [as defined in subparagraphs (2)(uu)1. and 2. of this rule], for each existing emissions unit, equals or exceeds the significant rate for that pollutant [as defined in subparagraph (2)(w) of this rule].

(g) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit [as defined in subparagraph (2)(d) of this rule] from each new emissions unit following completion of the project and the baseline actual emissions [as defined in subparagraph (2)(uu)3. of this rule] of these units before the project

equals or exceeds the significant rate for that pollutant [as defined in subparagraph (2)(w) of this rule].

(h) Actual-to-potential test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference(s) between the potential to emit [as defined in subparagraph (2)(d) of this rule] and the actual emissions [as defined in subparagraph (2)(u) of this rule], for each existing emissions unit, equals or exceeds the significant rate for that pollutant [as defined in subparagraph (2)(w) of this rule].

(i) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subparagraphs (1)(f) through (h) of this rule as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant rate for that pollutant [as defined in subparagraph (2)(w) of this rule].

(j) Any major stationary source subject to a plantwide applicability limit (PAL), as defined in subparagraph (23)(b)5. of this rule, for a regulated NSR pollutant shall comply with the requirements under paragraph (23) of this rule.

(k) Greenhouse gases (GHGs)

1. GHGs, as defined in Subparagraph (2)(zz) of this Rule, shall not be utilized in determining if a source is a major stationary source, as defined in Subparagraph (2)(a) of this Rule, or in determining if a modification is a major modification, as defined in Subparagraph (2)(b) of this Rule.

2. GHGs shall only be subject to the requirements of this Rule if:

(i) A new major stationary source or major modification causes a significant emissions increase of GHGs, as defined in subparagraph (2)(mm) of this rule, and a significant net emissions increase of GHGs, as defined in subparagraphs (2)(c) and (2)(w) of this rule, and

(ii) The new major stationary source or major modification is required to obtain a permit subject to the requirements of this Rule as a result of emissions of regulated NSR pollutants other than GHGs.

Reserved.

(2) Definitions. For the purposes of this rule only, the following terms will have meanings ascribed in this paragraph:

(a) "Major Stationary Source" shall mean:

1. Any of the following stationary sources [see subparagraph (e) of this paragraph] of air pollutants which emits, or has the potential to emit [see subparagraph (d) of this paragraph], 100 tons per year or more of any regulated NSR pollutant:

- carbon black plants (furnace process);
- charcoal production plants;
- chemical process plants;
- coal cleaning plants (with thermal dryers);
- coke oven batteries;
- fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;
- fuel conversion plants;
- glass fiber processing plants; and
- hydrofluoric acid plants;
- sulfuric acid plants;
- nitric acid plants;
- iron and steel mill plants;
- kraft pulp mills;
- lime plants;
- municipal incinerators capable of charging more than 250 tons of refuse per day;
- petroleum refineries;
- petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- phosphate rock processing plants;
- portland cement plants;
- primary aluminum ore reduction plants;
- primary copper smelters;
- primary lead smelters;
- primary zinc smelters;
- secondary metal production plants;
- sintering plants;
- sulfur recovery plants;
- taconite ore processing plants;

(i) Notwithstanding the stationary source size specified in subparagraph (a)1. of this paragraph, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any regulated NSR pollutant;

(ii) Any physical change that would occur at a stationary source not otherwise qualifying under this rule as a major stationary source, if the changes would constitute a major stationary source by itself.

2. A stationary source that is considered major for VOC or NO<sub>x</sub> shall be considered major for ozone.

(b) "Major Modification" shall mean any physical change in or change in the method of operation of a major stationary source that would result in a significant [see subparagraph (w) of this paragraph] net emissions increase [see subparagraph (c) of this paragraph] of any regulated NSR pollutant.

1. Any net emissions increase that is significant for VOC or NO<sub>x</sub> shall be considered significant for ozone.

2. Any net emissions increase that is significant for SO<sub>2</sub> or NO<sub>x</sub> shall be considered significant for PM<sub>2.5</sub>.

3. A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (P.L. 93-319, 15 U.S.C. 791 note) or any superseding legislation, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act (June 10, 1920, P.L. 280, 16 U.S.C. 791a);

(iii) Use of an alternative fuel by reason of an order or rule under Section 125 of the CAA;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(I) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition which was established after January 6, 1975.

(II) The source is approved to use under any permit issued under the Federal Prevention of Significant Deterioration ("PSD") regulations (40 CFR 52.21) or under regulations of this rule;

(vi) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any enforceable permit condition which was established after January 6, 1975.

(vii) Any change in ownership at a stationary source.

(viii) Reserved.

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with

requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(x) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated NSR pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

4. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph (23) of this rule for a PAL for that pollutant. Instead, the definition at subparagraph (23)(b)8. of this rule shall apply.

(c) "Net Emissions Increase" shall mean with respect to any regulated NSR pollutant, the amount by which the sum of the following exceeds zero:

1. Any increase in emissions as calculated pursuant to subparagraph (1)(e) through (i) of this rule from a particular physical change or change in method of operation at a stationary source; and

2. Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subparagraph shall be determined as provided in subparagraph (2)(uu) of this rule, except that subparagraphs (2)(uu)1.(iii) and (2)(uu)2.(iv) of this rule shall not apply.

(i) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(I) The date five (5) years before construction [see subparagraph (h) of this paragraph] on the particular change commences [see subparagraph (i) of this paragraph]; and

(II) The date that the increase from the particular change occurs.

(ii) An increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit for the source under this rule, which is in effect when the increase in actual emissions from the particular change occurs.

(iii) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date [see subparagraph (n)2. of this paragraph] is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM<sub>10</sub> and PM<sub>2.5</sub> emissions can be used to evaluate the net emissions increase for PM<sub>10</sub>. Only PM<sub>2.5</sub> emissions can be used to evaluate the net emissions increase for PM<sub>2.5</sub>.

(iv) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(v) A decrease in actual emissions is creditable only to the extent that:

(I) The old level of actual emissions or the old level of allowable emissions [see subparagraph (p) of this paragraph], whichever is lower, exceeds the new level of actual emissions;

(II) It is enforceable [see subparagraph (q) of this paragraph], at and after the time that actual construction on the particular change begins; and

(III) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(vi) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(d) "Potential to Emit" shall mean the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions [see paragraph 335-3-14-.04(2)(r)] do not count in determining the potential to emit of a stationary source.

(e) "Stationary Source" shall mean any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(f) "Building, Structure, Facility, or Installation" shall mean all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., all have the same two digit code) as described in the Standard Industrial Classification Manual.

(g) "Emissions Unit" shall mean any part of a stationary source which emits or would have the potential to emit any regulated NSR pollutant including an electric utility steam generating unit as defined in subparagraph (2)(vv) of this rule. For purposes of this rule, there are two types of emissions units as described in subparagraphs (2)(g)1. and 2. of this rule.

1. A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

2. An existing emissions unit is any emissions unit that does not meet the requirements in subparagraph (2)(g)1. of this rule. A replacement unit, as defined in subparagraph (bbb) of this rule, is an existing emissions unit.

(h) "Construction" shall mean any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in emissions.

(i) "Commence" as applied to construction of a major stationary source or major modification shall mean that the owner or operator has all necessary preconstruction approvals or permits [see subparagraph (j) of this paragraph] and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction [see subparagraph (k) of this paragraph] of the source, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(j) "Necessary Preconstruction Approvals or Permits" shall mean those permits or approvals required under Alabama air quality control laws and regulations which are part of the State Implementation Plan.

(k) "Begin Actual Construction" shall mean, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(l) "Best Available Control Technology (BACT)" shall mean an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR 60 and 61. If the Director determines that technological or economic limitations on the application of measurement

methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means which achieve equivalent results.

(m) "Baseline Concentration" shall mean that ambient concentration level which exists in the baseline area [see subparagraph (o) of this paragraph] at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

1. The actual emissions, as defined in paragraph (2)(u) of this rule, representative of sources in existence on the applicable minor source baseline date, except as provided in subparagraph (m) 3. of this paragraph;

2. The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

3. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(i) Actual emissions, as defined in paragraph (2)(u) of this rule, from any major stationary source on which construction commenced after the major source baseline date; and

(ii) Actual emissions increases and decreases, as defined in paragraph (2)(u) of this rule, at any stationary source occurring after the minor source baseline date.

(n) "Major Source Baseline Date" means in the case of particulate matter less than 10 microns in diameter and sulfur dioxide, January 6, 1975; in the case of nitrogen dioxide, the major source baseline date is February 8, 1988, and in the case of particulate matter less than 2.5 microns in diameter, the major source baseline date is October 20, 2010.

1. "Minor Source Baseline Date" means the earliest date after the trigger date on which the first complete [see subparagraph (v) of this paragraph], application is submitted by a major stationary source or major modification subject to the requirements of Federal PSD regulations or this rule. The trigger date is:

(i) In the case of particulate matter less than 10 microns in diameter and sulfur oxides, August 7, 1977, and

(ii) In the case of nitrogen dioxide, February 8, 1988.

(iii) In the case of particulate matter less than 2.5 microns in diameter, October 20, 2011.

2. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(i) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the CAA for the pollutant on the date of its complete application under Federal PSD regulations or this rule.

(ii) In the case of a major stationary source, the pollutant would be emitted in significant amounts or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

3. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments.

(o) "Baseline Area" shall mean any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the CAA in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) microgram per cubic meter (annual average) of the pollutant for which the minor source baseline date is established.

1. Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments.

(p) "Allowable Emissions" shall mean the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in 40 CFR 60, 61, and 63;
2. The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or
3. The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

(q) "Enforceable" shall mean all limitations and conditions which are enforceable, including those requirements developed pursuant to 40 CFR 60, 61, and 63, requirements within the State Implementation Plan and any permit requirements established pursuant to chapters 14, 15, or 16 of these regulations.

(r) "Secondary Emissions" shall mean emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major

modification itself. For the purpose of this rule, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

1. Emissions from ships or trains coming to or from the new or modified stationary source; and

2. Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(s) "Innovative Control Technology" shall mean any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

(t) "Fugitive Emissions" shall mean those emissions which could not reasonably pass through a stack, chimney, vent, roof monitor, or other functionally equivalent opening.

(u) "Actual Emissions" shall mean the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subparagraphs (u)1. through (u)3. below, except that this definition shall not apply for establishing a PAL under paragraph (23) of this rule. Instead, subparagraphs (2)(nn) and (2)(uu) of this rule shall apply for this purpose.

1. In general, actual emissions as of any given date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24- month period which precedes the given date and which is representative of normal source operation. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

2. The Director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

3. For any emissions unit which has not begun normal operations on the given date as determined in subparagraph (u)1., actual emissions shall equal the potential to emit of the unit on that date.

(v) "Complete" shall mean, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

(w) "Significant" shall mean, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

<u>Pollutant</u>	<b>Emissions Rate (tons per year)</b>
Carbon monoxide.....	100
Nitrogen oxides .....	40
Sulfur dioxide .....	40
Particulate matter .....	25
PM <sub>10</sub> .....	15
PM <sub>2.5</sub> .....	10 (of direct PM <sub>2.5</sub> ) 40 (of SO <sub>2</sub> or NO <sub>x</sub> )
Ozone .....	40 (of VOC or NO <sub>x</sub> )
Lead .....	0.6
Fluorides (excluding HF) .....	3
Sulfuric acid mist .....	7
Hydrogen sulfide (H <sub>2</sub> S) .....	10
Total reduced sulfur (including H <sub>2</sub> S).....	10
Reduced sulfur compounds (including H <sub>2</sub> S).....	10
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans) .....	3.5 x 10 <sup>-6</sup>
Municipal waste combustor metals (measured as particulate matter) .....	15
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride) .....	40
Municipal solid waste landfill emissions (measured as nonmethane organic compounds) .....	50
Greenhouse gases (GHGs) CO <sub>2</sub> e .....	75,000

1. Significant means, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that paragraph (2)(w) of this rule does not list: 100 TPY.

2. Notwithstanding subparagraph (w) above, significant shall mean any emissions rate or any net emissions increase, excluding GHGs, associated with a major stationary source or major modification which would construct within ten (10) kilometers of a Class I area and have an impact on such area equal to or greater than one (1) microgram per cubic meter (24-hour average).

3. For GHGs, a source or modification would not be significant unless it results in:

(i) An emissions increase and a net emissions increase in GHGs on a total mass basis, and

(ii) A significant emissions increase and a significant net emissions increase in GHGs on a CO<sub>2</sub>e basis.

(x) "Federal Land Manager" shall mean, with respect to any lands in the United States, the Secretary of the Department with authority over such lands.

(y) "High Terrain" shall mean any area having an elevation 900 feet or more above the base of the stack of a source.

(z) "Low Terrain" shall mean any area other than high terrain.

(aa) "Indian Governing Body" shall mean the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

(bb) "Indian Reservation" shall mean any Federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(cc) "Adverse Impact on Visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

(dd) "Visibility Impairment" means any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions.

(ee) "Natural Conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(ff) "Environmentally Beneficial Activity" shall mean:

1. Any activity or project undertaken at an existing emissions unit which, as its primary purpose, reduces emissions of air pollutants from such unit, and is limited to the installation or modification of any of the following:

(i) Conventional or advanced flue gas desulfurization, or sorbent injection for SO<sub>2</sub>;

(ii) Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for particulate matter or other pollutants;

(iii) Flue gas recirculation, low-NO<sub>x</sub> burners, selective non-catalytic reduction or selective catalytic reduction for NO<sub>x</sub>;

(iv) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, flares, carbon adsorbers, or combustion devices installed or modified to comply with hazardous emission standards for volatile organic compounds or hazardous air pollutants;

(v) Activities or projects undertaken to accommodate switching to an inherently less polluting fuel, including but not limited to natural gas or coal reburning, or the cofiring of natural gas and other inherently less polluting fuels, for the purpose of controlling emissions, and including any activity that is necessary to accommodate switching to an inherently less polluting fuel;

(vi) Pollution prevention projects which the Director determines to be environmentally beneficial.

(vii) Installation or modification of a technology other than those listed in subparagraphs (ff)1.(i) through (v), for the purposes set forth in subparagraph (ff)1., which has demonstrated an effectiveness at reducing emissions and is determined by the Director to be environmentally beneficial.

2. Environmentally beneficial projects do not include:

(i) The replacement of an existing emissions unit with a newer or different unit;

(ii) Reconstruction of an existing emissions unit;

(iii) Pollution prevention projects which result in an increased risk from the release of hazardous air pollutants;

(iv) Any project which would result in the increased production of an existing emissions unit.

(v) Any project which reduces emissions solely by transferring them to or from another media.

(vi) Any project which would cause an exceedance of an existing enforceable emissions limitation which was established to avoid applicability of the requirements of this rule.

(gg) "Pollution Prevention Projects" shall mean any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. It does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(hh) "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion

stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(ii) "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(jj) "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(kk) "Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

1. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(ll) Reserved.

(mm) "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in subparagraph (2)(w) of this rule) for that pollutant.

(nn) "Projected actual emissions" means

1. The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (consecutive 12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in

a significant emissions increase or a significant net emissions increase at the major stationary source.

2. In determining the projected actual emissions under subparagraph (2)(nn)1. of this rule (before beginning actual construction), the owner or operator of the major stationary source:

(i) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under these regulations; and

(ii) Shall include fugitive emissions to the extent quantifiable and emissions associated with startups and shutdowns; and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under subparagraph (2)(uu) of this rule and that are not resulting from the particular project, including any increased utilization due to product demand growth; or

(iv) In lieu of using the method set out in subparagraphs (2)(nn)2.(i) through (iii), may elect to use the emissions unit's potential to emit, in tons per year, as defined under subparagraph (2)(d) of this rule.

(oo) Reserved.

(pp) "Prevention of Significant Deterioration (PSD) program" means the preconstruction permit program in this rule. Any permit issued under this program is a major NSR permit.

(qq) "Continuous emissions monitoring system (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements of this rule, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(rr) "Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(ss) "Continuous parameter monitoring system (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements of this rule, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other

information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and to record average operational parameter value(s) on a continuous basis.

(tt) "Continuous emissions rate monitoring system (CERMS)" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(uu) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with subparagraphs (2)(uu)1. through 4. of this rule.

1. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Director may allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups and shutdowns.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subparagraph (2)(uu)1.(ii) of this rule.

2. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Department for a permit required under this rule, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups and shutdowns.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR part 63, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR § 51.165(a)(3)(ii)(G).

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subparagraphs (2)(uu)2.(ii) and (iii) of this rule.

3. For a new emissions unit, as defined in subparagraph (2)(g)1. of this rule, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero. During the first two years from the date which the emissions unit commenced operation, the baseline actual emissions shall equal the potential to emit for the unit. Thereafter, the unit will be considered an existing emissions unit and the baseline actual emissions will be determined in accordance with subparagraph (2)(uu)1. for an electric steam generating unit or subparagraph (2)(uu)2. for other emissions units.

4. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subparagraph (2)(uu)1. of this rule, for other existing emissions units in accordance with the procedures contained in subparagraph (2)(uu)2. of this rule, and for a new emissions unit in accordance with the procedures contained in subparagraph (2)(uu)3. of this rule.

(vv) Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric

generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(ww) "Regulated NSR pollutant", for purposes of this rule, means the following:

1. Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator of EPA (e.g., volatile organic compounds and NO<sub>x</sub> are precursors for ozone);

2. Any pollutant that is subject to any standard promulgated under section 111 of the Clean Air Act;

3. Any Class I or II substance subject to a standard promulgated under or established by title VI of the Clean Air Act; or

4. Any pollutant that otherwise is subject to regulation under the Clean Air Act; except that any or all hazardous air pollutants either listed in section 112 of the Clean Air Act, including compounds listed in 40 CFR Part 68 pursuant to Section 112(r) of the Clean Air Act, or added to the list pursuant to section 112(b)(2) of the Clean Air Act, which have not been delisted pursuant to section 112(b)(3) of the Clean Air Act, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Clean Air Act.

5. PM<sub>2.5</sub> and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. Such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub>. Applicability determinations made prior to January 1, 2011 without accounting for condensable particulate matter shall not be considered invalid.

(xx) Reserved.

(yy) "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

(zz) Greenhouse gases (GHGs) means the aggregate of: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(aaa) CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e) shall represent the amount of GHGs emitted as computed by the following:

1. Multiplying the mass amount of emissions (TPY) for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential as listed in Appendix I.

2. Sum the resultant value determined in subparagraph (aaa)1. for each gas to calculate the TPY of CO<sub>2</sub>e.

(bbb) Replacement unit means an emissions unit for which all the criteria listed in subparagraphs (2)(bbb)1. through 4. of this section are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced. A replacement unit is subject to all permitting requirements for modifications under this rule.

1. The emissions unit is a reconstructed unit within the meaning of 40 CFR §60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

2. The emissions unit is identical to or functionally equivalent to the replaced emissions unit. A functionally equivalent unit would be a unit that serves the same purpose as the replaced unit. The Director shall be the determiner of whether a unit is functionally equivalent to the replaced unit.

3. The replacement does not alter the basic design parameters of the process unit. Basic design parameters shall include, but not be limited to, maximum hourly heat input, maximum hourly fuel utilization, or maximum hourly raw material feed, as appropriate. Basic design parameters of a replaced unit shall also include all source specific emission limits and/or monitoring requirements. The Director shall be the determiner of whether the basic design parameters of the replaced unit are altered.

4. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(3) Ambient Air Increments. In areas designated as Class I, II or III, increases in pollutant concentration over the baseline shall be limited to the following:

Area	Pollutant	Maximum Allowable Increase (micrograms per cubic meter)
Class I	PM <sub>10</sub> :	Annual arithmetic mean .....4
		24-hour maximum .....8
	PM <sub>2.5</sub>	Annual arithmetic mean .....1
		24-hour maximum .....2
	Sulfur dioxide:	Annual arithmetic mean .....2
		24-hour maximum .....5

Area	Pollutant	Maximum Allowable Increase (micrograms per cubic meter)
		3-hour maximum ..... 25
	Nitrogen dioxide:	Annual arithmetic mean ..... 2.5
<b>Class II</b>	PM <sub>10</sub> :	Annual arithmetic mean ..... 17
		24-hour maximum ..... 30
	PM <sub>2.5</sub>	Annual arithmetic mean ..... 4
		24-hour maximum ..... 9
	Sulfur dioxide:	Annual arithmetic mean ..... 20
		24-hour maximum ..... 91
		3-hour maximum ..... 512
	Nitrogen dioxide:	Annual arithmetic mean ..... 25
<b>Class III</b>	PM <sub>10</sub> :	Annual arithmetic mean ..... 34
		24-hour maximum ..... 60
	PM <sub>2.5</sub>	Annual arithmetic mean ..... 8
		24-hour maximum ..... 18
	Sulfur dioxide:	Annual arithmetic mean ..... 40
		24-hour maximum ..... 182
		3-hour maximum ..... 700
	Nitrogen dioxide:	Annual arithmetic mean ..... 50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

(4) Ambient Air Ceilings. No concentration of a pollutant shall exceed:

(a) The concentration permitted under the National Secondary Ambient Air Quality Standard, or

(b) The concentration permitted under the National Primary Ambient Air Quality Standard, whichever concentration is lowest for the pollutant for a period of exposure.

(5) Area Classifications.

(a) The following area, which was in existence on August 7, 1977, shall be a Class I area and may not be redesignated:

1. The Sipsey Wilderness Area, located in Franklin, Winston, and Lawrence counties, Alabama.

(b) Any other area is initially designated Class II:

(6) Exclusions from Increment Consumption.

(a) The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

1. Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

2. Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

3. Concentrations of PM<sub>10</sub> attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

4. The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

5. Concentrations attributable to the temporary increase in emissions of sulfur dioxide, PM<sub>10</sub>, or nitrogen oxides from stationary sources which are affected by plan revisions approved by the EPA as being exempt from increment consumption.

(b) No exclusion of such concentrations shall apply for more than five (5) years after the effective date of the order to which subparagraph (a)1. of this paragraph or the plan to which subparagraph (a)2. of this paragraph refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply for more than five (5) years after the later of such effective dates.

(7) Reserved.

(8) Review of Major Stationary Sources and Major Modification - Source Applicability and Exemptions.

(a) No major stationary source or major modification shall begin actual construction unless, as a minimum, requirements contained in paragraphs (9) through (17) of this rule have been met.

(b) The requirements contained in paragraphs (9) through (17) shall apply to any major stationary source and any major modification with respect to each regulated NSR pollutant that it would emit, except as this rule would otherwise allow.

(c) The requirements contained in paragraphs (9) through (17) apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassified under Section 107(d)(1)(A)(ii) or (iii) of the CAA.

(d) The requirements contained in paragraphs (9) through (17) shall not apply to a major stationary source or major modification, if:

1. Reserved.

2. Reserved.

3. Reserved.

4. Reserved.

5. Reserved.

6. The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution; or

7. The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification, and the source does not belong to any of the following categories:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric or nitric acid plants;

- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the CAA; or

8. The source is a portable stationary source which has previously received a permit under this rule; and

(i) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(ii) The emissions from the source would not exceed its allowable emissions; and

(iii) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(iv) Reasonable notice is given to the Director prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Director not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the Director.

(e) The requirements of paragraphs (9) through (17) of this rule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the CAA.

(f) The requirements of paragraphs (10), (12), and (14) of this rule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the allowable emissions of that pollutant from the source or the net emissions increase of that pollutant from the modification:

1. Would impact no Class I area and no area where an applicable increment is known to be violated, and
2. Would be temporary.

(g) The requirements of paragraphs (10), (12), and (14) of this rule as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT would be less than 50 tons per year.

(h) The Director may exempt a stationary source or modification from the requirements of paragraph (12) of this rule with respect to monitoring for a particular pollutant if:

1. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts which are less than the following amounts:

Carbon monoxide .....	575 $\mu\text{g}/\text{m}^3$ , 8-hour average;
Nitrogen dioxide .....	14 $\mu\text{g}/\text{m}^3$ , annual average;
PM <sub>10</sub> .....	10 $\mu\text{g}/\text{m}^3$ , 24-hour average;
PM <sub>2.5</sub>	4 $\mu\text{g}/\text{m}^3$ , 24-hour average;
Sulfur dioxide.....	13 $\mu\text{g}/\text{m}^3$ , 24-hour average;
Ozone; <sup>1</sup>	
Lead.....	0.1 $\mu\text{g}/\text{m}^3$ , 3-month average;
Fluorides.....	0.25 $\mu\text{g}/\text{m}^3$ , 24-hour average;
Total reduced sulfur .....	10 $\mu\text{g}/\text{m}^3$ , 1-hour average;
Hydrogen sulfide .....	0.2 $\mu\text{g}/\text{m}^3$ , 1-hour average;

or

2. The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subparagraph (h)1. of this paragraph, or the pollutant is not listed in subparagraph (h)1. of this paragraph; or

3. The owner or operator of the stationary source or modification submits an application under this rule that the Director determines is complete, except with respect to the requirements for monitoring PM<sub>10</sub> in paragraph (12) of this rule, on or before June 1, 1988. If a complete permit application is received after June 1, 1988, but not later than December 1, 1988, the requirements for PM<sub>10</sub> monitoring under paragraph (12) of this rule apply in that data shall have been gathered over at least the period from February 1, 1988 to the date the complete application is received, except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months) then the shorter period of data gathering will suffice to meet the requirements of paragraph (12) of this rule.

(i) Reserved.

(j) Reserved.

(k) At the discretion of the Director, the requirements for air quality monitoring of PM<sub>10</sub> in subparagraphs (12)(a)1. through 4. of this rule may not apply to a particular source or modification when the owner or operator of the source or modification submits an application for a permit under this rule on or before June 1, 1988 and the Director subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring PM<sub>10</sub> in subparagraphs (12)(a)1. through 4.

(l) The requirements for air quality monitoring of PM<sub>10</sub> in subparagraphs (12)(a)2. and 4. and subparagraph (12)(c) shall apply to a particular source or modification if the owner or operator of the source of modification submits an

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<sup>1</sup>No de minimus air quality level is provided for ozone. However, any net increase of 100 tons per year or more of VOC or NO<sub>x</sub> subject to rule 335-3-14-.04 would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

application for permit under this rule after June 1, 1988 and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988 to the date the application becomes otherwise complete in accordance with the provisions set forth under subparagraph (12)(a)8., except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that subparagraph (12)(a)3. requires shall have been gathered over that shorter period.

(m) Any project which is an environmentally beneficial project as defined in subparagraph (2)(ff) of this rule shall not be considered a major modification as defined in paragraph (2) of this rule and is exempt from all provisions of this rule except paragraphs (10), (11), (13), (15), and (16).

(n) The requirements of paragraphs (10), (11), (12), (14), and (15) of this Rule shall not apply with respect to GHGs for any major stationary source or major modification.

(9) Control Technology Review.

(a) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable limitation standard and standard of performance under 40 CFR 60 and 61.

(b) A new major stationary source shall apply BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

(c) A major modification shall apply BACT for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(d) For phased construction projects, the determination of BACT shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of BACT for the source.

(10) Source Impact Analysis.

(a) Required Demonstration. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

1. Any National Ambient Air Quality Standard in any air quality control region; or

2. Any applicable maximum allowable increase over the baseline concentration in any area.

(b) Significant Impact Levels. The demonstration required in subparagraph (10)(a) is deemed to have been made if the emissions increase for the new stationary source alone or from the modification alone would cause, in all areas, air quality impacts less than the following amounts:

<b>Pollutant</b>	<b>Averaging Time</b>	<b>Class I Significance Level</b>	<b>Class II Significance Level</b>
SO <sub>2</sub>	3 hour		25 µg/m <sup>3</sup>
	24 hour		5 µg/m <sup>3</sup>
	Annual		1 µg/m <sup>3</sup>
PM <sub>10</sub>	24 hour		5 µg/m <sup>3</sup>
	Annual		1 µg/m <sup>3</sup>
PM <sub>2.5</sub>	24 hour	0.07 µg/m <sup>3</sup>	1.2 µg/m <sup>3</sup>
	Annual	0.06 µg/m <sup>3</sup>	0.3 µg/m <sup>3</sup>
NO <sub>2</sub>	Annual		1 µg/m <sup>3</sup>
CO	1 hour		2,000 µg/m <sup>3</sup>
	8 hour		500 µg/m <sup>3</sup>

(11) Air Quality Models.

(a) All estimates of ambient concentrations required under this rule shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models". (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711)

(12) Air Quality Analysis.

(a) Preapplication Analysis.

1. Any application for a permit under this rule shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(i) For the source, each pollutant that it would have the potential to emit in a significant amount;

(ii) For the modification, each pollutant for which it would result in a significant net emissions increase.

2. With respect to any such pollutant for which no NAAQS exists, the analysis shall contain such air quality monitoring data as the Director determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

3. With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

4. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one (1) year and shall represent the year preceding receipt of the application, except that, if the Director determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year (but not to be less than four (4) months), the data that is required shall have been gathered over at least that shorter period.

5. Reserved.

6. The owner or operator of a proposed stationary source or modification of VOC who satisfies all conditions of rule 335-3-14-.05 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under subparagraph (a) of this paragraph.

7. For any application that becomes complete, except as the requirements of subparagraphs (a)3. and 4. of this paragraph pertaining to PM<sub>10</sub>, after December 1, 1988 and no later than August 1, 1989 the data that subparagraph (a)3. of this paragraph requires shall have been gathered over at least the period from August 1, 1988 to the date the application becomes otherwise complete, except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that subparagraph (a)3. of this paragraph requires shall have been gathered over that shorter period.

8. With respect to any requirements for air quality monitoring of PM<sub>10</sub> under subparagraphs (8)(k) and (l) of this rule, the owner or operator of the source or modification shall use a monitoring method approved by the Director and shall estimate the ambient concentrations of PM<sub>10</sub> using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Director.

(b) Post-construction Monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the Director determines is necessary to determine the impact for said source or modification may have, or is having, on air quality in any area.

(c) Operations of Monitoring Stations. The owner or operator of a major stationary source or major modification shall meet Federal monitoring quality assurance requirements during the operation of monitoring stations for purposes of satisfying this paragraph.

(d) Visibility Monitoring. The Director may require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the Director deems necessary and appropriate.

(13) Source Information. The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or to make any determination required under this rule.

(a) With respect to a source or modification to which rules 335-3-14-.04(9), 335-3-14-.04(10), 335-3-14-.04(12), and 335-3-14-.04(14) apply, such information shall include:

1. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;
2. A detailed schedule for construction of the source or modification;
3. A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates and any other information necessary to determine that BACT would be applied.

(b) Upon request of the Director, the owner or operator shall also provide information on:

1. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and
2. The air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

(14) Additional Impact Analyses.

(a) The owner or operator shall provide an analysis of the impact on visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not

provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(b) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

(15) Sources Impacting Federal Class I Areas - Additional Requirements.

(a) Notice to Federal Land Managers and to EPA. The Director shall provide notice of any permit application for a proposed major stationary source or major modification the emissions from which would affect a Class I area to EPA, the Federal Land Manager and the Federal official charged with direct responsibility for management of any lands within any such area. The Director shall provide such notice promptly after receiving the application. The Director shall also provide EPA, the Federal Land Manager and such Federal officials with notice of every action related to the consideration of such permit.

(b) The Director shall notify all affected Federal Land Managers within 30 days of receipt of an advance notification of any permit application for a proposed major stationary source or modification, the emissions from which may affect a Class I Area. The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application. At least 30 days prior to the publication of the notice for public comment on the application, the Director shall provide the Federal Land Manager with a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility.

(c) Visibility analysis. The Director shall consider any analysis performed by the Federal Land Manager concerning visibility impairment if the analysis is received within 30 days of being provided the permit application information and analysis required by subparagraph (b) of this paragraph above. Where the Director finds that such an analysis does not demonstrate to the satisfaction of the Director that an adverse impact on visibility will result in the Federal Class I area, the Director must, in the notice of public comment on the permit application, either explain his decision or give notice as to where the explanation can be obtained.

(d) Denial - Impact on Air Quality Related Values. The Federal Land Manager of any such lands may demonstrate to the Director that the emissions from a proposed source or modification would have an adverse impact on the air quality related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Director concurs with such demonstration, then he shall not issue the permit.

(e) Class I Variances. The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality

related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and he so certifies, the Director may issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, PM<sub>2.5</sub>, PM<sub>10</sub>, and nitrogen oxides would not exceed the following maximum allowable increases over baseline concentration for such pollutants:

<b>Pollutant</b>	<b>Maximum Allowable Increase (micrograms per cubic meter)</b>
<b>PM<sub>10</sub></b>	Annual arithmetic mean..... 17
	24-hour maximum ..... 30
<b>PM<sub>2.5</sub></b>	Annual arithmetic mean .....4
	24-hour maximum.....9
<b>Sulfur dioxide</b>	Annual arithmetic mean..... 20
	24-hour maximum ..... 91
	3-hour maximum..... 325
<b>Nitrogen dioxide</b>	Annual arithmetic mean..... 25

provided that the applicable requirements of this rule are otherwise met.

(f) Sulfur Dioxide Variance by Governor with Federal Land Manager's Concurrence. The owner or operator of a proposed source or modification which cannot be approved under subparagraph (c) of this paragraph may demonstrate to the Governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of twenty-four (24) hours or less applicable to any Class I area and, in the case of Federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the Director shall issue a permit to such source or modification pursuant to the requirements of paragraph (16) of this rule provided, that the applicable requirements of this rule are otherwise met.

(g) Variance by the Governor with the President's Concurrence. In any case where the Governor recommends a variance in which the Federal Land Manager does not concur, the recommendations of the Governor and Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the Director shall issue a permit pursuant

to the requirements of paragraph (16) of this rule provided, that the applicable requirements of this rule are otherwise met.

(h) Emission Limitations for Presidential or Gubernatorial Variance. In the case of a permit issued pursuant to subparagraphs (f) or (g) of this paragraph, the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, during any annual period:

Period of exposure	Maximum Allowable Increase (micrograms per cubic meter)	
	Terrain areas	
	Low	High
24-hour maximum	36	62
3-hour maximum	130	221

(16) Public Participation.

(a) After receipt of an application for an Air Permit or any addition to such application, the Director shall advise the applicant of any deficiency in the application or in the information submitted. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of this rule, the date on which the Director received all required information.

(b) Within one (1) year after receipt of a complete application, the Director shall make a final determination of the application. This involves performing the following actions in a timely manner:

1. Make a preliminary determination whether construction should be approved, approved with conditions or disapproved.

2. Make available ~~in at least one location in each region in which the proposed source or modification would be constructed~~ on the Department's web site a copy of all materials the applicant submitted, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination.

3. Notify the public, by ~~advertisement in a newspaper of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of~~

~~increment consumption that is expected from the source or modification, and the opportunity for written public comment, as well as comment at a public hearing. Public comments will be accepted for at least 30 days from the date of initial publication.~~ posting on the Department's web site for the duration of the comment period of 30 days, the preliminary determination, the degree of increment consumption that is expected from the source or modification, the opportunity to comment on the proposed permit, how to request and/or attend a public hearing on the proposed permit, a copy of the proposed permit, and information on how to access the administrative record for the proposed permit.

4. Send a copy of the notice of public comment to the applicant, to EPA and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other State or local air pollution control agencies, the chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification.

5. Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

6. Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than ten (10) days after the close of the public comment period, the applicant may, as part of the public record, submit a written response to any comments submitted by the public. The Director shall consider the applicant's response in making a final decision. The Director shall make all comments available for public inspection ~~in the same locations~~ on the same web site where the Director made available preconstruction information relating to the proposed source or modification.

7. Make a final determination whether construction should be approved, approved with conditions or disapproved pursuant to this rule.

8. Notify the applicant in writing of the final determination and make such notification available for public inspection at the same ~~location~~ web site where the Director made available preconstruction information and public comments relating to the source or modification.

(17) Source Obligation.

(a) An Air Permit authorizing construction shall become invalid if construction is not commenced within twenty-four (24) months after receipt of such approval, if construction is discontinued for a period of twenty-four (24) months or more, or if construction is not completed within a reasonable time. The Director may extend the twenty-four (24) month period upon satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction

project; each phase must commence construction within twenty-four (24) months of the projected and approved commencement date.

(b) An Air Permit authorizing construction shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, State or Federal law.

(c) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of paragraphs (9) through (17) of this rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(d) The provisions of this subparagraph (17)(d) apply to projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL), that are not excluded from the definition of physical change or change in the method of operation, where there is not a reasonable possibility that the project is a part of a major modification and may result in a significant emissions increase and the owner or operator elects to use the method specified in subparagraphs (2)(nn)2.(i) through (iii) of this rule for calculating projected actual emissions.

1. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under subparagraph (2)(nn)2.(iii) of this rule and an explanation for why such amount was excluded, and any netting calculations, if applicable.

2. The owner or operator of the source shall make the information required to be documented and maintained pursuant to subparagraph (17)(d) of this rule available for review upon a request for inspection by the Department or the general public.

3. Nothing in this subparagraph shall be construed to exempt the owner or operator of such a unit from obtaining any minor source Air Permit in accordance with the requirements of this chapter.

(e) The provisions of this subparagraph (17)(e) apply to projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification, and that is not excluded from the definition of physical change or change in the method of operation, may result in a significant emissions increase and the owner or operator elects to use the method specified in subparagraphs (2)(nn)2.(i) through (iii) of this rule for calculating projected actual emissions.

1. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under subparagraph (2)(nn)2.(iii) of this rule and an explanation for why such amount was excluded, and any netting calculations, if applicable.

2. Before beginning actual construction, the owner or operator shall provide a copy of the information set out in subparagraph (17)(e)1. of this rule to the Director. Nothing in this subparagraph shall be construed to require the owner or operator of such a unit to obtain any determination from the Director before beginning actual construction; however, nothing in this subparagraph shall be construed to exempt the owner or operator of such a unit from obtaining any minor source Air Permit in accordance with the requirements of this chapter.

3. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subparagraph (17)(e)1.(ii) of this rule; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

4. The owner or operator shall submit a report to the Director within 60 days after the end of each year during which records must be generated under subparagraph (17)(e)3. of this rule. The report shall contain the following:

(i) All information required by subparagraph (17)(e)1. of this rule.

(ii) The name, address and telephone number of the major stationary source;

(iii) The annual emissions as calculated pursuant to subparagraph (17)(e)3. of this rule; and

(iv) Any other information that the owner or operator wishes to include in the report.

5. The owner or operator of the source shall make the information required to be documented and maintained pursuant to subparagraph (17)(e) of this rule available for review upon a request for inspection by the Department.

6. All information submitted to the Department pursuant to the requirements of subparagraph (17)(e) of this rule shall be available for review at the request of any member of the public in accordance with the Department's public records review procedures found in ADEM Admin. Code r. 335-1-1-.06.

(18) Innovative Control Technology.

(a) An owner or operator of a proposed major stationary source or major modification may request the Director in writing no later than the close of the comment period under paragraph (16) of this rule to approve a system of innovative control technology.

(b) The Director shall determine that the source or modification may employ a system of innovative control technology, if:

1. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare or safety in its operation or function;

2. The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under subparagraph (9)(b) of this rule by a date specified by the Director. Such date shall not be later than four (4) years from the time of startup or seven (7) years from permit issuance;

3. The source or modification would meet the requirements of paragraphs (9) and (10) of this rule based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Director;

4. The source or modification would not before the date specified by the Director:

(i) Cause or contribute to a violation of an applicable National Ambient Air Quality Standard; or

(ii) Impact any Class I area; or

(iii) Impact any area where an applicable increment is known to be violated; and

5. The consent of the Governor of any other affected state is secured;

6. All other applicable requirements including those for public participation have been met.

(c) The Director shall withdraw any approval to employ a system of innovative control technology made under this rule, if:

1. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare or safety; or

3. The Director decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare or safety.

(d) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subparagraph (c) of this paragraph, the Director may allow the source or modification up to an additional three (3) years to meet the requirement for the application of BACT through use of a demonstrated system of control.

(19) Permit Rescission.

(a) Any owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under this rule as in effect on July 30, 1987 or any earlier version of this rule, may request that the Director rescind the permit or a particular portion of the permit.

(b) The Director shall grant an application for rescission if the application shows that this rule would not apply to the source or modification.

(c) If the Director rescinds a permit under this rule, the public shall be given adequate notice of the rescission. Publication of an announcement of rescission ~~in a newspaper of general circulation in the affected region~~ on the Department's web site within sixty (60) days of the rescission shall be considered adequate notice.

(20) Reserved.

(21) Reserved.

(22) Reserved.

(23) Actuals PALs. The provisions in subparagraphs (23)(a) through (o) of this rule govern actuals PALs.

(a) Applicability.

1. The Director may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in subparagraphs (23)(a) through (o) of this rule. The term "PAL" shall mean "actuals PAL" throughout paragraph (23) of this rule.

2. Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in subparagraphs (23)(a) through (o) of this rule, and complies with the PAL permit:

- (i) Is not a major modification for the PAL pollutant;
- (ii) Does not have to be approved through the PSD program;

3. A major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(b) Definitions. For the purposes of this rule, the definitions in subparagraphs (23)(b)1. through 11. of this rule apply. When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (2) of this rule or in the Clean Air Act.

1. "Actuals PAL" for a major stationary source means a PAL based on the baseline actual emissions (as defined in subparagraph (2)(uu) of this rule) of all emissions units (as defined in subparagraph (2)(g) of this rule) at the source, that emit or have the potential to emit the PAL pollutant.

2. "Allowable emissions" means "allowable emissions" as defined in subparagraph (2)(p) of this rule, except as this definition is modified according to subparagraphs (23)(b)2.(i) and (ii) of this rule.

(i) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(ii) An emissions unit's potential to emit shall be determined using the definition in subparagraph (2)(d) of this rule, except that the words "or enforceable as a practical matter" should be added after "enforceable."

3. "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in subparagraph (2)(w) of this rule or in the Clean Air Act, whichever is lower.

4. "Major emissions unit" means:

(i) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant, other than GHG as CO<sub>2</sub>e, in an attainment area, or

(ii) Any emissions unit that has the potential to emit 75,000 tons per year of GHG as CO<sub>2</sub>e.

5. "Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with subparagraphs (23)(a) through (o) of this rule.

6. "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

7. "PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

8. "PAL major modification" means, notwithstanding subparagraphs (2)(b) and (2)(c) of this rule (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

9. "PAL permit" means the major NSR permit, the minor NSR permit, or the title V permit issued by the Director that establishes a PAL for a major stationary source.

10. "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

11. "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in subparagraph (2)(w) of this rule or in the Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in subparagraph (23)(b)4. of this rule.

(c) Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Director for approval:

1. A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations, or work practices apply to each unit.

2. Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated

not only with operation of the unit, but also emissions associated with startup and shutdown.

3. The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subparagraph (23)(m)1. of this rule.

(d) General requirements for establishing PALs.

1. The Director is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in subparagraphs (23)(d)1.(i) through (vii) of this rule are met.

(i) The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month total, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(ii) The PAL shall be established in a PAL permit that meets the public participation requirements in subparagraph (23)(e) of this rule.

(iii) The PAL permit shall contain all the requirements of subparagraph (23)(g) of this rule.

(iv) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(v) Each PAL shall regulate emissions of only one pollutant.

(vi) Each PAL shall have a PAL effective period of 10 years.

(vii) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subparagraphs (23)(l) through (n) of this rule for each emissions unit under the PAL through the PAL effective period.

2. At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under rule 335-3-14-.05 of this chapter unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(e) Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with those of this rule and 40 CFR Parts 51.160 and 51.161. This includes the requirement that the Director provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The Director must address all material comments before taking final action on the permit.

(f) Setting the 10-year actuals PAL level. The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in subparagraph (2)(uu) of this rule) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under subparagraph (2)(w) of this rule or under the Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. Emissions from units on which actual construction began after the beginning of the 24-month period must be added to the PAL level in an amount equal to the potential to emit of the unit if the unit began operation less than 24 months prior to the submittal of the PAL application. Baseline actual emissions from units on which actual construction began after the beginning of the 24-month period and commenced operation 24 months or more prior to the submittal of the PAL application must be added to the PAL based upon any 24 month period since the unit commenced operation. The Director shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Director is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO<sub>x</sub> to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(g) Contents of the PAL permit. The PAL permit must contain, at a minimum, the information in subparagraphs (23)(g)1. through 10. of this rule.

1. The PAL pollutant and the applicable source-wide emission limitation in tons per year.

2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).

3. Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with subparagraph (23)(j) of this rule before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Director.

4. A requirement that emission calculations for compliance purposes must include emissions from startups and shutdowns.

5. A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subparagraph (23)(i) of this rule.

6. The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subparagraph (23)(m)1. of this rule.

7. A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under subparagraph (23)(l) of this rule.

8. A requirement to retain the records required under subparagraph (23)(m) of this rule on site. Such records may be retained in an electronic format.

9. A requirement to submit the reports required under subparagraph (23)(n) of this rule by the required deadlines.

10. Any other requirements that the Director deems necessary to implement and enforce the PAL.

(h) PAL effective period and reopening of the PAL permit. The requirements in subparagraphs (23)(h)1. and 2. of this rule apply to actuals PALs.

1. PAL effective period. The Director shall specify a PAL effective period of 10 years.

2. Reopening of the PAL permit.

(i) During the PAL effective period, the Director must reopen the PAL permit to:

(I) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(II) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under rule 335-3-14-.05 of this chapter; and

(III) Revise the PAL to reflect an increase in the PAL as provided under subparagraph (23)(k) of this rule.

(ii) The Director shall have discretion to reopen the PAL permit for the following:

(I) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(II) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and is required by these regulations; and

(III) Reduce the PAL if the Director determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on a published air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(iii) Except for the permit reopening in subparagraph (23)(h)2.(i)(I) of this rule for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subparagraph (23)(e) of this rule.

(i) Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in subparagraph (23)(j) of this rule shall expire at the end of the PAL effective period, and the requirements in subparagraphs (23)(i)1. through 5. of this rule shall apply.

1. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in subparagraphs (23)(i)1.(i) and (ii) of this rule.

(i) Within the time frame specified for PAL renewals in subparagraph (23)(j)2. of this rule, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Director) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subparagraph (23)(j)5. of this rule, such distribution shall be made as if the PAL had been adjusted.

(ii) The Director shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Director determines is appropriate.

2. Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Director may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

3. Until the Director issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subparagraph (23)(i)1.(ii) of this rule, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

4. Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in subparagraph (2)(b) of this rule.

5. The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, synthetic minor limit, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period.

(j) Renewal of a PAL.

1. The Director shall follow the procedures specified in subparagraph (23)(e) of this rule in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Director.

2. Application deadline. A major stationary source owner or operator shall submit a timely application to the Director to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

3. Application requirements. The application to renew a PAL permit shall contain the information required in subparagraphs (23)(j)3.(i) through (iv) of this rule.

(i) The information required in subparagraphs (23)(c)1. through 3. of this rule.

(ii) A proposed PAL level.

(iii) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(iv) Any other information the owner or operator wishes the Director to consider in determining the appropriate level for renewing the PAL.

4. PAL adjustment. In determining whether and how to adjust the PAL, the Director shall consider the options outlined in subparagraphs (23)(j)4.(i) and (ii) of this rule. However, in no case may any such adjustment fail to comply with subparagraph (23)(j)4.(iii) of this rule.

(i) If the emissions level calculated in accordance with subparagraph (23)(f) of this rule is equal to or greater than 80 percent of the PAL level, the Director

may renew the PAL at the same level without considering the factors set forth in subparagraph (23)(j)4.(ii) of this rule; or

(ii) The Director may set the PAL at a level that he or she determines to be more representative of the source's baseline actual emissions, or that he or she determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Director in his or her written rationale.

(iii) Notwithstanding subparagraphs (23)(j)4.(i) and (ii) of this rule:

(I) If the potential to emit of the major stationary source is less than the PAL, the Director shall adjust the PAL to a level no greater than the potential to emit of the source; and

(II) The Director shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subparagraph (23)(k) of this rule (increasing a PAL).

5. If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Director has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

(k) Increasing a PAL during the PAL effective period.

1. The Director may increase a PAL emission limitation only if the major stationary source complies with the provisions in subparagraphs (23)(k)1.(i) through(iv) of this rule.

(i) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(ii) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(iii) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in subparagraph (23)(k)1.(i) of this rule, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

(iv) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

2. The Director shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subparagraph (23)(k)1.(ii)), plus the sum of the baseline actual emissions of the small emissions units.

3. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subparagraph (23)(e) of this rule.

(l) Monitoring requirements for PALs.

1. General requirements.

(i) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(ii) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subparagraphs (23)(l)2.(i) through (iv) of this rule and must be approved by the Director.

(iii) Notwithstanding subparagraph (23)(l)1.(ii) of this rule, an alternative monitoring approach that meets subparagraph (23)(l)1.(i) of this rule may be employed if approved by the Director.

(iv) Failure to use a monitoring system that meets the requirements of this rule renders the PAL invalid.

2. Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subparagraphs (23)(l)3. through 9. of this rule:

- (i) Mass balance calculations for activities using coatings or solvents;
- (ii) CEMS;
- (iii) CPMS or PEMS; and
- (iv) Emission factors.

3. Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(i) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(ii) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(iii) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Director determines there is site-specific data or a site-specific monitoring program to support another content within the range.

4. CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B; and

(ii) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

5. CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(ii) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Director, while the emissions unit is operating.

6. Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(i) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(ii) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(iii) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Director determines that testing is not required.

7. A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

8. Notwithstanding the requirements in subparagraphs (23)(l)3. through 7. of this rule, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Director shall, at the time of permit issuance:

(i) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(ii) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

9. Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Director. Such testing must occur at least once every 5 years after issuance of the PAL.

(m) Recordkeeping requirements.

1. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph (23) of this rule and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

2. The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

(i) A copy of the PAL permit application and any applications for revisions to the PAL; and

(ii) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(n) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Director in accordance with the applicable title V operating permit. The reports shall meet the requirements in subparagraphs (23)(n)1. through 3. of this rule.

1. Semi-annual report. This report shall contain the information required in subparagraphs (23)(n)1.(i) through (vii) of this rule.

(i) The identification of owner and operator and the permit number.

(ii) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subparagraph (23)(m)1. of this rule.

(iii) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

(iv) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

(v) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(vi) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by (23)(l)7 of this rule.

(vii) A signed statement by a responsible official (as defined in chapter 16 of these Regulations) certifying the truth, accuracy, and completeness of the information provided in the report.

2. Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 335-3-16-.05(c)3.(ii) shall satisfy this reporting requirement. The reports shall contain the following information:

(i) The identification of owner and operator and the permit number;

(ii) The PAL requirement that experienced the deviation or that was exceeded;

(iii) Emissions resulting from the deviation or the exceedance; and

(iv) A signed statement by a responsible official (as defined in chapter 16 of these Regulations) certifying the truth, accuracy, and completeness of the information provided in the report.

3. Re-validation results. The owner or operator shall submit to the Director the results of any re-validation test or method within 3 months after completion of such test or method.

(o) Transition requirements.

1. The Director may not issue a PAL that does not comply with the requirements in subparagraphs (23)(a) through (o) of this rule after the effective date of this rule.

2. The Director may supersede any PAL that was established prior to the effective date of this rule with a PAL that complies with the requirements of subparagraphs (23)(a) through (o) of this rule.

(24) If any provision of this rule, or the application of such provision to any person or circumstance, is held invalid, the remainder of this rule, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**Author:** Marilyn G. Elliott; Ronald W. Gore.

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**335-3-14-.05 Air Permits Authorizing Construction in or near Non-Attainment Areas**

(1) Applicability.

(a) The requirements of this Rule apply to the construction of any new major stationary source (as defined in subparagraph (2)(a) of this Rule) or any project at an existing major stationary source in or near an area designated as nonattainment under sections 107(d) of the Clean Air Act for which the source or modification is major for the pollutant or its precursors for which the area is designated as nonattainment. If the source is not major for the pollutant or its precursors for which the area is designated as nonattainment, it shall comply with the requirements of 335-3-14-.04 which would be applicable if the area were classified as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Clean Air Act.

(b) The requirements of paragraphs (3) through (17) of this Rule apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this Rule otherwise provides.

(c) No new major stationary source or major modification to which the requirements of paragraphs (3) through (17)(c) of this Rule apply shall begin construction without a permit that states that the major stationary source or major modification will meet those requirements.

(d) Except as otherwise provided in subparagraph (1)(j) of this Rule, and consistent with the definition of major modification contained in subparagraph (2)(b) of this Rule, a project is a major modification for a regulated NSR pollutant only if it causes two types of emissions increases – a significant emissions increase (as defined in subparagraph (2)(mm) of this Rule), and a significant net emissions increase (as defined in subparagraphs (2)(c) and (2)(w) of this Rule).

(e) Before beginning actual construction, the procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being modified, according to subparagraphs (1)(f) through (i) of this Rule. The procedure for calculating whether a significant net emissions increase will occur at the major stationary source is contained in the definition in subparagraphs (2)(c) and (2)(w) of this Rule. Regardless of any such preconstruction projections, a major modification can result only if the project causes a significant emissions increase and a significant net emissions increase.

(f) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference(s) between the projected actual emissions (as defined in subparagraph (2)(nn) of this Rule) and the baseline actual emissions (as defined in subparagraphs (2)(uu)1. and 2. of this Rule), for each existing emissions unit, equals or exceeds the significant rate for that pollutant (as defined in subparagraph (2)(w) of this Rule).

(g) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in subparagraph (2)(d) of this Rule) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in subparagraph (2)(uu)3. of this Rule) of these units before the project equals or exceeds the significant rate for that pollutant (as defined in subparagraph (2)(w) of this Rule).

(h) Actual-to-potential test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference(s) between the potential to emit (as defined in subparagraph (2)(d) of this Rule) and the actual emissions (as defined in subparagraph (2)(u) of this Rule), for each existing emissions unit, equals or exceeds the significant rate for that pollutant (as defined in subparagraph (2)(w) of this Rule).

(i) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subparagraphs (1)(f) through (h) of this Rule as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant rate for that pollutant (as defined in subparagraph (2)(w) of this Rule).

(j) Any major stationary source subject to a plantwide applicability limit (PAL), as defined in subparagraph (23)(b)5. of this Rule, for a regulated NSR pollutant shall comply with the requirements under paragraph (23) of this Rule.

(k) The fugitive emissions of a stationary source shall not be included in determining for any purposes of this Rule whether it is a major stationary source or major modification unless the source belongs to one of the following categories of stationary sources:

- Coal cleaning plants (with Thermal dryers);
- Kraft pulp mills;
- Portland cement plants;
- Primary zinc smelters;
- Iron and steel mills;
- Primary aluminum ore reduction plants;
- Primary copper smelters;
- Municipal incinerators capable of charging more than 250 tons of refuse per day;

- Hydrofluoric, sulfuric, or nitric acid plants;
- Petroleum refineries;
- Lime plants;
- Phosphate rock processing plants;
- Coke oven batteries;
- Sulfur recovery plants;
- Carbon black plants (furnace process);
- Primary lead smelters;
- Fuel conversion plants;
- Sintering plants;
- Secondary metal production plants;
- Chemical processing plants (excluding ethanol production facilities that produce ethanol by natural fermentation);
- Fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour of heat input;
- Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- Taconite ore processing plants;
- Glass fiber processing plants;
- Charcoal production plants;
- Fossil fuel fired steam electric plants of more than 250 British thermal units per hour heat input; and
- Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Clean Air Act.

(2) Definitions. For the purposes of this Rule only, the following terms will have meanings ascribed in this paragraph:

(a) "Major Stationary Source" shall mean:

1. Any stationary source [see subparagraph (e) of this paragraph] that emits, or has the potential to emit [see subparagraph (d) of this paragraph] air pollutants at or above one or more of the following applicable thresholds:

Nonattainment Area Classification	NO <sub>x</sub>	VOC	CO	SO <sub>2</sub>	PM <sub>10</sub>	PM <sub>2.5</sub>
	<i>All values expressed in tons per year (TPY)</i>					
Ozone: Marginal and Moderate	100	100				
Ozone: Serious	50	50				
Ozone: Severe	25	25				
Ozone: Extreme	10	10				
CO (Other than Serious)			100			
CO: Serious, where stationary sources do <u>not</u> contribute significantly to CO levels			100			
CO: Serious, where stationary sources do contribute significantly to CO levels			50			
PM <sub>10</sub> (Other than Serious)					100	
PM <sub>10</sub> : Serious					70	
PM <sub>2.5</sub>	100			100		100
SO <sub>2</sub>				100		
NO <sub>x</sub>	100					

2. Any physical change that would occur at a stationary source not otherwise qualifying under this Rule as a major stationary source, if the changes would constitute a major stationary source by itself.

3. A stationary source that is considered major for VOC or NO<sub>x</sub> shall be considered major for ozone.

(b) "Major Modification" shall mean any physical change in or change in the method of operation of a major stationary source that would result in a significant [see subparagraph (w) of this paragraph] net emissions increase [see subparagraph (c) of this paragraph] of any regulated NSR pollutant.

1. Any net emissions increase that is significant for VOC or NO<sub>x</sub> shall be considered significant for ozone.

2. A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (P.L. 93-319, 15 U.S.C. 791 note) or any superseding legislation, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act (June 10, 1920, P.L. 280, 16 U.S.C. 791a);

(iii) Use of an alternative fuel by reason of an order or rule under Section 125 of the CAA;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(I) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any enforceable permit condition which was established after December 21, 1976.

(II) The source is approved to use under any permit issued under the Federal Prevention of Significant Deterioration ("PSD") regulations (40 CFR 52.21) or under regulations of this Chapter;

(vi) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any enforceable permit condition which was established after December 21, 1976.

(vii) Any change in ownership at a stationary source.

(viii) Reserved.

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

3. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph (23) of this Rule for a PAL for that pollutant. Instead, the definition at subparagraph (23)(b)8. of this Rule shall apply.

(c) "Net Emissions Increase" shall mean with respect to any regulated NSR pollutant, the amount by which the sum of the following exceeds zero:

1. Any increase in emissions as calculated pursuant to subparagraphs (1)(e) through (i) of this Rule from a particular physical change or change in method of operation at a stationary source; and

2. Any other increases and decreases in actual emissions at a major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subparagraph shall be determined as provided in subparagraph (2)(uu) of this Rule, except that subparagraphs (2)(uu)1.(iii) and (2)(uu)2.(iv) of this Rule shall not apply.

(i) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(I) The date up to five (5) years before construction [see subparagraph (h) of this paragraph] on the particular change commences [see subparagraph (i) of this paragraph]; and

(II) The date that the increase from the particular change occurs.

(ii) An increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit for the source under this Rule, which is in effect when the increase in actual emissions from the particular change occurs.

(iii) With respect to particulate matter, only  $PM_{10}$  and  $PM_{2.5}$  emissions can be used to evaluate the net emissions increase for  $PM_{10}$ . Only  $PM_{2.5}$  emissions can be used to evaluate the net emissions increase for  $PM_{2.5}$ .

(iv) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(v) A decrease in actual emissions is creditable only to the extent that:

(I) The old level of actual emissions or the old level of allowable emissions [see subparagraph (p) of this paragraph], whichever is lower, exceeds the new level of actual emissions;

(II) It is enforceable [see subparagraph (q) of this paragraph], at and after the time that actual construction on the particular change begins; and

(III) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(IV) The Director has not relied upon the decrease in demonstrating attainment or reasonable further progress.

(vi) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

3. Fugitive emission increases and decreases are not creditable for those emissions units located at a facility whose primary activity is not listed in 335-3-14-.05(1)(k) and for which the unit, itself, is not part of a listed source category in 335-3-14-.05(1)(k).

(d) "Potential to Emit" shall mean the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions as defined in subparagraph

(2)(r) of this Rule do not count in determining the potential to emit of a stationary source.

(e) "Stationary Source" shall mean any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(f) "Building, Structure, Facility, or Installation" shall mean all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., all have the same two digit code) as described in the Standard Industrial Classification Manual.

(g) "Emissions Unit" shall mean any part of a stationary source which emits or would have the potential to emit any regulated NSR pollutant including an electric utility steam generating unit as defined in subparagraph (2)(vv) of this Rule. For purposes of this Rule, there are two types of emissions units as described in subparagraphs (2)(g)1. and 2. of this Rule.

1. A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

2. An existing emissions unit is any emissions unit that does not meet the requirements in subparagraph (2)(g)1. of this Rule.

(h) "Construction" shall mean any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in emissions.

(i) "Commence" as applied to construction of a major stationary source or major modification shall mean that the owner or operator has all necessary preconstruction approvals or permits [see subparagraph (2)(j) of this Rule] and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction [see subparagraph (2)(k) of this Rule] of the source, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(j) "Necessary Preconstruction Approvals or Permits" shall mean those permits or approvals required under Alabama air quality control laws and regulations which are part of the State Implementation Plan.

(k) "Begin Actual Construction" shall mean, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework, and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(l) "Best Available Control Technology (BACT)" shall mean an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 or 61. If the Director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means which achieve equivalent results.

(m) "Lowest achievable emission rate" (LAER) shall mean, for any source, the more stringent rate of emissions based on the following:

1. The most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

2. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term allow a new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(n) Reserved.

(o) Reserved.

(p) "Allowable Emissions" shall mean the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the

source is subject to enforceable limits which restrict the operating rate, the hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in 40 CFR Parts 60, 61, or 63;
2. The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or
3. The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

(q) "Enforceable" shall mean all limitations and conditions which are enforceable, including those requirements developed pursuant to 40 CFR Parts 60, 61, and 63, requirements within the State Implementation Plan, and any permit requirements established pursuant to Chapters 14, 15, or 16 of these regulations.

(r) "Secondary Emissions" shall mean emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this Rule, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(s) "Innovative Control Technology" shall mean any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

(t) "Fugitive Emissions" shall mean those emissions which could not reasonably pass through a stack, chimney, vent, roof monitor, or other functionally equivalent opening.

(u) "Actual Emissions" shall mean the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subparagraphs (u)1. through (u)3. below, except that this definition shall not apply for establishing a PAL under paragraph (23) of this Rule. Instead, subparagraphs (2)(nn) and (2)(uu) of this Rule shall apply for this purpose.

1. In general, actual emissions as of any given date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the given data and which is

representative of normal source operation. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

2. The Director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

3. For any emissions unit which has not begun normal operations on the given date as determined in subparagraph (u)1. above, actual emissions shall equal the potential to emit of the unit on that date.

(v) "Complete" shall mean, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

(w) "Significant" shall mean, in reference to an emissions increase or a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

<b><u>Pollutant</u></b>	<b>Emissions Rate (tons per year)</b>
Carbon monoxide	
Marginal and Moderate Nonattainment Areas.....	100
Serious Nonattainment Areas.....	50*
Nitrogen oxides .....	40
Sulfur dioxide .....	40
PM <sub>10</sub> .....	15
PM <sub>2.5</sub> .....	10 (of direct PM <sub>2.5</sub> ) 40 (of SO <sub>2</sub> or NO <sub>x</sub> )
Ozone	
Marginal and Moderate Nonattainment Areas.....	40 (of VOC or NO <sub>x</sub> )
Serious and Severe Nonattainment Areas .....	25 (of VOC or NO <sub>x</sub> )
Extreme Nonattainment Areas .....	Any (of VOC or NO <sub>x</sub> )
Lead.. .....	0.6

\* The significant emission rate of 50 tons for carbon monoxide in serious nonattainment areas shall only apply if the Director has made a determination that stationary sources significantly contribute to the carbon monoxide levels in the area.

(x) "Federal Land Manager" shall mean, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(y) "Nonattainment Area" shall mean any area designated by EPA as nonattainment for any national ambient air quality standard under Subpart C of 40 CFR part 81.301.

(z) Reserved.

(aa) Reserved.

(bb) Reserved.

(cc) Reserved.

(dd) Reserved.

(ee) Reserved.

(ff) Reserved.

(gg) "Pollution Prevention Projects" shall mean any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. It does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(hh) "Clean coal technology" shall mean any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(ii) "Clean coal technology demonstration project" shall mean a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(jj) "Temporary clean coal technology demonstration project" shall mean a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(kk) "Repowering" shall mean replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

1. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(ll) Reserved.

(mm) "Significant emissions increase" shall mean, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in subparagraph (2)(w) of this Rule) for that pollutant.

(nn) "Projected actual emissions" shall mean

1. The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (consecutive 12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

2. In determining the projected actual emissions under subparagraph (2)(nn)1. of this Rule (before beginning actual construction), the owner or operator of the major stationary source:

(i) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under these regulations; and

(ii) Shall include fugitive emissions to the extent quantifiable, if appropriate under 335-3-14-.05(1)(k), and emissions associated with startups and shutdowns; and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive

24-month period used to establish the baseline actual emissions under subparagraph (2)(uu) of this Rule and that are not resulting from the particular project, including any increased utilization due to product demand growth; or

(iv) In lieu of using the method set out in subparagraphs (2)(nn)2.(i) through (iii), may elect to use the emissions unit's potential to emit, in tons per year, as defined under subparagraph (2)(d) of this Rule.

(oo) "Nonattainment Major new source review (NSR) program" shall mean the preconstruction permit program in this Rule. Any permit issued under this program is a major NSR permit.

(pp) "Prevention of Significant Deterioration (PSD) program" shall mean the preconstruction permit program in 335-3-14-.04. Any permit issued under this program is a major NSR permit.

(qq) "Continuous emissions monitoring system (CEMS)" shall mean all of the equipment that may be required to meet the data acquisition and availability requirements of this Rule, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(rr) "Predictive emissions monitoring system (PEMS)" shall mean all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(ss) "Continuous parameter monitoring system (CPMS)" shall mean all of the equipment necessary to meet the data acquisition and availability requirements of this Rule, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and to record average operational parameter value(s) on a continuous basis.

(tt) "Continuous emissions rate monitoring system (CERMS)" shall mean the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(uu) "Baseline actual emissions" shall mean the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with subparagraphs (2)(uu)1. through 4. of this Rule.

1. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Director may

allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable, if appropriate under 335-3-14-.05(1)(k), and emissions associated with startups and shutdowns.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subparagraph (2)(uu)1.(ii) of this Rule.

2. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Department for a permit required under this Rule, whichever is earlier.

(i) The average rate shall include fugitive emissions to the extent quantifiable, if appropriate under 335-3-14-.05(1)(k), and emissions associated with startups and shutdowns.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR part 63, the baseline actual emissions need only be adjusted if the State has

taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR§51.165(a)(3)(ii)(G).

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subparagraphs (2)(uu)2.(ii) and (iii) of this Rule.

3. For a new emissions unit, as defined in subparagraph (2)(g)1. of this Rule, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero. During the first two years from the date which the emissions unit commenced operation, the baseline actual emissions shall equal the potential to emit for the unit. Thereafter, the unit will be considered an existing emissions unit and the baseline actual emissions will be determined in accordance with subparagraph (2)(uu)1. for an electric steam generating unit or subparagraph (2)(uu)2. for other emissions units.

4. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subparagraph (2)(uu)1. of this Rule, for other existing emissions units in accordance with the procedures contained in subparagraph (2)(uu)2. of this Rule, and for a new emissions unit in accordance with the procedures contained in subparagraph (2)(uu)3. of this Rule.

(vv) "Electric utility steam generating unit" shall mean any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(ww) "Regulated NSR pollutant", for purposes of this Rule, shall mean the following:

1. Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator of EPA (*e.g.*, volatile organic compounds and NO<sub>x</sub> are precursors for ozone);

2. PM<sub>2.5</sub> and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient

temperatures. Such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub>. Applicability determinations made prior to January 1, 2011 without accounting for condensable particulate matter shall not be considered invalid.

(xx) Reserved.

(yy) "Project" shall mean a physical change in, or change in the method of operation of, an existing major stationary source.

(zz) "Offset ratio" shall mean the ratio of total actual emissions reductions to total allowable emissions increases of such pollutant from the new source.

(aaa) "Significant Impact" shall mean the following significant levels would be exceeded in the portion of the designated nonattainment area where the ambient air quality standards are actually violated.

<b>Pollutant</b>	<b>Annual</b>	<b>24-Hour</b>	<b>8-Hour</b>	<b>3-Hour</b>	<b>1-Hour</b>
PM <sub>10</sub>		5 µg/m <sup>3</sup>			
PM <sub>2.5</sub>	0.3 µg/m <sup>3</sup>	1.2 µg/m <sup>3</sup>			
SO <sub>2</sub>	1 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>		25 µg/m <sup>3</sup>	
NO <sub>2</sub>	1 µg/m <sup>3</sup>				
CO			0.5 mg/m <sup>3</sup>		2 mg/m <sup>3</sup>

(3) Permitting requirements. No Air Permit shall be issued for the construction of a new major source or the major modification of an existing source that is major for any pollutant or its precursors for which an area is nonattainment if the source or modification would be located in the nonattainment area or would be located outside the nonattainment area but have a significant impact on the nonattainment area unless the following conditions are met, as applicable:

(a) The applicant demonstrates that the new source or the major modification would meet an emission limitation that would represent the lowest achievable emission rate (LAER) for that source or facility;

(b) The applicant certifies that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with that person) within the state of Alabama are in compliance with all applicable air emission limits or are on an acceptable compliance schedule; and

(c) The applicant demonstrates that emission reductions from existing source(s) in the area of the proposed source/major modification (whether or not

under the same ownership) meet the offset requirements of paragraph (4) of this rule.

(d) Alternative Sites Analysis. An analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification shall be required.

(e) Requirements for sources located outside of a nonattainment area. Any new major stationary source or major modification undergoing a PSD permitting review near a nonattainment area which has a significant impact, as defined in 335-3-14-.05(2)(aaa), on the nonattainment area shall either:

1. Obtain offsets from within the nonattainment area in accordance with the requirements in paragraph (4) of this Rule, or

2. Obtain emissions reductions in or near the nonattainment area which will, at a minimum, reduce the impact of the project to below the significant impact level. All emissions reductions must be calculated in accordance with the requirements in paragraph (4) and be enforceable.

(f) The requirements of this Rule shall apply to all pollutants for which a nonattainment area has been designated as nonattainment and all precursors for those pollutants.

(g) Interpollutant trading may be utilized only for the purpose of satisfying offset requirements for PM<sub>2.5</sub>. Emissions reductions may only be utilized once in determining allowable offsets, i.e. the same reductions in SO<sub>2</sub> may not be utilized to offset SO<sub>2</sub> increases and PM<sub>2.5</sub> increases. Any offsets utilized in interpollutant offset trading must meet the requirements of paragraph (4). Interpollutant offsets shall be determined based upon the following ratios:

1. 200 tons of NO<sub>x</sub> to 1 ton of PM<sub>2.5</sub>,
2. 1 ton of PM<sub>2.5</sub> to 200 tons of NO<sub>x</sub>,
3. 40 tons of SO<sub>2</sub> to 1 ton of PM<sub>2.5</sub>,
4. 1 ton of PM<sub>2.5</sub> to 40 tons of SO<sub>2</sub>.

(h) Exemptions. Temporary emission sources, such as pilot plants and portable facilities which will be relocated outside of the nonattainment area after a short period of time, are exempt from the requirements of subparagraphs (3)(c) through (e) of this Rule.

(i) The total amount of increased emissions resulting from a major modification that must be offset, in tons per year, shall be determined by summing the difference between the allowable emissions after the modification, as defined in 335-3-14-.05(2)(p), and the actual emissions before the modification, as defined in 335-3-14-.05(2)(u), for each emissions unit.

(4) Offset Standards.

(a) Where the emissions limit under these regulations allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

(b) For an existing fuel combustion source, credit shall be based on the allowable emissions under these regulations for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date

(c) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if they meet the following requirements:

1. Such reductions are surplus, permanent, quantifiable, and enforceable.

2. The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this paragraph, the Director may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. No credit may be given for shutdowns that occurred before August 7, 1977.

(d) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in paragraph (4)(c)2. of this section may be generally credited only if:

1. The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

2. The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment are surplus, permanent, quantifiable, and enforceable.

(e) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977; (This document is also available from Mr. Ted Creekmore, Office of Air Quality Planning and Standards, (MD-15) Research Triangle Park, NC 27711.))

(f) All emission reductions claimed as offset credit shall be federally enforceable;

(g) Credit for an emissions reduction can be claimed provided that the Department has not relied on it in issuing any permit under 335-3-14-.04 or .05 or has not relied on it in a demonstration of attainment or reasonable further progress.

(h) If a designated nonattainment area is projected to be an attainment area as part of an approved SIP control strategy by the new source start-up date, offsets would not be required if the new source would not cause a new violation.

(i) Calculation of Emission Offsets.

1. The following procedure shall be followed to calculate emission offsets:

(i) The source shall calculate average annual actual emissions, in tons per year (tpy), before the emission reduction using data from the 24-month period immediately preceding the reduction in emissions. With the Director's approval, the use of a different time period, not to exceed 10 years immediately preceding the reduction in emissions, may be allowed if the owner or operator of the source documents that such period is more representative of normal source operation, but not prior to the base year inventory date, which is the last day of the two years preceding the date of nonattainment designation; and

(ii) The emission offsets created shall be calculated by subtracting the allowable emissions following the reduction from the average annual actual emissions prior to the reduction.

2. For any emissions unit that has been operating for a consecutive period of at least 12 months but less than 24 months on the base year inventory date, based on the unit's potential to emit, emissions shall be calculated equal to the amount needed to complete a 24 month period on the base year inventory date. The baseline for determining credit for emission offsets of any source shall be the allowable emissions of said source or the actual emissions of said source, not including any malfunctions, whichever is less.

(j) Location of offsetting emissions. Emission offsets shall be obtained from sources currently operating within the same designated nonattainment area as the new or modified stationary source. Emission offsets may be obtained from another nonattainment area with the Director's approval only if

1. The other area has an equal or higher nonattainment classification than the area in which the proposed source is located; and

2. Emissions from the other area contribute to a violation of the NAAQS in the nonattainment area in which the source is located.

(k) Emission offsetting ratios. Emission offsets shall be required in nonattainment areas in accordance with the following provisions:

1. Emissions increases in carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>) nonattainment areas shall be offset at a ratio greater than 1 to 1.

2. Emissions increases in ozone nonattainment areas shall be offset for volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) in accordance with the following:

- (i) Marginal 1.1 to 1
- (ii) Moderate 1.15 to 1
- (iii) Serious 1.2 to 1
- (iv) Severe 1.3 to 1
- (v) Extreme 1.5 to 1

(5) Banking of Emission Offsets. Offsets approved after January 16, 1979, which exceed the requirement of reasonable further progress may be "banked" for future use; likewise, reductions in emissions from existing sources which exceed the requirement of reasonable further progress may be "banked" for future use. The banking is subject to the following requirements:

(a) Application shall be made in writing to the Director, describing the emission offsets to be banked, such description to include location, source, and type of emissions.

(b) Emission offsets cannot be banked beyond the allowable emissions of said source or the existing emissions of said source, not including any malfunctions, whichever is less.

(c) Upon approval by the Director of said application, the banked emissions shall be credited to the facility submitting such application.

(d) No emission offsets banked in accordance with the provisions of this Paragraph shall be used unless written notice is provided to the Director thirty (30) days prior to submission of the necessary permit applications, to provide opportunity for review of the proposed use of the banked emission offsets.

(e) In the event that a determination is made that the banked emission offsets may not be used for the proposed construction, written notice shall be afforded the applicant, as provided in Rule 335-3-14-.02(3), herein.

(f) In the event that a determination under subparagraph (e) of this paragraph is made by the Director, construction may proceed if, and only if, emission offsets are obtained sufficient to satisfy the requirements of paragraph (4) of this Rule.

(g) Nothing contained in this Paragraph shall prohibit the transfer, assignment, sale, or otherwise complete disposition of said banked emission

offsets, provided that written notice is provided to the Director, thirty (30) days prior to such disposition, describing in detail the recipient of the banked emissions.

(6) Area Classifications.

(a) The following area, which was in existence on August 7, 1977, shall be a Class I area and may not be redesignated:

1. The Sipsey Wilderness Area, located in Franklin, Winston, and Lawrence counties, Alabama.

(b) Any other area is initially designated Class II:

(7) Air Quality Models.

(a) All estimates of ambient concentrations required under this Rule shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models". (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711)

(8) Reserved.

(9) Control Technology Review.

(a) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable limitation standard and standard of performance under 40 CFR Parts 60, 61, and 63.

(b) A new major stationary source shall apply LAER for each regulated NSR pollutant and precursors that it would have the potential to emit in significant amounts for which the area is designated as nonattainment.

(c) A major modification shall apply LAER for each regulated NSR pollutant and precursors for which it would result in a significant net emissions increase for which the area is designated as nonattainment. This requirement applies to each emissions unit at which a net emissions increase in the pollutant or precursors would occur as a result of a physical change or change in the method of operation in the unit.

(d) For phased construction projects, the determination of LAER shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of LAER for the source.

(10) Reserved.

(11) Reserved.

(12) Air Quality Monitoring.

(a) Post-construction Monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the Director determines is necessary to determine the impact said source or modification may have, or is having, on air quality in any area.

(b) Operations of Monitoring Stations. The owner or operator of a major stationary source or major modification shall meet Federal monitoring quality assurance requirements during the operation of monitoring stations for purposes of satisfying this paragraph.

(c) Visibility Monitoring. The Director may require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the Director deems necessary and appropriate.

(13) Source Information. The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or to make any determination required under this Rule.

(a) Such information shall include:

1. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

2. A detailed schedule for construction of the source or modification;

3. A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that LAER would be applied.

(b) Upon request of the Director, the owner or operator shall also provide information on:

1. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

2. The air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

(14) Reserved.

(15) Reserved.

(16) Public Participation.

(a) After receipt of an application for an Air Permit or any addition to such application, the Director shall advise the applicant of any deficiency in the application or in the information submitted. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of this Rule, the date on which the Director received all required information.

(b) Within one (1) year after receipt of a complete application, the Director shall make a final determination of the application. This involves performing the following actions in a timely manner:

1. Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

2. Make available on the Department's web site ~~in at least one location in each region in which the proposed source or modification would be constructed~~ a copy of all materials the applicant submitted, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination.

3. Notify the public, by posting on the Department's web site for the duration of the comment period of 30 days, the preliminary determination, the opportunity to comment on the proposed permit, how to request and/or attend a public hearing on the proposed permit, a copy of the proposed permit, and information on how to access the administrative record for the proposed permit. ~~advertisement in a newspaper of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, and the opportunity for written public comment, as well as comment at a public hearing. Public comments will be accepted for at least 30 days from the date of initial publication.~~

4. Send a copy of the notice of public comment to the applicant, to EPA, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other State or local air pollution control agencies, the chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency, and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification.

5. Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

6. Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than ten (10) days after the close of the public comment period, the applicant may, as part of the public record, submit a written response to any comments submitted by the public. The Director shall consider the applicant's response in making a final decision. The Director shall make all comments available for public inspection

on the same web site ~~in the same locations~~ where the Director made available preconstruction information relating to the proposed source or modification.

7. Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this Rule.

8. Notify the applicant in writing of the final determination and make such notification available for public inspection on the same web site ~~at the same location~~ where the Director made available preconstruction information and public comments relating to the source or modification.

(17) Source Obligation.

(a) An Air Permit authorizing construction shall become invalid if construction is not commenced within twenty-four (24) months after receipt of such approval, if construction is discontinued for a period of twenty-four (24) months or more, or if construction is not completed within a reasonable time. The Director may extend the twenty-four (24) month period upon satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within twenty-four (24) months of the projected and approved commencement date.

(b) An Air Permit authorizing construction shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, State or Federal law.

(c) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of paragraphs (9) through (17) of this Rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(d) The provisions of this subparagraph (17)(d) apply to projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL), that are not excluded from the definition of physical change or change in the method of operation, where there is not a reasonable possibility that the project is a part of a major modification and may result in a significant emissions increase and the owner or operator elects to use the method specified in subparagraphs (2)(nn)2.(i) through (iii) of this Rule for calculating projected actual emissions.

1. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under subparagraph (2)(nn)2.(iii) of this Rule and an explanation for why such amount was excluded, and any netting calculations, if applicable.

2. The owner or operator of the source shall make the information required to be documented and maintained pursuant to subparagraph (17)(d) of this Rule available for review upon a request for inspection by the Department or the general public.

3. Nothing in this subparagraph shall be construed to exempt the owner or operator of such a unit from obtaining any minor source Air Permit in accordance with the requirements of this Chapter.

(e) The provisions of this subparagraph (17)(e) apply to projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification, and that is not excluded from the definition of physical change or change in the method of operation, may result in a significant emissions increase and the owner or operator elects to use the method specified in subparagraphs (2)(nn)2.(i) through (iii) of this Rule for calculating projected actual emissions.

1. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under subparagraph (2)(nn)2.(iii) of this Rule and an explanation for why such amount was excluded, and any netting calculations, if applicable.

2. Before beginning actual construction, the owner or operator shall provide a copy of the information set out in subparagraph (17)(e)1. of this Rule to the Director. Nothing in this subparagraph shall be construed to require the owner or operator of such a unit to obtain any determination from the Director before beginning actual construction; however, nothing in this subparagraph shall be construed to exempt the owner or operator of such a unit from obtaining any minor source Air Permit in accordance with the requirements of this chapter.

3. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subparagraph (17)(e)1.(ii) of this Rule; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

4. The owner or operator shall submit a report to the Director within 60 days after the end of each year during which records must be generated under subparagraph (17)(e)3. of this Rule. The report shall contain the following:

- (i) All information required by subparagraph (17)(e)1. of this Rule.
- (ii) The name, address and telephone number of the major stationary source;
- (iii) The annual emissions as calculated pursuant to subparagraph (17)(e)3. of this Rule; and
- (iv) Any other information that the owner or operator wishes to include in the report.

5. The owner or operator of the source shall make the information required to be documented and maintained pursuant to subparagraph (17)(e) of this Rule available for review upon a request for inspection by the Department.

6. All information submitted to the Department pursuant to the requirements of subparagraph (17)(e) of this Rule shall be available for review at the request of any member of the public in accordance with the Department's public records review procedures found in ADEM Admin. Code R-335-1-1-.06.

(18) Innovative Control Technology.

(a) An owner or operator of a proposed major stationary source or major modification may request in writing no later than the close of the comment period under paragraph (16) of this Rule that the Director approve a system of innovative control technology.

(b) The Director shall determine that the source or modification may employ a system of innovative control technology, if:

- 1. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare or safety in its operation or function;
- 2. The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under subparagraph (9)(b) of this Rule by a date specified by the Director. Such date shall not be later than four (4) years from the time of startup or seven (7) years from permit issuance;

3. The source or modification would meet the requirements of paragraph (9) of this Rule based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Director;

4. The source or modification has obtained all emission reductions as required in paragraph (4) prior to initial startup of the source or modification.

5. The consent of the Governor of any other affected state is secured;

6. All other applicable requirements including those for public participation have been met.

(c) The Director shall withdraw any approval to employ a system of innovative control technology made under this Rule, if:

1. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare or safety; or

3. The Director decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare or safety.

(d) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subparagraph (c) of this paragraph, the Director may allow the source or modification up to an additional three (3) years to meet the requirement for the application of LAER through use of a demonstrated system of control.

(19) Reserved.

(20) Reserved.

(21) Reserved.

(22) Reserved.

(23) Actuals PALs. The provisions in subparagraphs (23)(a) through (o) of this Rule govern actuals PALs.

(a) Applicability.

1. The Director may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in subparagraphs (23)(a) through (o) of this Rule. The term "PAL" shall mean "actuals PAL" throughout paragraph (23) of this Rule.

2. Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in subparagraphs (23)(a) through (o) of this Rule, and complies with the PAL permit:

(i) Is not a major modification for the PAL pollutant;

(ii) Does not have to be approved through the nonattainment major NSR program;

3. A major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(b) Definitions. For the purposes of this Rule, the definitions in subparagraphs (23)(b)1. through 11. of this Rule apply. When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (2) of this Rule or in the Clean Air Act.

1. Actuals PAL for a major stationary source means a PAL based on the baseline actual emissions (as defined in subparagraph (2)(uu) of this Rule) of all emissions units (as defined in subparagraph (2)(g) of this Rule) at the source, that emit or have the potential to emit the PAL pollutant.

2. Allowable emissions means "allowable emissions" as defined in subparagraph (2)(p) of this Rule, except as this definition is modified according to subparagraphs (23)(b)2.(i) and (ii) of this Rule.

(i) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(ii) An emissions unit's potential to emit shall be determined using the definition in subparagraph (2)(d) of this Rule, except that the words "or enforceable as a practical matter" should be added after "enforceable."

3. Small emissions unit means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in subparagraph (2)(w) of this Rule or in the Clean Air Act, whichever is lower.

4. Major emissions unit means:

(i) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area.

5. Plantwide applicability limitation (PAL) means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with subparagraphs (23)(a) through (o) of this Rule.

6. PAL effective date generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

7. PAL effective period means the period beginning with the PAL effective date and ending 10 years later.

8. PAL major modification means, notwithstanding subparagraphs (2)(b) and (2)(c) of this Rule (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

9. PAL permit means the major NSR permit, the minor NSR permit, or the title V permit issued by the Director that establishes a PAL for a major stationary source.

10. PAL pollutant means the pollutant for which a PAL is established at a major stationary source.

11. Significant emissions unit means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in subparagraph (2)(w) of this Rule or in the Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in subparagraph (23)(b)4. of this Rule.

(c) Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Director for approval:

1. A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations, or work practices apply to each unit.

2. Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup and shutdown.

3. The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subparagraph (23)(m)1. of this Rule.

(d) General requirements for establishing PALs.

1. The Director is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in subparagraphs (23)(d)1.(i) through (vii) of this Rule are met.

(i) The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month total, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(ii) The PAL shall be established in a PAL permit that meets the public participation requirements in subparagraph (23)(e) of this Rule.

(iii) The PAL permit shall contain all the requirements of subparagraph (23)(g) of this Rule.

(iv) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(v) Each PAL shall regulate emissions of only one pollutant.

(vi) Each PAL shall have a PAL effective period of 10 years.

(vii) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subparagraphs (23)(l) through (n) of this Rule for each emissions unit under the PAL through the PAL effective period.

2. At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under Rule 335-3-14-.05 of this chapter unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(e) Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with those of this Rule and 40 CFR Parts 51.160 and 51.161. This includes the requirement that the Director provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The Director must address all material comments before taking final action on the permit.

(f) Setting the 10-year actuals PAL level. The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions

(as defined in subparagraph (2)(uu) of this Rule) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under subparagraph (2)(w) of this Rule or under the Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. Emissions from units on which actual construction began after the beginning of the 24-month period must be added to the PAL level in an amount equal to the potential to emit of the unit if the unit began operation less than 24 months prior to the submittal of the PAL application. Baseline actual emissions from units on which actual construction began after the beginning of the 24-month period and commenced operation 24 months or more prior to the submittal of the PAL application must be added to the PAL based upon any 24 month period since the unit commenced operation. The Director shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Director is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NOX to a new Rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(g) Contents of the PAL permit. The PAL permit must contain, at a minimum, the information in subparagraphs (23)(g)1. through 10. of this Rule.

1. The PAL pollutant and the applicable source-wide emission limitation in tons per year.
2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).
3. Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with subparagraph (23)(j) of this Rule before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Director.
4. A requirement that emission calculations for compliance purposes must include emissions from startups and shutdowns.
5. A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subparagraph (23)(i) of this Rule.
6. The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subparagraph (23)(m)1. of this Rule.

7. A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under subparagraph (23)(l) of this Rule.

8. A requirement to retain the records required under subparagraph (23)(m) of this Rule on site. Such records may be retained in an electronic format.

9. A requirement to submit the reports required under subparagraph (23)(n) of this Rule by the required deadlines.

10. Any other requirements that the Director deems necessary to implement and enforce the PAL.

(h) PAL effective period and reopening of the PAL permit. The requirements in subparagraphs (23)(h)1. and 2. of this Rule apply to actuals PALs.

1. PAL effective period. The Director shall specify a PAL effective period of 10 years.

2. Reopening of the PAL permit.

(i) During the PAL effective period, the Director must reopen the PAL permit to:

(I) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(II) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under Rule 335-3-14-.05; and

(III) Revise the PAL to reflect an increase in the PAL as provided under subparagraph (23)(k) of this Rule.

(ii) The Director shall have discretion to reopen the PAL permit for the following:

(I) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(II) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and is required by these regulations; and

(III) Reduce the PAL if the Director determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on a published air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(iii) Except for the permit reopening in subparagraph (23)(h)2.(i)(I) of this Rule for the correction of typographical/calculation errors that do not increase

the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subparagraph (23)(e) of this Rule.

(i) Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in subparagraph (23)(j) of this Rule shall expire at the end of the PAL effective period, and the requirements in subparagraphs (23)(i)1. through 5. of this Rule shall apply.

1. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in subparagraphs (23)(i)1.(i) and (ii) of this Rule.

(i) Within the time frame specified for PAL renewals in subparagraph (23)(j)2. of this Rule, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Director) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subparagraph (23)(j)5. of this Rule, such distribution shall be made as if the PAL had been adjusted.

(ii) The Director shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Director determines is appropriate.

2. Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Director may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

3. Until the Director issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subparagraph (23)(i)1.(ii) of this Rule, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

4. Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in subparagraph (2)(b) of this Rule.

5. The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, synthetic minor limit, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period.

(j) Renewal of a PAL.

1. The Director shall follow the procedures specified in subparagraph (23)(e) of this Rule in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Director.

2. Application deadline. A major stationary source owner or operator shall submit a timely application to the Director to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

3. Application requirements. The application to renew a PAL permit shall contain the information required in subparagraphs (23)(j)3.(i) through (iv) of this Rule.

(i) The information required in subparagraphs (23)(c)1. through 3. of this Rule.

(ii) A proposed PAL level.

(iii) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(iv) Any other information the owner or operator wishes the Director to consider in determining the appropriate level for renewing the PAL.

4. PAL adjustment. In determining whether and how to adjust the PAL, the Director shall consider the options outlined in subparagraphs (23)(j)4.(i) and (ii) of this Rule. However, in no case may any such adjustment fail to comply with subparagraph (23)(j)4.(iii) of this Rule.

(i) If the emissions level calculated in accordance with subparagraph (23)(f) of this Rule is equal to or greater than 80 percent of the PAL level, the Director may renew the PAL at the same level without considering the factors set forth in subparagraph (23)(j)4.(ii) of this Rule; or

(ii) The Director may set the PAL at a level that he or she determines to be more representative of the source's baseline actual emissions, or that he or she determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Director in his or her written rationale.

(iii) Notwithstanding subparagraphs (23)(j)4.(i) and (ii) of this Rule:

(I) If the potential to emit of the major stationary source is less than the PAL, the Director shall adjust the PAL to a level no greater than the potential to emit of the source; and

(II) The Director shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subparagraph (23)(k) of this Rule (increasing a PAL).

5. If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Director has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

(k) Increasing a PAL during the PAL effective period.

1. The Director may increase a PAL emission limitation only if the major stationary source complies with the provisions in subparagraphs (23)(k)1.(i) through(iv) of this Rule.

(i) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(ii) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(iii) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in subparagraph (23)(k)1.(i) of this Rule, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

(iv) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

2. The Director shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subparagraph (23)(k)1.(ii)), plus the sum of the baseline actual emissions of the small emissions units.

3. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subparagraph (23)(e) of this Rule.

(l) Monitoring requirements for PALs.

1. General requirements.

(i) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(ii) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subparagraphs (23)(l)2.(i) through (iv) of this Rule and must be approved by the Director.

(iii) Notwithstanding subparagraph (23)(l)1.(ii) of this Rule, an alternative monitoring approach that meets subparagraph (23)(l)1.(i) of this Rule may be employed if approved by the Director.

(iv) Failure to use a monitoring system that meets the requirements of this Rule renders the PAL invalid.

2. Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subparagraphs (23)(l)3. through 9. of this Rule:

(i) Mass balance calculations for activities using coatings or solvents;

(ii) CEMS;

(iii) CPMS or PEMS; and

(iv) Emission factors.

3. Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(i) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(ii) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(iii) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Director determines there is site-specific data or a site-specific monitoring program to support another content within the range.

4. CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B; and

(ii) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

5. CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(ii) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Director, while the emissions unit is operating.

6. Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(i) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(ii) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(iii) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Director determines that testing is not required.

7. A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational

restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

8. Notwithstanding the requirements in subparagraphs (23)(l)3. through 7. of this Rule, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Director shall, at the time of permit issuance:

(i) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(ii) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

9. Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Director. Such testing must occur at least once every 5 years after issuance of the PAL.

(m) Recordkeeping requirements.

1. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph (23) of this Rule and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

2. The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

(i) A copy of the PAL permit application and any applications for revisions to the PAL; and

(ii) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(n) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Director in accordance with the applicable title V operating permit. The reports shall meet the requirements in subparagraphs (23)(n)1. through 3. of this Rule.

1. Semi-annual report. This report shall contain the information required in subparagraphs (23)(n)1.(i) through (vii) of this Rule.

(i) The identification of owner and operator and the permit number.

(ii) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subparagraph (23)(m)1. of this Rule.

(iii) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

(iv) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

(v) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(vi) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subparagraph (23)(l)7. of this rule.

(vii) A signed statement by a responsible official (as defined in Chapter 335-3-16 of these Regulations) certifying the truth, accuracy, and completeness of the information provided in the report.

2. Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 335-3-16-.05(c)3.(ii) shall satisfy this reporting requirement. The reports shall contain the following information:

(i) The identification of owner and operator and the permit number;

(ii) The PAL requirement that experienced the deviation or that was exceeded;

(iii) Emissions resulting from the deviation or the exceedance; and

(iv) A signed statement by a responsible official (as defined in Chapter 335-3-16 of these Regulations) certifying the truth, accuracy, and completeness of the information provided in the report.

3. Re-validation results. The owner or operator shall submit to the Director the results of any re-validation test or method within 3 months after completion of such test or method.

(o) Transition requirements.

1. The Director may not issue a PAL that does not comply with the requirements in subparagraphs (23)(a) through(o) of this Rule after the effective date of this Rule.

2. The Director may supersede any PAL that was established prior to the effective date of this Rule with a PAL that complies with the requirements of subparagraphs (23)(a) through (o) of this Rule.

(24) If any provision of this Rule, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Rule, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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**335-3-14-.06 Requirements for Control Technology [Determinations for Major Sources in Accordance with Clean Air Act Section 112(g)].**

(1) Applicability.

(a) The requirements of paragraphs (1) through (4) of this rule carry out Section 112(g)(2)(B) of the 1990 Clean Air Act Amendments (hereinafter, referred to as 'the Act' in this rule).

(b) Overall requirements. The requirements of paragraphs (1) through (4) of this rule apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after the effective date of this rule unless the major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to Section 112(d), Section 112(h), or Section 112(j) and incorporated in another Subpart of Part 63 of the 40 Code of Federal Regulations or chapter 335-3-11 of this Division, or the owner or operator of such major source has received all necessary air quality permits for such construction or reconstruction project before the effective date of this rule.

(c) Exclusion for electric utility steam generating units. The requirements of this rule do not apply to electric utility steam generating units unless and until such time as these units are added to the source category list pursuant to Section 112(c)(5) of the Act.

(d) Exclusion for stationary sources in deleted source categories. The requirements of this rule do not apply to stationary sources that are within a source category that has been deleted from the source category list pursuant to Section 112(c)(9) of the Act.

(e) Exclusion for research and development activities. The requirements of this rule do not apply to research and development activities, as defined in paragraph (2) below.

(f) Prohibition. After the effective date of this rule, no person may begin actual construction or reconstruction of a major source of HAP unless:

1. The major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to Section 112(d), Section 112(h) or Section 112(j) in Part 63 [40 CFR 63, Subpart B, as incorporated by reference in rule 335-3-11-.06(1)], and the owner and operator has fully complied with all procedures and requirements for preconstruction review established by that standard, including any applicable requirements set forth in Subpart A of Part 63; or

2. The Department has made a final and effective case-by-case determination pursuant to the provisions of this rule such that emissions from the constructed or reconstructed major source will be controlled to a level no less stringent than the maximum achievable control technology emission limitation for new sources.

(2) Definitions.

Terms used in this rule that are not defined below have the meaning given to them in the Act and in 40 CFR Subpart A.

(a) "Affected Source" means the stationary source or group of stationary sources which, when fabricated (on site), erected, or installed meets the definition of "construct a major source" or the definition of "reconstruct a major source" contained in this paragraph.

(b) "Affected States" are all States:

1. Whose air quality may be affected and that are contiguous to the State in which a MACT determination is made in accordance with this rule; or

2. Whose air quality may be affected and that are within 50 miles of the major source for which a MACT determination is made in accordance with this rule.

(c) "Available Information" means, for purposes of identifying control technology options for the affected source, information contained in the following information sources as of the date of approval of the MACT determination by the Department:

1. A relevant proposed regulation, including all supporting information;

2. Background information documents for a draft or proposed regulation;

3. Data and information available from the Control Technology Center developed pursuant to Section 113 of the Act;

4. Data and information contained in the Aerometric Informational Retrieval System including information in the MACT data base;

5. Any additional information that can be expeditiously provided by the Director; and

6. For the purpose of determinations by the Department, any additional information provided by the applicant or others, and any additional information considered available by the Department.

(d) "Construct a Major Source" means:

1. To fabricate, erect, or install at any greenfield site a stationary source or group of stationary sources which is located within a contiguous area and under common control and which emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAPs, or

2. To fabricate, erect, or install at any developed site a new process or production unit which in and of itself emits or has the potential to emit 10 tons

per year of any HAP or 25 tons per year of any combination of HAPs, unless the process or production unit satisfies criteria (i) through (vi) below:

(i) All HAP emitted by the process or production unit that would otherwise be controlled under the requirements of this rule will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;

(ii) The Department has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented best available control technology (BACT), or lowest achievable emission rate (LAER) under chapter 335-3-14; or the Department determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT or LAER determination);

(iii) The Department determines that the percent control efficiency for emissions of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(iv) The Department has provided notice and an opportunity for public comment concerning its determination that criteria in subparagraphs 2.(i), 2.(ii), and 2.(iii) of this definition apply and concerning the continued adequacy of any prior LAER or BACT determination;

(v) If any commenter has asserted that a prior LAER or BACT determination is no longer adequate, the Department has determined that the level of control required by that prior determination remains adequate; and

(vi) Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by the Department are predicated will be construed by the Department as applicable requirements under Section 504(a) and either have been incorporated into any existing Major Source Operating Permit for the affected facility or will be incorporated into such permit upon issuance.

(e) "Control Technology" means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants through process changes, substitution of materials or other modifications including, but not limited to, measures that:

1. Reduce the quantity of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;
2. Enclose systems or processes to eliminate emissions;
3. Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point;

4. Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in 42 U.S.C. 7412(h); or

5. Are a combination of subparagraphs 1. - 4. of this definition.

(f) "Department" means the Department as defined in this Division.

(g) "Effective Date of Section 112(g)(2)(B)" means the effective date of this rule adopted by the Department.

(h) "Electric Utility Steam Generating Unit" means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

(i) "Greenfield Site" means a contiguous area under common control that is an undeveloped site.

(j) "Hazardous Air Pollutant or HAP" means any of the substances listed in Appendix G of this Division.

(k) "List of Source Categories" means the Source Category List required by Section 112(c) of the Act.

(l) "Maximum Achievable Control Technology (MACT) Emission Limitation for New Sources" means the emission limitation which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions that the Department, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.

(m) "Process or Production Unit" means any collection of structures and/or equipment, that processes, assembles, applies, or otherwise uses material inputs to produce or store an intermediate or final product. A single facility may contain more than one process or production unit.

(n) "Reconstruct a Major Source" means the replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAPs, whenever:

1. The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit; and

2. It is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under this rule.

(o) "Research and Development Activities" means activities conducted at a research or laboratory facility whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for sale or exchange for commercial profit, except in a de minimis manner.

(p) "Similar Source" means a stationary source or process that has comparable emissions and is structurally similar in design and capacity to a constructed or reconstructed major source such that the source could be controlled using the same control technology.

(3) Maximum Achievable Control Technology (MACT) Determinations for Constructed and Reconstructed Major Sources.

(a) Applicability. The requirements of this paragraph apply to an owner or operator who constructs or reconstructs a major source of HAP subject to a case-by-case determination of maximum achievable control technology pursuant to this rule.

(b) Principles of MACT determinations. The following general principles shall govern preparation by the owner or operator of each permit application or other application requiring a case-by-case MACT determination concerning construction or reconstruction of a major source, and all subsequent review of and actions taken concerning such an application by the Department:

1. The MACT emission limitation or MACT requirements recommended by the applicant and approved by the Department shall not be less stringent than the emission control which is achieved in practice by the best controlled similar source, as determined by the Department.

2. Based upon available information, as defined in this rule, the MACT emission limitation and control technology (including any requirements under subparagraph (b)3. below) recommended by the applicant and approved by the Department shall achieve the maximum degree of reduction in emissions of HAP which can be achieved by utilizing those control technologies that can be identified from the available information, taking into consideration the costs of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements associated with the emission reduction.

3. The applicant may recommend a specific design, equipment, work practice, or operational standard, or a combination thereof, and the Department may approve such a standard if the Department specifically determines that it is not feasible to prescribe or enforce an emission limitation under the criteria set forth in Section 112(h)(2) of the Act.

4. If the Administrator has either proposed a relevant emission standard pursuant to Section 112(d) or Section 112(h) of the Act or adopted a presumptive MACT determination for the source category which includes the constructed or reconstructed major source, then the MACT requirements applied to the constructed or reconstructed major source shall have considered those MACT emission limitations and requirements of the proposed standard or presumptive MACT determination.

(c) Application requirements for a case-by-case MACT determination.

1. An application for a MACT determination (whether a permit application under chapter 335-3-16, or other permit specified by the Department under subparagraph (d) of this paragraph) shall specify a control technology selected by the owner or operator that, if properly operated and maintained, will meet the MACT emission limitation or standard as determined according to the principles set forth in subparagraph (b) of this paragraph.

2. In each instance where a constructed or reconstructed major source would require additional control technology or a change in control technology, the application for a MACT determination shall contain the following information:

(i) The name and address (physical location) of the major source to be constructed or reconstructed;

(ii) A brief description of the major source to be constructed or reconstructed and identification of any listed source category or categories in which it is included;

(iii) The expected commencement date for the construction or reconstruction of the major source;

(iv) The expected completion date for construction or reconstruction of the major source;

(v) the anticipated date of start-up for the constructed or reconstructed major source;

(vi) The HAP emitted by the constructed or reconstructed major source, and the estimated emission rate for each such HAP, to the extent this information is needed by the Department to determine MACT;

(vii) Any enforceable emission limitations applicable to the constructed or reconstructed major source;

(viii) The maximum and expected utilization of capacity of the constructed or reconstructed major source, and the associated uncontrolled emission rates for that source, to the extent this information is needed by the Department to determine MACT;

(ix) The controlled emissions for the constructed or reconstructed major source in tons/yr at expected and maximum utilization of capacity, to the extent this information is needed by the Department to determine MACT;

(x) A recommended emission limitation for the constructed or reconstructed major source consistent with the principles set forth in subparagraph (b) of this paragraph;

(xi) The selected control technology to meet the recommended MACT emission limitation, including technical information on the design, operation, size, estimated control efficiency of the control technology (and the manufacturer's name, address, telephone number, and relevant specifications and drawings, if requested by the Department);

(xii) Supporting documentation including identification of alternative control technologies considered by the applicant to meet the emission limitation, and analysis of cost and non-air quality health environmental impacts or energy requirements for the selected control technology; and

(xiii) Any other relevant information required pursuant to Subpart A, 40 CFR 63.

3. In each instance where the owner or operator contends that a constructed or reconstructed major source will be in compliance, upon startup, with case-by-case MACT under this rule without a change in control technology, the application for a MACT determination shall contain the following information:

(i) The information described in subparagraphs (c)2.(i) through (c)2.(x) of this paragraph; and

(ii) Documentation of the control technology in place.

(d) Permit Content.

1. The Air Permit will contain a MACT emission limitation (or a MACT work practice standard if the Department determines it is not feasible to prescribe or enforce an emission standard) to control the emissions of HAP. The MACT emission limitation or standard will be determined by the Department and will conform to the principles set forth in subparagraph (3)(b) of this rule.

2. The Air Permit will specify any notification, operation and maintenance, performance testing, monitoring, reporting and record keeping requirements, including:

(i) Additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure enforceability of the MACT emission limitation;

(ii) Compliance certifications, testing, monitoring, reporting and record keeping requirements that are consistent with the requirements of 335-3-16-.07;

(iii) In accordance with Section 114(a)(3) of the Act, monitoring shall be capable of demonstrating continuous compliance during the applicable reporting period. Such monitoring data shall be of sufficient quality to be used as a basis for enforcing all applicable requirements established under this rule, including emission limitations;

(iv) A statement requiring the owner or operator to comply with all applicable requirements contained in Subpart A of 40 CFR 63;

3. All provisions contained in the Air Permit shall be enforceable upon the effective date of issuance of said permit, as provided by subparagraph (g) of this paragraph.

4. The Air Permit shall expire if construction or reconstruction has not commenced within 18 months of issuance, unless the Department has granted an extension which shall not exceed an additional 12 months.

(e) Public participation.

1. Notice shall be ~~given by~~ posted on the Department's web site for the duration of the comment period, and also transmitted to a list developed by the Department for persons desiring notice of permit action, including persons who have requested in writing to be on such a list; ~~publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice and also to persons on a mailing list developed by the Department for persons desiring notice of permit action, including persons who have requested in writing to be on such a list;~~

2. The notice shall include a link to the proposed permit and information on how to access the administrative record for the proposed permit; identify the affected facility; the name and address of the permittee; the address of the Department; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person (or an email or web site address) from whom interested persons may obtain additional information, including ~~copies of the permit draft,~~ the application, all relevant supporting materials, including any compliance plan, monitoring and compliance certification report, except for information entitled to be kept confidential, and all other materials available to the Department that are relevant to the permit decision; a brief description of the comment procedures required by this chapter; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled);

3. The Department shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing; and

4. The Department shall keep a record of the comments made during the public participation process.

## 5. Exceptions.

(i) If the owner or operator obtains a Major Source Operating Permit prior to construction or reconstruction of a source subject to this rule, then the requirements of this subparagraph do not apply.

(ii) If the owner or operator is concurrently applying for an Air Permit under rules 335-3-14-.04 or 335-3-14-.05, the public participation requirements of those rules shall substitute for the requirements of this paragraph.

(f) Prohibition of construction. An owner or operator applying for a MACT emission limitation for new sources under this rule shall not begin construction until a permit has been issued pursuant to this rule.

(g) Effective date. The effective date of a MACT determination shall be the date of issuance of a final Major Source Operating Permit incorporating a MACT determination (in those instances where the owner or operator either is required or elects to obtain such a permit before construction or reconstruction), or a permit issued pursuant to this rule.

(h) Compliance date. On and after the date of start-up, a constructed or reconstructed major source which is subject to the requirements of this rule shall be in compliance with all applicable requirements specified in the MACT determination.

### (i) Compliance with MACT determinations.

1. An owner or operator of a constructed or reconstructed major source that is subject to a MACT determination shall comply with all requirements in the final Major Source Operating Permit (in those instances where the owner or operator either is required or elects to obtain such a permit before construction or reconstruction), or other permit issued pursuant to this rule, including but not limited to any MACT emission limitation or MACT work practice standard, and any notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements.

2. An owner or operator of a constructed or reconstructed major source which has obtained a MACT determination shall be deemed to be in compliance with Section 112(g)(2)(B) of the Act and this rule only to the extent that the constructed or reconstructed major source is in compliance with all requirements set forth in the final Major Source Operating Permit (in those instances where the owner or operator either is required or elects to obtain such a permit before construction or reconstruction), or other permit issued pursuant to this rule. Any violation of such requirements by the owner or operator shall be deemed by the Department and by EPA to be a violation of the prohibition on construction or reconstruction in Section 112(g)(2)(B) and this rule for whatever period the owner or operator is determined to be in violation of such requirements, and shall subject the owner or operator to appropriate enforcement action under the Act.

(4) Requirements for Constructed or Reconstructed Major Sources Subject to a Subsequently Promulgated MACT Standard or MACT Requirement.

(a) If the Administrator promulgates an emission standard under Section 112(d) or Section 112(h) of the Act or the Department issues a determination under Section 112(j) of the Act [40 CFR 63, Subpart B, as incorporated by reference in rule 335-3-11-.06(1)] that is applicable to a stationary source or group of sources which would be deemed to be a constructed or reconstructed major source under this rule before the date that the owner or operator has obtained a final and legally effective MACT determination pursuant to this rule, the owner or operator of the source(s) shall comply with the promulgated standard or determination rather than any MACT determination under this rule, and the owner or operator shall comply with the promulgated standard by the compliance date in the promulgated standard.

(b) If the Administrator promulgates an emission standard under Section 112(d) or Section 112(h) of the Act or the Department makes a determination under Section 112(j) of the Act [40 CFR 63, Subpart B, as incorporated by reference in rule 335-3-11-.06(1)] that is applicable to a stationary source or group of sources which was deemed to be a constructed or reconstructed major source under this rule and has been subject to a prior case-by-case MACT determination pursuant to this rule, and the owner and operator obtained a final and legally effective case-by-case MACT determination prior to the promulgation date of such emission standard, then the Department shall (if the initial Major Source Operating Permit has not yet been issued) issue an initial operating permit which incorporates the emission standard or determination, or shall (if the initial Major Source Operating Permit has been issued) revise the operating permit according to the reopening procedures in chapter 335-3-16 to incorporate the emission standard or determination.

1. The EPA may include in the emission standard established under Section 112(d) or Section 112(h) of the Act a specific compliance date for those sources which have obtained a final and legally effective MACT determination under this rule and which have submitted the information required by paragraph (3) of this rule to the EPA before the close of the public comment period for the standard established under Section 112(d) of the Act. Such date shall assure that the owner or operator shall comply with the promulgated standard as expeditiously as practicable, but not longer than 8 years after such standard is promulgated. In that event, the Department shall incorporate the applicable compliance date in the Major Source Operating Permit.

2. If no compliance date has been established in the promulgated Section 112(d) or 112(h) standard or Section 112(j) determination [40 CFR 63, Subpart B, as incorporated by reference in rule 335-3-11-.06(1)], for those sources which have obtained a final and legally effective MACT determination under this rule, then the Department shall establish a compliance date in the permit that assures that the owner or operator shall comply with the promulgated standard or determination as expeditiously as practicable, but not longer than 8 years after such standard is promulgated or a Section 112(j) determination [40 CFR 63, Subpart B, as incorporated by reference in rule 335-3-11-.06(1)] is made.

(c) Notwithstanding the requirements of subparagraphs (a) and (b) of this paragraph, if the Administrator promulgates an emission standard under Section 112(d) or Section 112(h) of the Act or the Department issues a determination under Section 112(j) of the Act [40 CFR 63, Subpart B, as incorporated by reference in rule 335-3-11-.06(1)] that is applicable to a stationary source or group of sources which was deemed to be a constructed or reconstructed major source under this rule and which is the subject of a prior case-by-case MACT determination pursuant to paragraph (3) of this rule, and the level of control required by the emission standard issued under Section 112(d) or Section 112(h) or the determination issued under Section 112(j) [40 CFR 63, Subpart B, as incorporated by reference in rule 335-3-11-.06(1)] is less stringent than the level of control required by any emission limitation or standard in the prior MACT determination, the Department is not required to incorporate any less stringent terms of the promulgated standard in the Major Source Operating Permit applicable to such source(s) and may in its discretion consider any more stringent provisions of the prior MACT determination to be applicable legal requirements when issuing or revising such an operating permit.

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-11, 22-28-14, 22-28-16, 22-22A-5.

**History:** Effective Date: March 27, 1998.

**Amended:** September 7, 2000-;[XXXXXX, 2017.](#)

**ADEM Admin. Code Rule 335-3-15-.05**

**335-3-15-.05 Public Participation.**

(a) The provisions of this Rule apply only to potential major sources as specified in Rules 335-3-15-.04(1)(b) and -.04(4)(b). Notice shall be ~~given by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice~~ posted on the Department's web site for the duration of the public comment period and ~~also to persons on a mailing~~ transmitted sent to a list developed by the Department for persons desiring notice of permit action, including persons who have requested in writing to be on such a list. The notice shall contain a link to the draft proposed permit. A copy of the notice shall also be provided to EPA;

(b) The notice shall identify the affected facility; the name and address of the permittee; the address of the Department; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person (or an email or web site address) from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, except for information entitled to be kept confidential, and all other materials available to the Department that are relevant to the permit decision; a brief description of the comment procedures required by this Rule; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled);

(c) The Department shall provide at least 15 days for public comment; and

(d) The Department shall keep a record of the commenters and also of the issues raised during the public participation process.

**Author:** Richard E. Grusnick

**Statutory Authority:** Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: December 28, 1993.

**Amended:** November 21, 1996; ~~XXXXXX~~, 2017.

**ADEM Admin. Code Rule 335-3-16-.15**

**335-3-16-15 Permit Review by EPA, Affected States and Public.**

(1) Transmission of information to EPA.

(a) The Department shall submit each application, each proposed permit and each final permit to EPA. The Department may require the applicant to submit a copy of its application directly to EPA. The Department also shall submit a copy of the draft permit to the applicant at the same time that EPA is sent a copy.

(b) Upon agreement with EPA, the Department may submit a summary of the application instead of the full application.

(c) The Department shall keep 5 years of records of the information sent to EPA that is required in subparagraph (a) of this paragraph.

(2) Review by affected states.

(a) The Department shall give notice to each affected state of each draft permit on or before public notice, unless public notice is not required.

(b) The Department shall respond in writing its reasons for refusing to accept an affected State's recommendations or for refusing to accept the Administrator's recommendations.

(3) EPA objection.

(a) If EPA objects in writing within 45 days of receipt of a proposed permit or prior to issuance of a final permit, the Department shall not issue the permit, except that the Department may issue a permit that is valid pursuant to Alabama's Air Pollution Control Act only. However, the Department shall advise the source that issuance of such permit shall not provide any protection from federal requirements.

(b) The objection must include the reasons for the objection and a description of the terms that the permit must include to respond to the objections. EPA must supply the applicant with a copy of the objection.

(c) Failure of the Department to do any of the following are also grounds for objection:

1. Comply with paragraphs (1) or (2) of this rule.
2. Submit any information requested by EPA in writing necessary to review the permit.
3. Process the permit under the significant permit modification procedures (unless the modification is minor).

(4) Public participation. Except for modifications qualifying for administrative or minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall use the following procedures for public notice:

(a) Notice shall be ~~given by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice~~ posted on the Department's web site for the duration of the public comment period and also ~~to persons on a mailing~~ transmitted to a list developed by the Department for persons desiring notice of permit action, including persons who have requested in writing to be on such a list. The notice shall contain a link to the draft permit;

(b) The notice shall identify the affected facility; the name and address of the permittee; the address of the Department; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person (or an email or web site address) from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, monitoring and compliance certification report, except for information entitled to be kept confidential, and all other materials available to the Department that are relevant to the permit decision; a brief description of the comment procedures required by this chapter; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled);

(c) The Department shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing; and

(d) The Department shall keep a record of the comments made during the public participation process.

**Author:** Richard E. Grusnick.

**Statutory Authority:** Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: December 28, 1993.

**Amended:** November 21, 1996-~~XXXXXX~~, 2017.

**ADEM Admin. Code Rules 335-3-19-.01 through 335-3-19-.05**

**335-3-19-.01 Definitions.** For the purposes of this Chapter and ~~Rules~~ rules 335-3-10-.02(75) and 335-3-10-.02(76) only, the following words and phrases, unless a different meaning is plainly required by the content, shall have the following meanings.

(a) "Active collection system" means a gas collection system that uses gas mover equipment.

(b) "Active landfill" means a landfill in which solid waste is being placed or a landfill that is planned to accept waste in the future.

(c) "Closed area" means a separately lined area of an MSW landfill in which solid waste is no longer being placed. If additional solid waste is placed in that area of the landfill, that landfill area is no longer closed. The area shall be separately lined to ensure that the landfill gas does not migrate between open and closed areas.

(ed) "Closed landfill" means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under §60.7(a)(4), 40 CFR. Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed.

(e) "Closed landfill subcategory" means a closed landfill that has submitted a closure report as specified in rule 335-3-19-.03(6)(e) on or before September 27, 2017.

(df) "Closure" means that point in time when a landfill becomes a closed landfill.

(eg) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

(fh) "Controlled landfill" means any landfill at which collection and control systems are required under this Chapter as a result of the nonmethane organic compounds emission rate. The landfill is considered controlled at the time a collection and control system design plan is submitted in compliance with ~~Rule~~ rule 335-3-19-.03(1)(bd)2.(i).

(i) "Corrective action analysis" means a description of all reasonable interim and long-term measures, if any, that are available, and an explanation of why the selected corrective action(s) is/are the best alternative(s), including, but not limited to, considerations of cost effectiveness, technical feasibility, safety, and secondary impacts.

(g) "Design capacity" means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the Department, plus any in-place waste not accounted for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site specific density, which must be recalculated annually.

(k) "Disposal facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

(h) "Emission rate cutoff" means the threshold annual emission rate to which a landfill compares its estimated emission rate to determine if control under the regulation is required.

(i) "Enclosed combustor" means an enclosed firebox which maintains a relatively constant limited peak temperature generally using a limited supply of combustion air. An enclosed flare is considered an enclosed combustor.

(j) "Flare" means an open combustor without enclosure or shroud.

(k) "Gas mover equipment" means the equipment (i.e., fan, blower, compressor) used to transport landfill gas through the header system.

(p) "Gust" means the highest instantaneous wind speed that occurs over a 3-second running average.

(q) "Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). Household waste does not include fully segregated yard waste. Segregated yard waste means vegetative matter resulting exclusively from the cutting of grass, the pruning and/or removal of bushes, shrubs, and trees, the weeding of gardens, and other landscaping maintenance activities. Household waste does not include construction, renovation, or demolition wastes, even if originating from a household. ~~any solid waste including garbage and trash derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas).~~

(r) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of the Resource Conservation and Recovery Act. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include fly ash waste,

bottom ash waste, boiler slag waste, or flue gas emission control waste which result from the combustion of coal or other fossil fuels at electric or steam generating plants. Additionally, this term does not include mining waste or oil and gas wastes, or small quantity generator waste as defined in ADEM Admin. Code R. 335-14-2-.01(5). Uncontaminated concrete, soil, brick, rock, and similar materials are excluded from this definition.

(~~ns~~) "Interior Well" means any well or similar collection component located inside the perimeter of the landfill waste. A perimeter well located outside the landfilled waste is not an interior well.

(~~et~~) "Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under ADEM Admin. Code R. 335-13-1-.03.

(~~pu~~) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing MSW landfill. A lateral expansion is not a modification unless it results in an increase in the design capacity of the landfill.

(~~v~~) "Leachate recirculation" means the practice of taking the leachate collected from the landfill and reapplying it to the landfill by any of one of a variety of methods, including pre-wetting of the waste, direct discharge into the working face, spraying, infiltration ponds, vertical injection wells, horizontal gravity distribution systems, and pressure distribution systems.

(~~qw~~) "Modification" means an increase in the permitted volume design capacity of the landfill by either ~~horizontal~~-lateral or vertical expansion based on its design capacity as of ~~May 30, 1991~~July 17, 2014. Modification does not occur until the owner or operator commences construction on the ~~horizontal~~-lateral or vertical expansion.

(~~fx~~) "Municipal solid waste landfill" or "MSW landfill" means an entire disposal facility in a contiguous geographic space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes (ADEM Admin. Code R. 335-13-1-.03) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

(~~sy~~) "Municipal solid waste landfill emissions" or "MSW landfill emissions" means gas generated by the decomposition of organic waste deposited in an MSW landfill or derived from the evolution of organic compounds in the waste.

(~~tz~~) "NMOC" means nonmethane organic compounds, as measured according to the provisions of ~~Rule~~-rule 335-3-19-.03(3).

(~~aa~~) "Nondegradable waste" means any waste that does not decompose through chemical breakdown or microbiological activity. Examples are, but are not limited to, concrete, municipal waste combustor ash, and metals.

(vbb) "Passive collection system" means a gas collection system that solely uses positive pressure within the landfill to move the gas rather than using gas mover equipment.

(cc) "Root cause analysis" means an assessment conducted through a process of investigation to determine the primary cause, and any other contributing causes, of positive pressure at a wellhead.

(wdd) "Sludge" means any nonhazardous solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

(xee) "Solid waste" means any garbage or rubbish, construction/demolition debris, ash, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities or materials intended for or capable of recycling, but which have not been diverted or removed from the solid waste stream. The term "solid waste" does not include recovered material, solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to National Pollutant Discharge permits under the Federal Water Pollution Control Act 33 U.S.C. 1342, as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.). Also excluded from this definition are wastes from silvicultural operations, land application of crop residues, animal residues, animal manure and ash resulting exclusively from the combustion of fossil fuels or wood during normal agricultural operations or mining refuse as defined and regulated pursuant to the Alabama Mining Act.

(yff) "Sufficient density" means any number, spacing, and combination of collection system components, including vertical wells, horizontal collectors, and surface collectors, necessary to maintain emission and migration control as determined by measures of performance set forth in this Chapter.

(zgg) "Sufficient extraction rate" means a rate sufficient to maintain a negative pressure at all wellheads in the collection system without causing air infiltration, including any wellheads connected to the system as a result of expansion or excess surface emissions, for the life of the blower.

(hh) "Treated landfill gas" means landfill gas processed in a treatment system as defined in this rule.

(ii) "Treatment system" means a system that filters, de-waters, and compresses landfill gas for sale or beneficial use.

(ij) "Untreated landfill gas" means any landfill gas that is not treated landfill gas.

**Author:** Ronald W. Gore

**Statutory Authority:** Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8.

**History:** Effective Date: January 15, 1998.

**Amended:** January 13, 2000; ~~XXXXXX~~, 2017.

### **335-3-19-.02 General Provisions.**

(1) The provisions of this Chapter apply to each existing MSW landfill for which construction, reconstruction or modification was commenced on or before July 17, 2014. Physical or operational changes made to an existing MSW landfill solely to comply with this Chapter are not considered a modification or reconstruction and would not subject an existing MSW landfill to the requirements of Subpart XXX as incorporated by reference in rule 335-3-10-.02(76), [see §60.760 of Subpart XXX, 40 CFR].

(2) Collection and control of MSW landfill emissions shall be required at each MSW landfill meeting the following three conditions:

(a) The landfill has accepted municipal solid waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.

(b) The landfill has a design capacity greater than or equal to 2.5 million megagrams by mass and 2.5 million cubic meters by volume. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the design capacity report; and

(c) The landfill has a nonmethane organic compound emission rate greater than or equal to 34 megagrams per year or Tier 4 surface emissions monitoring shows a surface emission concentration of 500 parts per million methane or greater.

(d) The landfill in the closed landfill subcategory and has an NMOC emission rate greater than or equal to 50 megagrams per year or Tier 4 surface emissions monitoring shows a surface emission concentration of 500 parts per million methane or greater.

(3) For purposes of obtaining an operating permit under Chapter 335-3-16 of this Division, the owner or operator of a MSW landfill subject to this Chapter with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain an operating permit for the landfill under Chapter 335-3-16, unless the landfill is otherwise subject to Chapter 335-3-16. For purposes of submitting a timely application for an operating permit, the owner or operator of a MSW landfill subject to this Chapter with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on the effective date of EPA's approval of the state's program [December 7, 1998], and not otherwise subject to Chapter 335-3-16, becomes subject to the requirements of Chapter 335-3-16, 90 days after the effective date [March 7, 1999] of said program approval, even if the design capacity report is submitted earlier.

(4) When a MSW landfill subject to this Chapter is closed as defined in this rule, the owner or operator is no longer subject to the requirement to maintain an operating permit under Chapter 335-3-16 for the landfill if the

landfill is not otherwise subject to the requirements of Chapter 335-3-16 and if either of the following conditions are met.

(a) The landfill was never subject to the requirement to install and operate a gas collection and control system under rule 335-3-19-.03; or

(b) The owner or operator meets the condition for control system removal specified in rule 335-3-19-.03(1)(e).

(5) When an MSW landfill subject to this rule is in the closed landfill subcategory, the owner or operator is not subject to the following reports of this rule, provided the owner or operator submitted these reports under the provisions of Subpart WWW as incorporated by reference in rule 335-3-10-.02(75); or under the provisions of this rule on or before July 17, 2014;

(a) Initial design capacity report specified in subparagraph 335-3-19-.03(6)(a) of this rule.

(b) Initial or subsequent NMOC emission rate report specified in subparagraph 335-3-19-.03(6)(b) of this rule, provided that the most recent NMOC emission rate report indicated the NMOC emissions were below 50 Mg/yr.

(c) Collection and control system design plan specified in subparagraph 335-3-19-.03(6)(c) of this rule.

(d) Closure report specified in subparagraph 335-3-19-.03(6)(e) of this rule.

(e) Equipment removal report specified in subparagraph 335-3-19-.03(6)(f) of this rule.

(f) Initial annual report specified in subparagraph 335-3-19-.03(6)(g) of this rule.

(g) ~~initial~~Initial performance test report in subparagraph 335-3-19-.03(6)(h) of this rule.

**Author:** Ronald W. Gore

**Statutory Authority:** Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8.

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**Amended:** January 13, 2000; XXXXXX, 2017.

**335-3-19-.03 Standards for Existing Municipal Solid Waste Landfills.**

(1) Standards for Air Emissions from Existing Municipal Solid Waste Landfills.

(a) Collection system. Each MSW landfill meeting the conditions in 335-3-19-.02(2) shall install a gas collection as specified in subparagraphs (a)1. through (a)3. of this paragraph.

1. Install and start up a collection and control system that captures the gas generated within the landfill within 30 months after:

(i) The first annual report in which the NMOC emission rate equals or exceeds 34 megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 34 megagrams per year, as specified in subparagraph (6)(c)4. of this rule; or

(ii) The first annual NMOC emission rate report for a landfill in the closed landfill subcategory in which the NMOC emission rate equals or exceeds 50 megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 50 megagrams per year, as specified in subparagraph (6)(c)4. of this rule; or

(iii) The most recent NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 megagrams per year based on Tier 2, if the Tier 4 surface emissions monitoring shows a surface methane emission concentration of 500 parts per million methane or greater as specified in subparagraph (6)(c)4.(iii) of this rule.

2. *Active.* An active collection system shall:

(i) Be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control system equipment.

(ii) Collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of 5 years or more if active; or 2 years or more if closed or at final grade.

(iii) Collect gas at a sufficient extraction rate.

(iv) Be designed to minimize off-site migration of subsurface gas.

3. *Passive.* A passive collection system shall:

(i) Comply with the provisions specified in subparagraphs (1)(a)2.(i), (ii), and (iv) of this paragraph.

(ii) Be installed with liners on the bottom and all sides in all areas in which gas is to be collected. The liners shall be installed as required under 40 CFR §258.40.

(b) Control system. Each MSW landfill meeting the conditions in rule 335-3-19-.02(2) shall control gas collected from within the landfill through the use of control devices meeting the following requirements, except as provided in 40 CFR §60.24.

1. A non-enclosed flare designed and operated in accordance with the parameters established in 40 CFR §60.18 except as noted in subparagraph (5)(d) of this rule; or

2. A control system designed and operated to reduce NMOC by 98 weight percent; or when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight percent or reduce the outlet NMOC concentration to less than 20 parts per million by volume, dry basis as hexane at 3 percent oxygen or less. The reduction efficiency or concentration in parts per million by volume shall be established by an initial performance test to be completed no later than 180 days after the initial startup of the approved control system using the test methods specified in subparagraph (3)(d) of this rule. The performance test is not required for boilers and process heaters with design heat input capacities equal to or greater than 44 megawatts that burn landfill gas for compliance with this Chapter.

(i) If a boiler or process heater is used as the control device, the landfill gas stream shall be introduced into the flame zone.

(ii) The control device shall be operated within the parameter ranges established during the initial or most recent performance test. The operating parameters to be monitored are specified in paragraph (5) of this rule.

(iii) For the closed landfill subcategory, the initial or most recent performance test conducted to comply with 40 CFR 60 Subpart WWW of this; or any other requirement of this Chapter on or before July 17, 2014 is sufficient for compliance with this Chapter.

3. Route the collected gas to a treatment system that processes the collected gas for subsequent sale or beneficial use such as fuel for combustion, production of vehicle fuel, production of high-Btu gas for pipeline injection, or use as a raw material in a chemical manufacturing process. Venting of treated landfill gas to the ambient air is not allowed. If the treated landfill gas cannot be routed for subsequent sale or beneficial use, then the treated landfill gas shall be controlled according to either subparagraph (b)1. or 2. of this paragraph.

4. All emissions from any atmospheric vent from the gas treatment system are subject to the requirements of subparagraph (a) or (b) of this paragraph. For purposes of this Chapter, atmospheric vents located on the condensate storage tank are not part of the treatment system and are exempt from the requirements of subparagraph (a) or (b) of this paragraph.

(c) *Design capacity.* Each owner or operator of an MSW landfill having a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume shall submit an initial design capacity report to the Director as provided in subparagraph (6)(a) of this rule. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the report. Submittal of the initial design capacity report shall fulfill the requirements of this rule except as provided for in subparagraphs (a)1. and (a)2. below.

1. The owner or operator shall submit to the Director an amended design capacity report, as provided for in subparagraph (6)(a)3. [Guidance: Note that if the design capacity increase is the result of a modification, as defined in rule 335-3-19-.01, that was commenced after July 17, 2014, the landfill will become subject to Rule 335-3-10-.02(76), 40 CFR 60, Subpart XXX. If the design capacity increase is the result of a change in operating practices, density, or some other change that is not a modification as the defined in rule 335-3-19-.01, the landfill remains subject to this Chapter.]

2. When an increase in the maximum design capacity of a landfill with an initial design capacity less than 2.5 million megagrams or 2.5 million cubic meters results in a revised maximum design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, the owner or operator shall comply with the provision of subparagraph (d) below.

(d) Each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, shall either install a collection and control system as provided in subparagraphs (a) and (b) of this paragraph or calculate an NMOC emission rate for the landfill using the procedures specified in paragraph (3) of this rule. The NMOC emission rate shall be recalculated annually, except as provided in subparagraph(6)(b)3. of this rule. The owner or operator of an MSW landfill subject to this Chapter with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters is subject to major source operating permitting requirements in Chapter 335-3-16.

1. If the calculated NMOC emission rate is less than 34 megagrams per year, the owner or operator shall:

(i) submit an annual NMOC emission report to the Director, except as provided for in subparagraph(6)(b)3. of this rule; and

(ii) recalculate the NMOC emission rate annually using the procedures specified in subparagraph (3)(a) of this rule until such time as the calculated NMOC emission rate is equal to or greater than 34 megagrams per year, or the landfill is closed.

(I) If the NMOC emission rate, upon initial calculation or annual recalculation required in subparagraph (d)1.(ii) above, is equal to or greater than 34 megagrams per year, the owner or operator shall install a collection and control system in compliance with subparagraph (b)2. below; calculate NMOC emission using the next higher tier in subparagraph (3) of this rule; or conduct a surface emission monitoring demonstration using the procedures specified in subparagraph (3)(a)6. of this rule.

(II) If the landfill is permanently closed, a closure report shall be submitted to the Director as provided for in subparagraph (6)(e) of this rule, except for exemption allowed under 335-3-19-.02(5)(d).

(III) For the closed landfill subcategory, if the most recently calculated NMOC emission rate is equal to or greater than 50 megagrams per year, the owner or operator shall either: Submit a gas collection and control system design plan as specified in subparagraph (6)(c) of this rule, except for

exemptions allowed under rule 335-3-19-.02(5)(c), and install a collection and control system as provided in subparagraphs (a) and (b) of this paragraph; calculate NMOC emissions using the next higher tier in paragraph (3) of this rule; or conduct a surface emission monitoring demonstration using the procedures specified in subparagraph (3)(a)6. of this rule.

2. If the calculated NMOC emission rate is equal to or greater than 34 megagrams per year using Tier 1, 2, or 3 procedures, the owner or operator shall either:

(i) submit a collection and control system design plan prepared by a professional engineer to the Director within 1 year as specified in subparagraph (6)(c) of this rule, except for exemptions allowed under rule 335-3-19-.02(5)(c);

(ii) calculate NMOC emissions using a higher tier in paragraph (3) of this rule; or

(iii) conduct a surface emission monitoring demonstration using the procedures specified in subparagraph (3)(a)6. of this rule.

3. For the closed landfill subcategory, if the calculated NMOC emission rate is equal to or greater than 50 megagrams per year using Tier 1, 2, or 3 procedures, the owner or operator shall either:

(i) Submit a collection and control system design plan as specified in subparagraph (6)(c) of this rule, except for exemptions allowed under rule 335-3-19-.02(5)(c);

(ii) calculate NMOC emissions using a higher tier in paragraph (3) of this rule; or

(iii) conduct a surface emission monitoring demonstration using the procedures specified in subparagraph (3)(a)6. of this rule.

(e) *Removal criteria.* The collection and control system may be capped, removed, or decommissioned provided that the following criteria are met:

1. The landfill is a closed landfill as defined in rule 335-3-19-.01(d). A closure report shall be submitted to the Director as provided in subparagraph (6)(e) of this rule;

2. The collection and control system shall have been in operation a minimum of 15 years or the landfill owner or operator demonstrates that the GCCS will be unable to operate for 15 years due to declining gas flow.

3. Following the procedures specified in subparagraph (3)(b) of this rule, the calculated NMOC gas produced by the landfill shall be less than 34 megagrams per year on three successive test dates. The test dates shall be no less than 90 days apart, and no more than 180 days apart.

4. For the closed landfill subcategory (as defined in rule 335-3-19-.01(e)), following the procedures specified in subparagraph (3)(b) of this rule, the calculated NMOC emission rate at the landfill is less than 50 megagrams per year on three successive test dates. The test dates shall be no less than 90 days apart, and no more than 180 days apart.

(2) Operational Standards for Collection and Control Systems. Each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of subparagraph (1)(a) and (b) of this rule shall:

(a) Operate the collection system such that gas is collected from each area, cell, or group of cells in the MSW landfill in which solid waste has been in place for:

1. 5 years or more if active; or
2. 2 years or more if closed or at final grade;

(b) Operate the collection system with negative pressure at each wellhead except under the following conditions:

1. a fire or increased well temperature. The owner or operator shall record instances when positive pressure occurs in efforts to avoid a fire. These records shall be submitted with the annual reports as provided in subparagraph (6)(g) of this rule;

2. use of a geomembrane or synthetic cover. The owner or operator shall develop acceptable pressure limits in the design plan;

3. a decommissioned well. A well may experience a static positive pressure after shut down to accommodate for declining flows. All design changes shall be approved by the Director as specified in subparagraph 335-3-19-.03(6)(c) of this rule;

(c) Operate each interior wellhead in the collection system with a landfill gas temperature less than 55°C (131°F). The owner or operator may establish a higher operating temperature value at a particular well. A higher operating value demonstration shall be submitted to the Director for approval and shall include supporting data demonstrating that the elevated parameter neither causes fires nor significantly inhibits anaerobic decomposition by killing methanogens. The demonstration shall satisfy both criteria in order to be approved (i.e., neither causing fires nor killing methanogens is acceptable).

(d) Operate the collection system so that the methane concentration is less than 500 parts per million above background at the surface of the landfill. To determine if this level is exceeded, the owner or operator shall conduct surface testing using an organic vapor analyzer, flame ~~ionization~~ ionization detector, or other portable monitor meeting the specifications provided in subparagraph (4)(d) of this rule. The owner or operator shall conduct surface testing around the perimeter of the collection area and along a pattern that traverses the landfill at no more than 30 meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover and all cover penetrations. Thus the owner or operator shall monitor any openings that are within an area of the landfill where waste has been placed and a gas collection system is required. The owner or operator shall establish an alternative traversing pattern that ensures equivalent coverage. A surface monitoring design plan shall be developed that includes a topographical map with the monitoring route and the rationale for any site-specific deviations from the 30 meter intervals. Areas with

steep slopes or other dangerous areas may be excluded from the surface testing.

(e) Operate the system such that all collected gases are vented to a control system designed and operated in compliance with subparagraph (1)(b) of this rule. In the event the collection or control system is inoperable, the gas mover system shall be shut down and all valves in the collection and control system contributing to venting of the gas to the atmosphere shall be closed within 1 hour of the collection or control system not operating.

(f) Operate the control system at all times when the collected gas is routed to the system.

(g) If monitoring demonstrates that the operational requirements in subparagraphs (b), (c), or (d) of this paragraph are not met, corrective action shall be taken as specified in subparagraphs (4)(a)3. and 5. or subparagraph (4)(c) of this rule. If corrective actions are taken as specified in paragraph (4) of this rule, the monitored exceedance is not a violation of the operational requirements in this paragraph.

### (3) Test Methods and Procedures.

(a) *NMOC Emission Rate.* The landfill owner or operator shall calculate the NMOC emission rate using either the equation provided in subparagraph (a)1. of this paragraph or the equation provided in subparagraph (a)1.(ii) of this paragraph. Both equations may be used if the actual year-to-year solid waste acceptance rate is known, as specified in subparagraph (a)1. of this paragraph, for part of the life of the landfill and the actual year-to-year solid waste acceptance rate is unknown, as specified in subparagraph (a)1.(ii) of this paragraph, for part of the life of the landfill. The values to be used in both equations are 0.05 per year for  $k$ , 170 cubic meters per megagram for  $L_0$ , and 4,000 parts per million by volume as hexane for the  $C_{NMOC}$ . For landfills located in geographical areas with a 30-year annual average precipitation of less than 25 inches, as measured at the nearest representative official meteorological site, the  $k$  value to be used is 0.02 per year.

1. The following equation shall be used if the actual year-to-year solid waste acceptance rate is known.

$$M_{NMOC} = \sum_{i=1}^n 2kL_0 M_i (e^{-kt_i}) (C_{NMOC}) (3.6 \times 10^{-9})$$

where,

$M_{NMOC}$  = Total NMOC emission rate from the landfill, megagrams per year

$k$  = methane generation rate constant, year<sup>-1</sup>

$L_0$  = methane generation potential, cubic meters per megagram solid waste

$M_i$  = mass of solid waste in the  $i^{\text{th}}$  section, megagrams

$t_i$  = age of the  $i^{\text{th}}$  section, years

$C_{\text{NMOC}}$  = concentration of NMOC, parts per million by volume as hexane

$3.6 \times 10^{-9}$  = conversion factor

(i) The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value for  $M_i$  if the documentation of the nature and amount of such wastes is maintained.

(ii) The following equation shall be used if the actual year-to-year solid waste acceptance rate is unknown.

$$M_{\text{NMOC}} = 2L_o R (e^{-kc} - e^{-kt}) (C_{\text{NMOC}}) (3.6 \times 10^{-9})$$

where,

$M_{\text{NMOC}}$  = mass emission rate of NMOC, megagrams per year

$L_o$  = methane generation potential, cubic meters per megagram solid waste

$R$  = average annual acceptance rate, megagrams per year

$k$  = methane generation rate constant, year<sup>-1</sup>

$t$  = age of landfill, years

$C_{\text{NMOC}}$  = concentration of NMOC, parts per million by volume as hexane

$c$  = time since closure, years. For active landfill  $c = 0$  and  $e^{-kc} = 1$

$3.6 \times 10^{-9}$  = conversion factor

(iii) The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating a value for  $R$ , if the documentation of the nature and amount of such wastes is maintained.

2. Tier 1. The owner or operator shall compare the calculated NMOC mass emission rate to the standard of 34 megagrams per year.

(i) If the NMOC emission rate calculated in subparagraph (a) of this paragraph is less than 34 megagrams per year, then the landfill owner or operator shall submit an NMOC emission rate report as provided in

subparagraph (6)(b)1. of this rule, and shall recalculate the NMOC mass emission rate annually as required under subparagraph (1)(d)1. of this rule.

(ii) If the calculated NMOC emission rate is equal to or greater than 34 megagrams per year, then the landfill owner or operator shall either:

(I) Submit a gas collection and control system design plan within 1 year as specified in subparagraph (6)(c) of this rule, and install and operate a gas collection and control system within 30 months according to subparagraphs (1)(a) and (b) of this rule;

(II) Determine a site-specific NMOC concentration and recalculate the NMOC emission rate using the Tier 2 procedures provided in subparagraph (3)(a)3. of this paragraph; or

(III) Determine a site-specific methane generation rate constant and recalculate the NMOC emission rate using the Tier 3 procedures provided in subparagraph (3)(a)4. of this paragraph.

3. Tier 2. The landfill owner or operator shall determine the site-specific NMOC concentration using the following sampling procedure. The landfill owner or operator shall install at least two sample probes per hectare, evenly distributed over the landfill surface that has retained waste for at least 2 years. If the landfill is larger than 25 hectares in area, only 50 samples are required. The probes should be evenly distributed across the sample area. The sample probes should be located to avoid known areas of nondegradable solid waste. The owner or operator shall collect and analyze one sample of landfill gas from each probe to determine the NMOC concentration using Method 25 or 25C of Appendix A of 40 CFR Part 60. Taking composite samples from different probes into a single cylinder is allowed; however, equal sample volumes shall be taken from each probe. For each composite, the sampling rate, collection times, beginning and ending cylinder vacuums, or alternative volume measurements shall be recorded to verify that composite volumes are equal. Composite sample volumes should not be less than one liter unless evidence can be provided to substantiate the accuracy of smaller volumes. Terminate compositing before the cylinder approaches ambient pressure where measurement accuracy diminishes. If more than the required number of samples is taken, all samples shall be used in the analysis. The landfill owner or operator shall divide the NMOC concentration from Method 25 or 25C by six to convert from  $C_{\text{NMOC}}$  as carbon to  $C_{\text{NMOC}}$  as hexane. If the landfill has an active or passive gas removal system in place, Method 25 or 25C samples may be collected from these systems instead of surface probes provided the removal system can be shown to provide sampling as representative as the two sampling probe per hectare requirement. For active collection systems, samples may be collected from the common header pipe. The sample location on the common header pipe shall be before any gas moving, condensate removal, or treatment system equipment. For active collection systems, a minimum of three samples shall be collected from the header pipe.

[**NOTE:** Test Methods found in Appendix A of 40 CFR part 60 are incorporated by reference in ADEM Admin. Code r. 335-3-10-.03.]

(i) Within 60 days after the date of determining the NMOC concentration and corresponding NMOC emission rate, the owner or operator shall submit the results according to subparagraph (6)(i)2. of this rule.

(ii) The landfill owner or operator shall recalculate the NMOC mass emission rate using the equations provided in subparagraph (3)(a)1. or (a)1.(ii) of this paragraph and using the average site-specific NMOC concentration from the collected samples instead of the default value in the equation provided in subparagraph (a) of this paragraph.

(iii) If the resulting NMOC mass emission rate is less than 34 megagrams per year, the owner or operator shall submit a periodic estimate of the NMOC emissions in an NMOC emission rate report as provided in subparagraph (6)(b)1. of this rule and shall recalculate the NMOC mass emission rate ~~annually~~annually as required under subparagraphs (1)(a) and (b) of this rule. The site-specific NMOC concentration shall be retested every 5 years using the methods specified in this paragraph.

(iv) If the NMOC mass emission rate as calculated using the Tier 2 site-specific NMOC concentration is equal to or greater than 34 megagrams per year, the owner or operator shall either:

(I) Submit a gas collection and control system design plan within 1 year as specified in subparagraph (6)(c) of this rule, and install and operate a gas collection and control system within 30 months according to subparagraphs (1)(a) and (b) of this rule;

(II) Determine a site-specific methane generation rate constant and recalculate the NMOC emission rate using the site-specific methane generation rate using the Tier 3 procedures specified in subparagraph (3)(a)4. of this paragraph; or

(III) Conduct a surface emission monitoring demonstration using the Tier 4 procedures specified in subparagraph (a)6 of this paragraph.

4. Tier 3. The site-specific methane generation rate constant shall be determined using the procedures provided in Method 2E of Appendix A. The landfill owner or operator shall estimate the NMOC mass emission rate using equations in subparagraph (a)1. or (a)1.(ii) of this paragraph and using a site-specific methane generation rate constant  $k$ , and the site-specific NMOC concentration as determined in subparagraph (a)3. of this paragraph instead of the default values provided in subparagraph (a) of this paragraph. The landfill owner or operator shall compare the resulting NMOC mass emission rate to the standard of 34 megagrams per year.

(i) If the NMOC mass emission rate as calculated using the Tier ~~2~~2 site-specific methane generation rate and concentration of NMOC is equal to or greater than ~~50~~34 megagrams per year, the owner or operator shall comply with subparagraph (1)(b)2. of this Rule.

(I) Submit a gas collection and control system design plan within 1 year as specified in subparagraph (6)(c) of this rule, and install and operate a gas collection and control system within 30 months according to subparagraphs (1)(a) and (b) of this rule; or

(II) Conduct a surface emission monitoring demonstration using the Tier 4 procedures specified in subparagraph (3)(a)6. of this paragraph.

(ii) If the NMOC mass emission rate is less than 34 megagrams per year, then the owner or operator shall recalculate the NMOC mass emission rate annually using either equation in subparagraph (a)1. of this paragraph and using the site-specific Tier 2 NMOC concentration and Tier 3 methane generation rate constant and submit a periodic NMOC emission rate report as provided in subparagraph (6)(b) of this rule. The calculation of the methane generation rate constant is performed only once, and the value obtained from this test shall be used in all subsequent annual NMOC emission rate calculations.

5. *Other methods.* The owner or operator may use other methods to determine the NMOC concentration or a site-specific  $k$  as an alternative to the methods required in subparagraphs (a)3. and (a)4. of this paragraph if the method has been approved by the Administrator.

6. *Tier 4.* The landfill owner or operator shall demonstrate that surface methane emissions are below 500 parts per million. Surface emission monitoring shall be conducted on a quarterly basis using the following procedures. Tier 4 is allowed only if the landfill owner or operator can demonstrate that NMOC emissions are greater than or equal to 34 Mg/yr but less than 50 Mg/yr using Tier 1 or Tier 2. If both Tier 1 and Tier 2 indicate NMOC emissions are 50 Mg/yr or greater, then Tier 4 cannot be used. In addition, the landfill shall meet the criteria in subparagraph (a)6.(viii) of this paragraph.

(i) The owner or operator shall measure surface concentrations of methane along the entire perimeter of the landfill and along a pattern that traverses the landfill at no more than 30-meter intervals using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in subparagraph (4)(d) of this rule.

(ii) The background concentration shall be determined by moving the probe inlet upwind and downwind at least 30 meters from the waste mass boundary of the landfill.

(iii) Surface emission monitoring shall be performed in accordance with section 8.3.1 of Method 21 of appendix A of 40 CFR Part 60, except that the probe inlet shall be placed no more than 5 centimeters above the landfill surface; the constant measurement of distance above the surface should be based on a mechanical device such as with a wheel on a pole.

(I) The owner or operator shall use a wind barrier, similar to a funnel, when onsite average wind speed exceeds 4 miles per hour or 2 meters per second or gust exceeding 10 miles per hour. Average on-site wind speed shall also be determined in an open area at 5-minute intervals using an on-site anemometer with a continuous recorder and data logger for the entire duration

of the monitoring event. The wind barrier shall surround the SEM monitor, and shall be placed on the ground, to ensure wind turbulence is blocked. SEM cannot be conducted if average wind speed exceeds 25 miles per hour.

(II) Landfill surface areas where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover, and all cover penetrations shall also be monitored using a device meeting the specifications provided in subparagraph (4)(d) of this rule.

(iv) Each owner or operator seeking to comply with the Tier 4 provisions in subparagraph (a)6. of this paragraph shall maintain records of surface emission monitoring as provided in subparagraph(7)(g) of this rule, and submit a Tier 4 surface emissions report as provided in subparagraph (6)(c)4.(iii) of this rule.

(v) If there is any measured concentration of methane of 500 parts per million or greater from the surface of the landfill, the owner or operator shall submit a gas collection and control system design plan within 1 year of the first measured concentration of methane of 500 parts per million or greater from the surface of the landfill according to subparagraph (6)(c) of this rule, and install and operate a gas collection and control system according to subparagraphs (1)(a) and (b) of this rule, within 30 months of the most recent NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 megagrams per year based on Tier 2.

(vi) If after four consecutive quarterly monitoring periods at a landfill, other than a closed landfill, there is no measured concentration of methane of 500 parts per million or greater from the surface of the landfill, the owner or operator shall continue quarterly surface emission monitoring using the methods specified in this paragraph.

(vii) If after four consecutive quarterly monitoring periods at a closed landfill there is no measured concentration of methane of 500 parts per million or greater from the surface of the landfill, the owner or operator shall conduct annual surface emission monitoring using the methods specified in this paragraph.

(viii) If a landfill has installed and operates a collection and control system that is not required by this Chapter, then the collection and control system shall meet the following criteria:

(I) The gas collection and control system shall have operated for at least 6,570 out of 8,760 hours preceding the Tier 4 surface emissions monitoring demonstration.

(II) During the Tier 4 surface emissions monitoring demonstration, the gas collection and control system shall operate as it normally would to collect and control as much landfill gas as possible.

(b) After the installation and startup of a collection and control system in compliance with paragraph (4) of this rule, the owner or operator shall calculate the NMOC emission rate for purposes of determining when the system can be capped, removed, or decommissioned as provided in subparagraph (1)(e) of this rule, using the following equation:

$$M_{NMOC} = 1.89 \times 10^{-3} (Q_{LFG})(C_{NMOC})$$

where,

$M_{NMOC}$  = mass emission rate of NMOC, megagrams per year

$Q_{LFG}$  = flow rate of landfill gas, cubic meters per minute

$C_{NMOC}$  = NMOC concentration, parts per million by volume as hexane

1. The flow rate of landfill gas,  $Q_{LFG}$ , shall be determined by measuring the total landfill gas flow rate at the common header pipe that leads to the control device using a gas flow measuring device calibrated according to the provisions of Section 10 of Method 2E of Appendix A.

2. The average NMOC concentration,  $C_{NMOC}$ , shall be determined by collecting and analyzing landfill gas sampled from the common header pipe before the gas moving or condensate removal equipment using the procedures in Method 25 or 25C or Method 18 of Appendix A. If using Method 18, the minimum list of compounds to be tested shall be those published in the most recent Compilation of Air Pollutant Emission Factors (AP-42). The sample location on the common header pipe shall be before any condensate removal or other gas refining units. The landfill owner or operator shall divide the NMOC concentration from Method 25 or 25C by six to convert from  $C_{NMOC}$  as carbon to  $C_{NMOC}$  as hexane.

3. The owner or operator may use another method to determine landfill gas flow rate and NMOC concentration if the method has been approved by the ~~Director~~Administrator.

(i) Within 60 days after the date of calculating the NMOC emission rate for purposes of determining when the system can be capped or removed, the owner or operator shall submit the results according to subparagraph (6)(i)2. of this rule.

(ii) [Reserved]

(c) When calculating emissions for PSD purposes, the owner or operator of each MSW landfill subject to the provisions of this Chapter shall estimate the NMOC emission rate for comparison to the PSD major source and significance levels in rule 335-3-14-.04(2)(w) using AP-42 or other approved measurement procedures.

(d) For the performance test required in subparagraph (1)(b)1. of this rule, the net heating value of the combusted landfill gas as determined in 40 CFR §60.18(f)(3) is calculated from the concentration of methane in the landfill gas as measured by Method 3C. A minimum of three 30-minute Method 3C samples are determined. The measurement of other organic components, hydrogen, and carbon monoxide is not applicable. Method 3C may be used to determine the landfill gas molecular weight for calculating the flare gas exit velocity under 40 CFR §60.18(f)(4).

1. Within 60 days after the date of completing each performance test (as defined in 40 CFR §60.8), the owner or operator shall submit the results of the performance tests required by paragraph (b) or (d) of this section, including any associated fuel analyses, according to subparagraph (6)(i)1. of this rule.

2. [Reserved].

(e) For the performance test required in subparagraph (i)(b)2., Method 25 or 25C or Method 18 (Method 25C may be used at the inlet only) shall be used to determine compliance with 98 weight-percent efficiency or the 20 ppmv outlet NMOC concentration level, unless another method to demonstrate compliance has been approved by the Director as provided by subparagraph (6)(c)2. of this rule. If using Method 18, the minimum list of compounds to be tested shall be those published in the most recent Compilation of Air Pollutant Emission Factors (AP-42). Method 3, 3A, or 3C shall be used to determine oxygen for correcting the NMOC concentration as hexane to 3 percent. In cases where the outlet concentration is less than 50 ppm NMOC as carbon (8 ppm NMOC as hexane), Method 25A should be used in place of Method 25. Method 18 may be used in conjunction with Method 25A on a limited basis (compound specific, *e.g.*, methane) or Method 3C may be used to determine methane. The methane as carbon should be subtracted from the Method 25A total hydrocarbon value as carbon to give NMOC concentration as carbon. The landfill owner or operator shall divide the NMOC concentration as carbon by 6 to convert the  $C_{NMOC}$  as carbon to  $C_{NMOC}$  as hexane. The following equation shall be used to calculate efficiency:

$$\text{Control Efficiency} = \frac{(NMOC_{in} - NMOC_{out})}{NMOC_{in}}$$

where,

$NMOC_{in}$  = mass of NMOC entering control device

$NMOC_{out}$  = mass of NMOC exiting control device

1. Within 60 days after the date of completing each performance test (as defined in 40 CFR §60.8), the owner or operator shall submit the results of the performance tests, including any associated fuel analyses, according to subparagraph (6)(i)1. of this rule.

2. [Reserved].

(4) Compliance Provisions.

(a) Except as provided in subparagraph (6)(c)2. of this rule, the specified methods in subparagraphs (a)1. through (a)6. of this paragraph shall be used to determine whether the gas collection system is in compliance with subparagraph (1)(b)2.(ii) of this rule.

1. For the purposes of calculating the maximum expected gas generation flow rate from the landfill to determine compliance with subparagraph (1)(a)2.(i)

of this rule, one of the following equations shall be used. The  $k$  and  $L_o$  kinetic factors should be those published in the most recent Compilation of Air Pollutant Emission Factors (AP-42) or other site specific values demonstrated to be appropriate and approved by the Director. If  $k$  has been determined as specified in subparagraph (3)(a)4. of this rule, the value of  $k$  determined from the test shall be used. A value of no more than 15 years shall be used for the intended use period of the gas mover equipment. The active life of the landfill is the age of the landfill plus the estimated number of years until closure.

(i) For sites with unknown year-to-year solid waste acceptance rate:

$$Q_m = 2L_o R (e^{-kc} - e^{-kt})$$

where,

$Q_m$  = maximum expected gas generation flow rate, cubic meters per year

$L_o$  = methane generation potential, cubic meters per megagram solid waste

$R$  = average annual acceptance rate, megagrams per year

$k$  = methane generation rate constant, year<sup>-1</sup>

$t$  = age of the landfill at equipment installation plus the time the owner or operator intends to use the gas mover equipment or active life of the landfill, whichever is less. If the equipment is installed after closure,  $t$  is the age of the landfill at installation, years

$c$  = time since closure, years (for an active landfill  $c = 0$  and  $e^{-kc} = 1$ )

(ii) For sites with known year-to-year solid waste acceptance rate:

$$Q_m = \sum_{i=1}^n 2kL_o M_i (e^{-kt_i})$$

where,

$Q_m$  = maximum expected gas generation flow rate, cubic meters per year

$k$  = methane generation rate constant, year<sup>-1</sup>

$L_o$  = methane generation potential, cubic meters per megagram solid waste

$M_i$  = mass of solid waste in the  $i^{\text{th}}$  section, megagrams

$t_i$  = age of the  $i^{\text{th}}$  section, years

(iii) If a collection and control system has been installed, actual flow data may be used to project the maximum expected gas generation flow rate instead

of, or in conjunction with, the equations in subparagraphs (a)1.(i) and (ii) of this paragraph. If the landfill is still accepting waste, the actual measured flow data will not equal the maximum expected gas generation rate, so calculations using the equations in subparagraphs (a)1.(i) or (ii) or other methods shall be used to predict the maximum expected gas generation rate over the intended period of use of the gas control system equipment.

2. For the purposes of determining sufficient density of gas collectors for compliance with subparagraph (1)(a)2.(ii) of this rule., the owner or operator shall design a system of vertical wells, horizontal collectors, or other collection devices, satisfactory to the Director, capable of controlling and extracting gas from all portions of the landfill sufficient to meet all operational and performance standards.

3. For the purpose of demonstrating whether the gas collection system flow rate is sufficient to determine compliance with subparagraph (1)(a)2.(iii) of this rule, the owner or operator shall measure gauge pressure in the gas collection header at each individual well, monthly. If a positive pressure exists, action shall be initiated to correct the exceedance within 5 calendar days, except for the three conditions allowed under subparagraph (2)(b) of this rule. Any attempted corrective measure shall not cause exceedances of other operational or performance standards.

(i) If negative pressure cannot be achieved without excess air infiltration within 15 calendar days of the first measurement of positive pressure, the owner or operator shall conduct a root cause analysis and correct the exceedance as soon as practicable, but not later than 60 days after positive pressure was first measured. The owner or operator shall keep records according to subparagraph (7)(e)3 of this rule.

(ii) If corrective actions cannot be fully implemented within 60 days following the positive pressure measurement for which the root cause analysis was required, the owner or operator shall also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the positive pressure measurement. The owner or operator shall submit the items listed in subparagraph (6)(g)7. of this rule as part of the next annual report. The owner or operator shall keep records according to subparagraph (7)(e)4. of this rule.

(iii) If corrective action is expected to take longer than 120 days to complete after the initial exceedance, the owner or operator shall submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Director, according to subparagraph (6)(g)7. and (j) of this rule. The owner or operator shall keep records according to subparagraph (7)(e)5. of this rule.

4. [Reserved].

5. For the purpose of identifying whether excess air infiltration into the landfill is occurring, the owner or operator shall monitor each well monthly for temperature as provided in subparagraph (2)(c) of this rule. If a well exceeds the operating parameter for temperature, action shall be initiated to correct the

exceedance within 5 calendar days. Any attempted corrective measure shall not cause exceedances of other operational or performance standards.

(i) If a landfill gas temperature less than 55 degrees Celsius (131 degrees Fahrenheit) cannot be achieved within 15 calendar days of the first measurement of landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit), the owner or operator shall conduct a root cause analysis and correct the exceedance as soon as practicable, but no later than 60 days after a landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit) was first measured. The owner or operator shall keep records according to subparagraph (7)(e)3. of this rule.

(ii) If corrective actions cannot be fully implemented within 60 days following the positive pressure measurement for which the root cause analysis was required, the owner or operator shall also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the measurement of landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit). The owner or operator shall submit the items listed in subparagraph (6)(g)7. of this rule, as part of the next annual report. The owner or operator shall keep records according to subparagraph (7)(e)4. of this rule.

(iii) If corrective action is expected to take longer than 120 days to complete after the initial exceedance, the owner or operator shall submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Director, according to subparagraphs (6)(g)7. and (j) of this rule. The owner or operator shall keep records according to subparagraph (7)(e)5. of this rule.

6. An owner or operator seeking to demonstrate compliance with subparagraph (1)(a)2.(iv) of this rule through the use of a collection system not conforming to the specifications provided in paragraph (8) of this rule shall provide information satisfactory to the Director as specified in subparagraph (6)(c)3. of this rule demonstrating that off-site migration is being controlled.

(b) For purposes of compliance with subparagraph (2)(a) of this rule, each owner or operator of a controlled landfill shall place each well or design component as specified in the approved design plan as provided in subparagraph (6)(c) of this rule. Each well shall be installed no later than 60 days after the date on which the initial solid waste has been in place for a period of:

1. 5 years or more if active; or
2. 2 years or more if closed or at final grade.

(c) The following procedures shall be used for compliance with the surface methane operational standard as provided in subparagraph (2)(d) of this rule.

1. After installation and startup of the gas collection system, the owner or operator shall monitor surface concentrations of methane along the entire perimeter of the collection area and along a pattern that traverses the landfill at no more than 30 meter intervals (or a site-specific established spacing) for each collection area on a quarterly basis using an organic vapor analyzer, flame

ionization detector, or other portable monitor meeting the specifications provided in subparagraph (d) of this paragraph.

2. The background concentration shall be determined by moving the probe inlet upwind and downwind outside the boundary of the landfill at a distance of at least 30 meters from the perimeter wells.

3. Surface emission monitoring shall be performed in accordance with Section 8.3.1 of Method 21 of Appendix A of 40 CFR Part 60, except that the probe inlet shall be placed within 5 to 10 centimeters of the ground. Monitoring shall be performed during typical meteorological conditions.

4. Any reading of 500 parts per million or more above background at any location shall be recorded as a monitored exceedance and the actions specified in subparagraphs (c)4.(i) through (v) of this paragraph below shall be taken. As long as the specified actions are taken, the exceedance is not a violation of the operational requirements of subparagraph (2)(d) of this rule.

(i) The location of each monitored exceedance shall be marked and the location and concentration recorded. For location, the owner or operator shall determine the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters. The coordinates shall be in decimal degrees with at least five decimal places.

(ii) Cover maintenance or adjustments to the vacuum of the adjacent wells to increase the gas collection in the vicinity of each exceedance shall be made and the location shall be re-monitored within 10 calendar days of detecting the exceedance.

(iii) If the re-monitoring of the location shows a second exceedance, additional corrective action shall be taken and the location shall be monitored again within 10 days of the second exceedance. If the re-monitoring shows a third exceedance for the same location, the action specified in subparagraph (c)4.(v) of this paragraph shall be taken, and no further monitoring of that location is required until the action specified in subparagraph (c)4.(v) has been taken.

(iv) Any location that initially showed an exceedance but has a methane concentration less than 500 ppm methane above background at the 10-day re-monitoring specified in subparagraph (c)4.(ii) or (iii) of this paragraph shall be re-monitored 1 month from the initial exceedance. If the 1-month re-monitoring shows a concentration less than 500 parts per million above background, no further monitoring of that location is required until the next quarterly monitoring period. If the 1-month re-monitoring shows an exceedance, the actions specified in subparagraph (c)4.(iii) or (v) of this paragraph shall be taken.

(v) For any location where monitored methane concentration equals or exceeds 500 parts per million above background three times within a quarterly period, a new well or other collection device shall be installed within 120 calendar days of the initial exceedance. An alternative remedy to the exceedance, such as upgrading the blower, header pipes or control device, and a corresponding timeline for installation may be submitted to the Director for approval.

5. The owner or operator shall implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis.

(d) Each owner or operator seeking to comply with the provisions in subparagraph (c) of this paragraph shall comply with the following instrumentation specifications and procedures for surface emission monitoring devices:

1. The portable analyzer shall meet the instrument specifications provided in Section 6 of Method 21 of Appendix A, except that "methane" shall replace all references to VOC.

2. The calibration gas shall be methane, diluted to a nominal concentration of 500 parts per million in air.

3. To meet the performance evaluation requirements in Section 8.1 of Method 21 of Appendix A, the instrument evaluation procedures of Section 8.1 of Method 21 of Appendix A shall be used.

4. The calibration procedures provided in Section 8 and 10 of Method 21 of Appendix A shall be followed immediately before commencing a surface monitoring survey.

(e) The provisions of this paragraph apply at all times, including periods of startup, shutdown, or malfunction. During periods of startup, shutdown, and malfunction, the owner or operator shall comply with the work practice specified in subparagraph (2)(e) of this rule, in lieu of the compliance provisions in paragraph (4) of this rule..

(5) Monitoring of Operations.

Except as provided in subparagraph (6)(c)2. of this rule,

(a) Each owner or operator seeking to comply with subparagraph (l)(a)2. of this rule for an active gas collection system shall install a sampling port and a thermometer, other temperature measuring device, or an access port for temperature measurements at each wellhead and:

1. Measure the gauge pressure in the gas collection header on a monthly basis as provided in subparagraph (4)(a)3. of this rule; and

2. Monitor nitrogen or oxygen concentration in the landfill gas on a monthly basis as follows:

(i) The nitrogen level shall be determined using Method 3C, unless an alternative test method is established as allowed by subparagraph (6)(c)2. of this rule.

(ii) Unless an alternative test method is established as allowed by subparagraph (6)(c)2. of this rule, the oxygen level shall be determined by an oxygen meter using Method 3A, 3C, or ASTM D6522-11 (incorporated by reference, see 40 CFR §60.17). Determine the oxygen level by an oxygen meter using Method 3A, 3C, or ASTM D6522-11 (if sample location is prior to combustion) except that:

(I) The span shall be set between 10 and 12 percent oxygen;(II) A data recorder is not required;

- (III) Only two calibration gases are required, a zero and span;
- (IV) A calibration error check is not required; and
- (V) The allowable sample bias, zero drift, and calibration drift are  $\pm 10$  percent.

(iii) A portable gas composition analyzer may be used to monitor the oxygen levels provided:

- (I) The analyzer is calibrated; and
- (II) The analyzer meets all quality assurance and quality control requirements for Method 3A or ASTM D6522-11 (incorporated by reference, see 40 CFR §60.17).

3. Monitor temperature of the landfill gas on a monthly basis as provided in subparagraph (4)(a)5. of this rule. The temperature measuring device shall be calibrated annually using the procedure in this 40 CFR Part 60, Appendix A-1, Method 2, Section 10.3.

(b) Each owner or operator seeking to comply with subparagraph (1)(b)2.(iii) of this rule using an enclosed combustor shall calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment.

1. A temperature monitoring device equipped with a continuous recorder and having a minimum accuracy of  $\pm 1$  percent of the temperature being measured expressed in °Celsius or  $\pm 0.5$  °C, whichever is greater. A temperature monitoring device is not required for boilers or process heaters with design heat input capacity equal to or greater than 44 megawatts.

2. A device that records flow to the control device and bypass of the control device (if applicable). The owner or operator shall:

(i) Install, calibrate, and maintain a gas flow rate measuring device that shall record the flow to the control device at least every 15 minutes; and

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(c) Each owner or operator seeking to comply with subparagraph (1)(b) of this rule using an open flare shall install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:

1. A heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light or the flame itself to indicate the continuous presence of a flame.

2. A device that records flow to the flare and bypass of the flare (if applicable). The owner or operator shall:

(i) Install, calibrate, and maintain a gas flow rate measuring device that shall record the flow to the control device at least every 15 minutes; and

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(d) Each owner or operator seeking to demonstrate compliance with subparagraph (1)(b)2.(iii) of this rule using a device other than an open flare or an enclosed combustor or a treatment system shall provide information satisfactory to the Director as provided in subparagraph (6)(c)2. of this rule describing the operation of the control device, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The Director shall review the information and either approve it, or request that additional information be submitted. The Director may specify additional appropriate monitoring procedures.

(e) Each owner or operator seeking to install a collection system that does not meet the specifications in paragraph (8) of this rule or seeking to monitor alternative parameters to those required by paragraphs (2) through (5) of this rule shall provide information satisfactory to the Director as provided in subparagraphs (6)(c)2. And 3. of this rule describing the design and operation of the collection system, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The Director may specify additional appropriate monitoring procedures.

(f) Each owner or operator seeking to demonstrate compliance with the 500 parts per million surface methane operational standard in subparagraph (2)(d) of this rule, shall monitor surface concentrations of methane according to the procedures provided in subparagraph (4)(c) of this rule, and the instrument specifications in subparagraph (4)(d) of this rule. Any closed landfill that has no monitored exceedances of the operational standard in three consecutive quarterly monitoring periods may skip to annual monitoring. Any methane reading of 500 ppm or more above background detected during the annual monitoring returns the frequency for that landfill to quarterly monitoring.

(g) Each owner or operator seeking to demonstrate compliance with the control system requirements in subparagraph (1)(b) of this rule, using a landfill gas treatment system shall maintain and operate all monitoring systems associated with the treatment system in accordance with the site-specific treatment system monitoring plan required in subparagraph (7)5.(ii) of this rule, and shall calibrate, maintain, and operate according to the manufacturer's specifications a device that records flow to the treatment system and bypass of the treatment system (if applicable). The owner or operator shall:

1. Install, calibrate, and maintain a gas flow rate measuring device that records the flow to the treatment system at least every 15 minutes; and

2. Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(h) The monitoring requirements of subparagraphs (b), (c) (d) and (g) of this paragraph apply at all times the affected source is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. The owner or operator shall complete monitoring system repairs in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

(6) Reporting Requirements.

Except as provided 40 CFR §60.24 and in subparagraph (6)(c)2. of this rule,

(a) *Design capacity report.* Each owner or operator subject to the requirements of this Chapter shall submit an initial design capacity report to the Director.

1. The initial design capacity report shall fulfill the requirements of the notification of the date construction is commenced as required under §60.7(a)(1), 40 CFR and shall be submitted no later than 90 days from the effective date of these rules.

2. The initial design capacity report shall contain the following information:

(i) A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where solid waste may be landfilled according to the provisions of the State permit;

(ii) The maximum design capacity of the landfill. Where the maximum design capacity is specified in the State permit, a copy of the permit specifying the maximum design capacity may be submitted as part of the report. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity shall be calculated using good engineering practices. The calculations shall be provided, along with the relevant parameters as part of the report. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation shall include a site-specific density, which shall be recalculated annually. Any density conversions shall be documented and submitted with the design capacity report. The Director may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

3. *Amended design capacity report.* An amended design capacity report shall be submitted to the Director providing notification of any increase in the design capacity of the landfill, within 90 days of an increase in the maximum design capacity of the landfill to meet or exceed 2.5 million megagrams and 2.5 million cubic meters. This increase in design capacity may result from an

increase in the permitted volume of the landfill or an increase in the density as documented in the annual recalculation required in subparagraph (7)(f) of this rule.

(b) *NMOC emission rate report.* Each owner or operator of an existing MSW landfill subject to the requirements of this Chapter with a design capacity equal to or greater than 2.5million megagrams and 2.5 million cubic meters, shall submit an NMOC emission rate report to the Director annually following the procedure specified in subparagraph (i)2. of this paragraph, except as provided for in subparagraph (b)3. of this paragraph. The Director may request such additional information as may be necessary to verify the reported NMOC emission rate.

1. The NMOC emission rate report shall contain an annual or 5-year estimate of the NMOC emission rate calculated using the formula and procedures provided in subparagraphs (3)(a) or (b) of this rule, as applicable.

(i) The NMOC emission rate report shall be submitted following the procedure specified in subparagraph (i)2. of this paragraph no later than 90 days from the effective date of these rules.

2. The NMOC emission rate report shall include all the data, calculations, sample reports and measurements used to estimate the annual or 5-year emissions.

3. If the estimated NMOC emission rate as reported in the annual report to the Director is less than 34 megagrams per year in each of the next 5 consecutive years, the owner or operator may elect to submit, following the procedure specified in subparagraph (i)2. of this paragraph, an estimate of the NMOC emission rate for the next 5-year period in lieu of the annual report. This estimate shall include the current amount of solid waste-in-place and the estimated waste acceptance rate for each year of the 5 years for which an NMOC emission rate is estimated. All data and calculations upon which this estimate is based shall be provided to the Director. This estimate shall be revised at least once every 5 years. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the 5-year estimate, a revised 5-year estimate shall be submitted to the Director. The revised estimate shall cover the 5-year period beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.

4. Each owner or operator subject to the requirements of this Chapter is exempted to submit an NMOC emission rate report after the installation of a collection and control system in compliance with subparagraphs (l)(a) and (b) of this rule, during such time as the collection and control system is in operation and in compliance with paragraphs (2) and (4) of this rule.

(c) *Collection and control system design plan.* A design plan for each gas collection and control system shall be prepared and approved by a professional engineer and shall meet the following requirements:

1. The collection and control system as described in the design plan shall meet the design requirements in subparagraphs (l)(a) and (b) of this rule.

2. The collection and control system design plan shall include any alternatives to the operational standards, test methods, procedures, compliance

measures, monitoring, recordkeeping, or reporting provisions of paragraphs (4) through (7) of this rule, proposed by the owner or operator.

3. The collection and control system design plan shall either conform to specifications for active collection systems in paragraph (8) of this rule, or include a demonstration to the Director's satisfaction of the sufficiency of the alternative provisions to paragraph (8) of this rule.

4. Each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters shall submit a copy of the collection and control system design plan cover page that contains the engineer's seal to the Director within 1 year of the first NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 megagrams per year, except as follows::

(i) If the owner or operator elects to recalculate the NMOC emission rate after Tier 2 NMOC sampling and analysis as provided in subparagraph (3)(a)3. of this rule and the resulting rate is less than 34 megagrams per year, annual periodic reporting shall be resumed, using the Tier 2 determined site-specific NMOC concentration, until the calculated NMOC emission rate is equal to or greater than 34 megagrams per year or the landfill is closed. The revised NMOC emission rate report, with the recalculated NMOC emission rate based on NMOC sampling and analysis, shall be submitted, following the procedures in subparagraph (6)(i)2. of this rule, within 180 days of the first calculated exceedance of 34 megagrams per year.

(ii) If the owner or operator elects to recalculate the NMOC emission rate after determining a site-specific methane generation rate constant ( $k$ ), as provided in Tier 3 in subparagraph (3)(a)4. of this rule, and the resulting NMOC emission rate is less than 34 Mg/yr, annual periodic reporting shall be resumed. The resulting site-specific methane generation rate constant ( $k$ ) shall be used in the NMOC emission rate calculation until such time as the emissions rate calculation results in an exceedance. The revised NMOC emission rate report based on the provisions of subparagraph (3)(a)4. of this rule and the resulting site-specific methane generation rate constant ( $k$ ) shall be submitted to the Director within 1 year of the first calculated NMOC emission rate equaling or exceeding 34 megagrams per year.

(iii) If the owner or operator elects to demonstrate that site-specific surface methane emissions are below 500 parts per million methane, based on the provisions of subparagraph (3)(a)6. of this rule, then the owner or operator shall submit annually a Tier 4 surface emissions report as specified in this subparagraph (d)4.(iii) following the procedure specified in subparagraph (6)(i)2. of this paragraph until a surface emissions readings of 500 parts per million methane or greater is found. If the Tier 4 surface emissions report shows no surface emissions readings of 500 parts per million methane or greater for four consecutive quarters at a closed landfill, then the landfill owner or operator may reduce Tier 4 monitoring from a quarterly to an annual frequency. The Director may request such additional information as may be necessary to verify the reported instantaneous surface emission readings. The Tier 4 surface emissions report shall clearly identify the location, date and time (to the nearest second), average wind speeds including wind gusts, and reading (in parts per million) of

any value 500 parts per million methane or greater, other than non-repeatable, momentary readings. For location, the owner or operator shall determine the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters. The coordinates shall be in decimal degrees with at least five decimal places. The Tier 4 surface emission report should also include the results of the most recent Tier 1 and Tier 2 results in order to verify that the landfill does not exceed 50 Mg/yr of NMOC.

(I) The initial Tier 4 surface emissions report shall be submitted annually, starting within 30 days of completing the fourth quarter of Tier 4 surface emissions monitoring that demonstrates that site-specific surface methane emissions are below 500 parts per million methane, and following the procedure specified in subparagraph (6)(i)2. of this paragraph.

(II) The Tier 4 surface emissions rate report shall be submitted within 1 year of the first measured surface exceedance of 500 parts per million methane, following the procedure specified in subparagraph (6)(i)2. of this paragraph.

(iv) If the landfill is in the closed landfill subcategory, the owner or operator shall submit a collection and control system design plan to the Director within 1 year of the first NMOC emission rate report in which the NMOC emission rate equals or exceeds 50 megagrams per year, except as follows:

(I) If the owner or operator elects to recalculate the NMOC emission rate after Tier 2 NMOC sampling and analysis as provided in subparagraph (3)(a)3. of this rule, and the resulting rate is less than 50 megagrams per year, annual periodic reporting shall be resumed, using the Tier 2 determined site-specific NMOC concentration, until the calculated NMOC emission rate is equal to or greater than 50 megagrams per year or the landfill is closed. The revised NMOC emission rate report, with the recalculated NMOC emission rate based on NMOC sampling and analysis, shall be submitted, following the procedure specified in subparagraph (6)(i)2. of this paragraph, within 180 days of the first calculated exceedance of 50 megagrams per year

(II) If the owner or operator elects to recalculate the NMOC emission rate after determining a site-specific methane generation rate constant  $k$ , as provided in Tier 3 in subparagraph (3)(a)4. of this rule, and the resulting NMOC emission rate is less than 50 megagrams per year, annual periodic reporting shall be resumed. The resulting site-specific methane generation rate constant  $k$  shall be used in the NMOC emission rate calculation until such time as the emissions rate calculation results in an exceedance. The revised NMOC emission rate report based on the provisions of subparagraph (3)(a)4. of this rule, and the resulting site-specific methane generation rate constant  $k$  shall be submitted, following the procedure specified in subparagraph (6)(i)2. of this paragraph, to the Director within 1 year of the first calculated NMOC emission rate equaling or exceeding 50 megagrams per year.

(III) The landfill owner or operator elects to demonstrate surface emissions are low, consistent with the provisions in subparagraph (d)4.(iii) of this paragraph.

(IV) The landfill has already submitted a gas collection and control system design plan consistent with the provisions of Subpart WWW of 40 CFR part 60 or any other requirements of this Chapter.

5. The landfill owner or operator shall notify the Director that the design plan is completed and submit a copy of the plan's signature page. The Director has 90 days to decide whether the design plan should be submitted for review. If the Director chooses to review the plan, the approval process continues as described in subparagraph (c)6. of this paragraph. However, if the Director indicates that submission is not required or does not respond within 90 days, the landfill owner or operator can continue to implement the plan with the recognition that the owner or operator is proceeding at their own risk. In the event that the design plan is required to be modified to obtain approval, the owner or operator shall take any steps necessary to conform any prior actions to the approved design plan and any failure to do so could result in an enforcement action.

6. Upon receipt of an initial or revised design plan, the Director shall review the information submitted under subparagraphs (6)(c)1. through 3. of this paragraph, and either approve it, disapprove it, or request that additional information be submitted. Because of the many site-specific factors involved with landfill gas system design, alternative systems may be necessary. A wide variety of system designs are possible, such as vertical wells, combination horizontal and vertical collection systems, or horizontal trenches only, leachate collection components, and passive systems. If the Director does not approve or disapprove the design plan, or does not request that additional information be submitted within 90 days of receipt, then the owner or operator may continue with implementation of the design plan, recognizing they would be proceeding at their own risk.

7. If the owner or operator chooses to demonstrate compliance with the emission control requirements of this Chapter using a treatment system as defined in this Chapter, then the owner or operator shall prepare a site-specific treatment system monitoring plan as specified in subparagraph (7)(b)5. of this rule.

(d) *Revised design plan.* The owner or operator who has already been required to submit a design plan under subparagraph (c) of this paragraph, or under Subpart WWW of 40 CFR part 60; or any other requirements of this Chapter shall submit a revised design plan to the Director for approval as follows:

1. At least 90 days before expanding operations to an area not covered by the previously approved design plan.

2. Prior to installing or expanding the gas collection system in a way that is not consistent with the design plan that was submitted to the Director according to subparagraph (c) of this paragraph.

(e) *Closure report.* Each owner or operator of a controlled landfill shall submit a closure report to the Director within 30 days of waste acceptance cessation. The Director may request additional information as may be necessary to verify that permanent closure has taken place in accordance with

the requirements of ADEM Admin. Code Chapter 335-13-4. If a closure report has been submitted to the Director, no additional wastes may be placed into the landfill without filing a notification of modification as described under §60.7(a)(4), 40 CFR.

(f) *Equipment removal report.* Each owner or operator of a controlled landfill shall submit an equipment removal report to the Director 30 days prior to removal or cessation of operation of the control equipment.

1. The equipment removal report shall contain all of the following items:

(i) A copy of the closure report submitted in accordance with subparagraph (e) of this paragraph;

(ii) A copy of the initial performance test report demonstrating that the 15 year minimum control period has expired, unless the report of the results of the performance test has been submitted to the EPA via the EPA's CDX, or information that demonstrates that the GCCS will be unable to operate for 15 years due to declining gas flows. In the equipment removal report, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX; and

(iii) Dated copies of three successive NMOC emission rate reports demonstrating that the landfill is no longer producing 34 megagrams or greater of NMOC per year, unless the NMOC emission rate reports have been submitted to the EPA via the EPA's CDX. If the NMOC emission rate reports have been previously submitted to the EPA's CDX, a statement that the NMOC emission rate reports have been submitted electronically and the dates that the reports were submitted to the EPA's CDX may be submitted in the equipment removal report in lieu of the NMOC emission rate reports; or

(iv) For the closed landfill subcategory, dated copies of three successive NMOC emission rate reports demonstrating that the landfill is no longer producing 50 megagrams or greater of NMOC per year, unless the NMOC emission rate reports have been submitted to the EPA via the EPA's CDX. If the NMOC emission rate reports have been previously submitted to the EPA's CDX, a statement that the NMOC emission rate reports have been submitted electronically and the dates that the reports were submitted to the EPA's CDX may be submitted in the equipment removal report in lieu of the NMOC emission rate reports.

2. The Director may request such additional information as may be necessary to verify that all of the conditions for removal in subparagraph (l)(e)2. of this rule have been met.

(g) *Annual report.* Each owner or operator of a landfill seeking to comply with subparagraph (1)(d) of this rule using an active collection system designed in accordance with subparagraph (l)(a) of this rule shall submit to the Director annual reports of the recorded information in subparagraphs (g)1. through (g)6. of this paragraph. The initial annual report shall be submitted within 180 days of installation and start-up of the collection and control system, and shall include the initial performance test report required under §60.8, 40 CFR as applicable, unless the report of the results of the performance test has been

submitted to the EPA via the EPA's CDX. In the initial annual report, the process unit(s) tested, the pollutant(s) tested and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX. The initial performance test report shall be submitted, following the procedure specified in subparagraph (i) 1. of this paragraph, no later than the date that the initial annual report is submitted. For enclosed combustion devices and flares, reportable exceedances are defined under subparagraph (7)(c) of this rule.

1. Value and length of time for exceedance of applicable parameters monitored under subparagraphs (5)(a), (b), (c), (d), and (g) of this rule.

2. Description and duration of all periods when the gas stream was diverted from the control device or treatment system through a bypass line or the indication of bypass flow as specified under paragraph (5) of this rule.

3. Description and duration of all periods when the control device or treatment system was not operating and length of time the control device or treatment system was not operating.

4. All periods when the collection system was not operating.

5. The location of each exceedance of the 500 parts per million methane concentration as provided in subparagraph (2)(d) of this rule and the concentration recorded at each location for which an exceedance was recorded in the previous month. For location, the owner or operator shall determine the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters. The coordinates shall be in decimal degrees with at least five decimal places.

6. The date of installation and the location of each well or collection system expansion added pursuant to subparagraphs (a)3., (a)5., (b), and (c)4. of paragraph (4).

7. For any corrective action analysis for which corrective actions are required in subparagraph (4)(a)3. or 5. of this rule, and that take more than 60 days to correct the exceedance, the root cause analysis conducted, including a description of the recommended corrective action(s), the date for corrective action(s) already completed following the positive pressure reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(h) *Initial performance test report.* Each owner or operator seeking to comply with subparagraph (l)(b) of this rule shall include the following information with the initial performance test report required under §60.8, 40 CFR:

1. A diagram of the collection system showing collection system positioning including all wells, horizontal collectors, surface collectors, or other gas extraction devices, including the locations of any areas excluded from collection and the proposed sites for the future collection system expansion;

2. The data upon which the sufficient density of wells, horizontal collectors, surface collectors, or other gas extraction devices and the gas mover equipment sizing are based;

3. The documentation of the presence of asbestos or nondegradable material for each area from which collection wells have been excluded based on the presence of asbestos or nondegradable material;

4. The sum of the gas generation flow rates for all areas from which collection wells have been excluded based on nonproductivity and the calculations of gas generation flow rate for each excluded area;

5. The provisions for increasing gas mover equipment capacity with increased gas generation flow rate, if the present gas mover equipment is inadequate to move the maximum flow rate expected over the life of the landfill; and

6. The provisions for the control of off-site migration.

(i) *Electronic reporting.* The owner or operator shall submit reports electronically according to subparagraphs (i)1. and 2. of this paragraph.

1. Within 60 days after the date of completing each performance test (as defined in 40 CFR §60.8), the owner or operator shall submit the results of each performance test according to the following procedures:

(i) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site ([https://www3.epa.gov/ttn/chief/ert/ert\\_info.html](https://www3.epa.gov/ttn/chief/ert/ert_info.html)) at the time of the test, the owner or operator shall submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>). Performance test data shall be submitted in a file format generated through the use of the EPA's ERT or an alternative file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site, once the XML schema is available. If the owner or operator claim that some of the performance test information being submitted is confidential business information (CBI), the owner or operator shall submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage media to the EPA. The electronic media shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this subparagraph (i)1.(i) of this paragraph.

(ii) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, the owner or operator shall submit the results of the performance test to the Director at the appropriate address listed in 40 CFR §60.4.

2. Each owner or operator required to submit reports following the procedure specified in this paragraph shall submit reports to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX.) The owner or operator shall use the appropriate electronic report in CEDRI for this Chapter or an alternate electronic file format consistent with the XML schema listed on

the CEDRI Web site (<https://www3.epa.gov/ttn/chief/cedri/index.html>). If the reporting form specific to this Chapter is not available in CEDRI at the time that the report is due, the owner or operator shall submit the report to the Director at the appropriate address listed in §60.4. Once the form has been available in CEDRI for 90 calendar days, the owner or operator shall begin submitting all subsequent reports via CEDRI. The reports shall be submitted by the deadlines specified in this Chapter, regardless of the method in which the reports are submitted.

(j) *Corrective action and the corresponding timeline.* The owner or operator shall submit according to paragraphs (j)1. and 2. of this below.

1. For corrective action that is required according to subparagraphs (4)(a)3.(iii) or (a)5.(iii) of this rule, and is expected to take longer than 120 days after the initial exceedance to complete, the owner or operator shall submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Director as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature monitoring value of 55 degrees Celsius (131 degrees Fahrenheit) or above. The Director shall approve the plan for corrective action and the corresponding timeline.

2. For corrective action that is required according to subparagraphs (4)(a)3.(iii) or (a)5.(iii) of this rule, and is not completed within 60 days after the initial exceedance, the owner or operator shall submit a notification to the Director as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature exceedance.

(k) *Liquids addition.* The owner or operator of an affected landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters that has employed leachate recirculation or added liquids based on a Research, Development, and Demonstration permit (issued through Resource Conservation and Recovery Act, subtitle D, part 258) within the last 10 years shall submit to the Director, annually, following the procedure specified in subparagraph (i)2. of this paragraph, the following information:

1. Volume of leachate recirculated (gallons per year) and the reported basis of those estimates (records or engineering estimates).

2. Total volume of all other liquids added (gallons per year) and the reported basis of those estimates (records or engineering estimates).

3. Surface area (acres) over which the leachate is recirculated (or otherwise applied).

4. Surface area (acres) over which any other liquids are applied.

5. The total waste disposed (megagrams) in the areas with recirculated leachate and/or added liquids based on on-site records to the extent data are available, or engineering estimates and the reported basis of those estimates.

6. The annual waste acceptance rates (megagrams per year) in the areas with recirculated leachate and/or added liquids, based on on-site records to the extent data are available, or engineering estimates.

7. The initial report shall contain items in subparagraph (k)1. through 6. of this paragraph per year for the most recent 365 days as well as for each of the previous 10 years, to the extent historical data are available in on-site records, and the report shall be submitted no later than:

(i) September 27, 2017, for landfills that commenced construction, modification, or reconstruction after July 17, 2014 but before August 29, 2016; or

(ii) 365 days after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction after August 29, 2016.

8. Subsequent annual reports shall contain items in subparagraph (k)1. through 6. of this paragraph for the 365-day period following the 365-day period included in the previous annual report, and the report shall be submitted no later than 365 days after the date the previous report was submitted.

9. Landfills in the closed landfill subcategory are exempt from reporting requirements contained in subparagraphs (k)1. through 7. of this paragraph.

10. Landfills may cease annual reporting of items in subparagraphs (k)1. through 6. of this paragraph once they have submitted the closure report in subparagraph (e) of this paragraph.

(l) *Tier 4 notification.*

1. The owner or operator of an affected landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters shall provide a notification of the date(s) upon which it intends to demonstrate site-specific surface methane emissions are below 500 parts per million methane, based on the Tier 4 provisions of subparagraph (3)(a)6. of this rule. The landfill shall also include a description of the wind barrier to be used during the SEM in the notification. Notification shall be postmarked not less than 30 days prior to such date.

2. If there is a delay to the scheduled Tier 4 SEM date due to weather conditions, including not meeting the wind requirements in subparagraph (3)(a)6.(iii)(I) of this rule, the owner or operator of a landfill shall notify the Director by email or telephone no later than 48 hours before any known delay in the original test date, and arrange an updated date with the Director by mutual agreement.

#### (7) Recordkeeping Requirements.

(a) Except as provided in subparagraph (6)(c)2. of this rule, each owner or operator of an MSW landfill subject to the provisions of subparagraph (1)(d) of this rule shall keep for at least 5 years up-to-date, readily accessible, on-site records of the design capacity report which triggered subparagraph (1)(d), the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

(b) Except as provided in subparagraph (6)(c)2. of this rule, each owner or operator of a controlled landfill shall keep up-to-date, readily accessible records for the life of the control equipment of the data listed in subparagraphs (b)1. through (b)5. of this paragraph as measured during the initial performance test or compliance determination. Records of subsequent tests or monitoring shall be maintained for a minimum of 5 years. Records of the control device vendor specifications shall be maintained until removal.

1. Where an owner or operator subject to the provisions of this Chapter seeks to demonstrate compliance with subparagraph (l)(a) of this Rule:

(i) The maximum expected gas generation flow rate as calculated in subparagraph (4)(a)1. of this rule. The owner or operator may use another method to determine the maximum gas generation flow rate, if the method has been approved by the Director.

(ii) The density of wells, horizontal collectors, surface collectors, or other gas extraction devices determined using the procedures specified in subparagraph (8)(a)1. of this rule.

2. Where an owner or operator subject to the provisions of this Chapter seeks to demonstrate compliance with subparagraph (l)(b) of this rule through use of an enclosed combustion device other than a boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts:

(i) The average combustion temperature measured at least every 15 minutes and averaged over the same time period of the performance test.

(ii) The percent reduction of NMOC determined as specified in subparagraph (l)(b)2. of this paragraph achieved by the control device.

3. Where an owner or operator subject to the provisions of this Chapter seeks to demonstrate compliance with subparagraph (l)(b)2.(i) of this rule through use of a boiler or process heater of any size: a description of the location at which the collected gas vent stream is introduced into the boiler or process heater over the same time period of the performance testing.

4. Where an owner or operator subject to the provisions of this Chapter seeks to demonstrate compliance with subparagraph (l)(b)1. of this rule through use of an open flare, the flare type (i.e., steam-assisted, air-assisted, or nonassisted), all visible emission readings, heat content determination, flow rate or bypass flow rate measurements, and exit velocity determinations made during the performance test as specified in §60.18, 40 CFR; continuous records of the flare pilot flame or flare flame monitoring and records of all periods of operations during which the pilot flame of the flare flame is absent.

5. Where an owner or operator subject to the provisions of this Chapter seeks to demonstrate compliance with subparagraph (l)(b)3. of this rule through use of a landfill gas treatment system:

(i) *Bypass records.* Records of the flow of landfill gas to, and bypass of, the treatment system.

(ii) *Site-specific treatment monitoring plan,* to include:

(I) Monitoring records of parameters that are identified in the treatment system monitoring plan and that ensure the treatment system is operating properly for each intended end use of the treated landfill gas. At a minimum, records should include records of filtration, de-watering, and compression parameters that ensure the treatment system is operating properly for each intended end use of the treated landfill gas.

(II) Monitoring methods, frequencies, and operating ranges for each monitored operating parameter based on manufacturer's recommendations or engineering analysis for each intended end use of the treated landfill gas.

(III) Documentation of the monitoring methods and ranges, along with justification for their use.

(IV) Identify who is responsible (by job title) for data collection.

(V) Processes and methods used to collect the necessary data.

(VI) Description of the procedures and methods that are used for quality assurance, maintenance, and repair of all continuous monitoring systems.

(c) Except as provided in subparagraph (6)(c)2. of this rule, each owner or operator of a controlled landfill subject to the provisions of this Chapter shall keep for 5 years up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored in paragraph (5) of this rule as well as up-to-date, readily accessible records for periods of operation during which the parameter boundaries established during the most recent performance test are exceeded.

1. The following constitute exceedances that shall be recorded and reported under subparagraph (6) of this rule:

(i) For enclosed combustors except for boilers and process heaters with design heat input capacity of 44 megawatts (150 million British thermal unit per hour) or greater, all 3-hour periods of operation during which the average combustion temperature was more than 28 °C (82 degrees Fahrenheit) below the average combustion temperature during the most recent performance test at which compliance with subparagraph (l)(b) of this rule was determined.

(ii) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under subparagraph (b)3. of this paragraph.

2. Each owner or operator subject to the provisions of this Chapter shall keep up-to-date, readily accessible continuous records of the indication of flow to the control device or the indication of bypass flow or records of monthly inspections of car-seals or lock-and-key configurations used to seal bypass lines, specified under paragraph (5) of this rule.

3. Each owner or operator subject to the provisions of this Chapter who uses a boiler or process heater with a design heat input capacity of 44 megawatts or greater to comply with subparagraph (l)(b) shall keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. (Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other State regulatory requirements.)

4. Each owner or operator seeking to comply with the provisions of this Chapter by use of an open flare shall keep up-to-date, readily accessible continuous records of the flame or flare pilot flame monitoring specified under subparagraph (5)(c) of this rule, and up-to-date, readily accessible records of all periods of operation in which the flame or flare pilot flame is absent.

5. Each owner or operator of a landfill seeking to comply with subparagraph (1)(d) of this rule using an active collection system designed in accordance with subparagraph (1)(d) of this rule shall keep records of periods when the collection system or control device is not operating.

(d) Except as provided in subparagraph (6)(c)2. of this rule, each owner or operator subject to the provisions of this Chapter shall keep for the life of the collection system an up-to-date, readily accessible plot map showing each existing and planned collector in the system and providing a unique identification location label for each collector that matches the labeling on the plot map.

1. Each owner or operator subject to the provisions of this Chapter shall keep up-to-date, readily accessible records of the installation date and location of all newly installed collectors as specified under subparagraph (4)(b) of this rule.

2. Each owner or operator subject to the provisions of this Chapter shall keep readily accessible documentation of the nature, date of deposition, amount, and location of asbestos-containing or nondegradable waste excluded from collection as provided in subparagraph (8)(a)3.(i) of this rule as well as any nonproductive areas excluded from collection as provided in subparagraph (8)(a)3.(ii) of this rule.

(e) Except as provided in subparagraph (6)(c)2. of this rule, each owner or operator subject to the provisions of this Chapter shall keep for at least 5 years up-to-date, readily accessible records of the following:

1. All collection and control system exceedances of the operational standards in paragraph (2) of this rule, the reading in the subsequent month whether or not the second reading is an exceedance, and the location of each exceedance.

2. Each owner or operator subject to the provisions of this Chapter shall also keep records of each wellhead temperature monitoring value of 55 degrees Celsius (131 degrees Fahrenheit) or above, each wellhead nitrogen level at or above 20 percent, and each wellhead oxygen level at or above 5 percent.

3. For any root cause analysis for which corrective actions are required in subparagraph (4)(a)3. or 5. of this rule, keep a record of the root cause analysis conducted, including a description of the recommended corrective action(s) taken, and the date(s) the corrective action(s) were completed.

4. For any root cause analysis for which corrective actions are required in subparagraph (4)(a)3.(ii) or (a)5.(ii) of this rule, keep a record of the root cause analysis conducted, the corrective action analysis, the date for corrective action(s) already completed following the positive pressure reading or high temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

5. For any root cause analysis for which corrective actions are required in subparagraph (4)(a)3.(iii) or (a)5.(iii) of this rule, keep a record of the root cause analysis conducted, the corrective action analysis, the date for corrective action(s) already completed following the positive pressure reading or high temperature reading, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates, and a copy of any comments or final approval on the corrective action analysis or schedule from the regulatory agency.

(f) Landfill owners or operators who convert design capacity from volume to mass or mass to volume to demonstrate that landfill design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, as provided in the definition of "design capacity", shall keep readily accessible, on-site records of the annual recalculation of site-specific density, design capacity, and the supporting documentation. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic format are acceptable.

(g) Landfill owners or operators seeking to demonstrate that site-specific surface methane emissions are below 500 parts per million by conducting surface emission monitoring under the Tier 4 procedures specified in subparagraph (3)(a)6. of this rule shall keep for at least 5 years up-to-date, readily accessible records of all surface emissions monitoring and information related to monitoring instrument calibrations conducted according to sections 8 and 10 of Method 21 of appendix A of this part, including all of the following items:

1. Calibration records:

(i) Date of calibration and initials of operator performing the calibration.

(ii) Calibration gas cylinder identification, certification date, and certified concentration.

(iii) Instrument scale(s) used.

(iv) A description of any corrective action taken if the meter readout could not be adjusted to correspond to the calibration gas value.

(v) If an owner or operator makes their own calibration gas, a description of the procedure used.

2. Digital photographs of the instrument setup. The photographs shall be time and date-stamped and taken at the first sampling location prior to sampling and at the last sampling location after sampling at the end of each sampling day, for the duration of the Tier 4 monitoring demonstration.

3. Timestamp of each surface scan reading:

(i) Timestamp should be detailed to the nearest second, based on when the sample collection begins.

(ii) A log for the length of time each sample was taken using a stopwatch (*e.g.*, the time the probe was held over the area).

4. Location of each surface scan reading. The owner or operator shall determine the coordinates using an instrument with an accuracy of at least 4

meters. Coordinates shall be in decimal degrees with at least five decimal places.

5. Monitored methane concentration (parts per million) of each reading.

6. Background methane concentration (parts per million) after each instrument calibration test.

7. Adjusted methane concentration using most recent calibration (parts per million).

8. For readings taken at each surface penetration, the unique identification location label matching the label specified in subparagraph (d) of this paragraph.

9. Records of the operating hours of the gas collection system for each destruction device.

(h) Except as provided in subparagraph (6)(c)2. of this rule, each owner or operator subject to the provisions of this Chapter shall keep for at least 5 years up-to-date, readily accessible records of all collection and control system monitoring data for parameters measured in subparagraphs (5)(a)1., 2., and 3. of this rule.

(i) Any records required to be maintained by this Chapter that are submitted electronically via the EPA's CDX may be maintained in electronic format.

(j) For each owner or operator reporting leachate or other liquids addition under subparagraph (6)(k) of this rule, keep records of any engineering calculations or company records used to estimate the quantities of leachate or liquids added, the surface areas for which the leachate or liquids were applied, and the estimates of annual waste acceptance or total waste in place in the areas where leachate or liquids were applied.

#### (8) Specifications for Active Collection Systems.

(a) Each owner or operator seeking to comply with subparagraph of this rule shall site active collection wells, horizontal collectors, surface collectors, or other extraction devices at a sufficient density throughout all gas producing areas using the following procedures unless alternative procedures have been approved by the Director 1. The collection devices within the interior and along the perimeter areas shall be certified to achieve comprehensive control of surface gas emissions by a professional engineer. The following issues shall be addressed in the design: depths of refuse, refuse gas generation rates and flow characteristics, cover properties, gas system expandability, leachate and condensate management, accessibility, compatibility with filling operations, integration with closure end use, air intrusion control, corrosion resistance, fill settlement, resistance to the refuse decomposition heat, and ability to isolate individual components or sections for repair or troubleshooting without shutting down entire collection system.

2. The sufficient density of gas collection devices determined in subparagraph (a)1. of this paragraph shall address landfill gas migration issues

and augmentation of the collection system through the use of active or passive systems at the landfill perimeter or exterior.

3. The placement of gas collection devices determined in subparagraph (a)1. of this paragraph shall control all gas producing areas, except as provided by subparagraphs (a)3.(i) and (a)3.(ii) of this paragraph.

(i) Any segregated area of asbestos or nondegradable material may be excluded from collection if documented as provided under subparagraph (7)(d) of this rule. The documentation shall provide the nature, date of deposition, location and amount of asbestos or nondegradable material deposited in the area, and shall be provided to the Director upon request.

(ii) Any nonproductive area of the landfill may be excluded from control, provided that the total of all excluded areas can be shown to contribute less than 1 percent of the total amount of NMOC emissions from the landfill. The amount, location, and age of the material shall be documented and provided to the Director upon request. A separate NMOC emissions estimate shall be made for each section proposed for exclusion, and the sum of all such sections shall be compared to the NMOC emissions estimate for the entire landfill.

(I) The NMOC emissions from each section proposed for exclusion shall be computed using the following equation:

$$Q_i = 2kL_oM_i(e^{-kt_i})(C_{NMOC})(3.6 \times 10^{-9})$$

where,

$Q_i$  = NMOC emission rate from the  $i^{\text{th}}$  section, megagrams per year

$k$  = methane generation rate constant, year<sup>-1</sup>

$L_o$  = methane generation potential, cubic meters per megagram solid waste

$M_i$  = mass of the degradable solid waste in the  $i^{\text{th}}$  section, megagram

$t_i$  = age of the solid waste in the  $i^{\text{th}}$  section, years

$C_{NMOC}$  = concentration of nonmethane organic compounds, parts per million by volume

$3.6 \times 10^{-9}$  = conversion factor

(II) If the owner or operator is proposing to exclude, or cease gas collection and control from, nonproductive physically separated (*e.g.*, separately lined) closed areas that already have gas collection systems, NMOC emissions from each physically separated closed area shall be computed using either equation in subparagraph (3)(b) of this rule, or the equation in subparagraph (a)3.(ii)(I) of this paragraph.

(iii) The values for  $k$ , and  $C_{NMOC}$  determined in field testing shall be used, if field testing has been performed in determining the NMOC emission rate or the radii of influence (the distance from the well center to a point in the landfill where the pressure gradient applied by the blower or compressor approaches zero). If field testing has not been performed, the default values for  $k$ ,  $L_0$  and  $C_{NMOC}$  provided in paragraph (3) of this rule or the alternative values from paragraph (3) of this rule shall be used. The mass of nondegradable solid waste contained within the given section may be subtracted from the total mass of the section when estimating emissions provided the nature, location, age, and amount of the nondegradable material is documented as provided in subparagraph (a)3.(i) of this paragraph.

(b) Each owner or operator seeking to comply with subparagraph (1)(a) of this rule shall construct the gas collection devices using the following equipment or procedures:

1. The landfill gas extraction components shall be constructed of polyvinyl chloride (PVC), high density polyethylene (HDPE) pipe, fiberglass, stainless steel, or other nonporous corrosion resistant material of suitable dimensions to: convey projected amounts of gases; withstand installation, static, and settlement forces; and withstand planned overburden or traffic loads. The collection system shall extend as necessary to comply with emission and migration standards. Collection devices such as wells and horizontal collectors shall be perforated to allow gas entry without head loss sufficient to impair performance across the intended extent of control. Perforations shall be situated with regard to the need to prevent excessive air infiltration.

2. Vertical wells shall be placed so as not to endanger underlying liners and shall address the occurrence of water within the landfill. Holes and trenches constructed for piped wells and horizontal collectors shall be of sufficient cross-section so as to allow for their proper construction and completion including, for example, centering of pipes and placement of gravel backfill. Collection devices shall be designed so as not to allow indirect short circuiting of air into the cover or refuse into the collection system or gas into the air. Any gravel used around pipe perforations should be of a dimension so as not to penetrate or block perforations.

3. Collection devices may be connected to the collection header pipes below or above the landfill surface. The connector assembly shall include a positive closing throttle valve, any necessary seals and couplings, access couplings and at least one sampling port. The collection devices shall be constructed of PVC, HDPE, fiberglass, stainless steel, or other nonporous material of suitable thickness.

(c) Each owner or operator seeking to comply with subparagraph (1)(b) of this rule shall convey the landfill gas to a control system in compliance with subparagraph (1)(b) of this rule through the collection header pipe(s). The gas mover equipment shall be sized to handle the maximum gas generation flow rate expected over the intended use period of the gas moving equipment using the following procedures:

1. For existing collection systems, the flow data shall be used to project the maximum flow rate. If no flow data exists, the procedures in subparagraph (c)2. of this paragraph shall be used.

2. For new collection systems, the maximum flow rate shall be in accordance with subparagraph (4)(a)1. of this rule.

**Author:** Ronald W. Gore

**Statutory Authority:** Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8.

**History:** Effective Date: January 15, 1998.

**Amended:** January 13, 2000; September 7, 2000; March 14, 2002;XXXXXX, 2017.

**335-3-19-.04 Compliance Schedules.**

(1) Planning, awarding of contracts, installing, and starting up MSW landfill air emission collection and control equipment that is capable of meeting the emission standards under this Chapter shall be completed within 30 months after the date an NMOC emission rate report shows NMOC emissions equal or exceed 34 megagrams per year (50 megagrams per year for the closed landfill subcategory); or ~~Except as provided for under paragraph (2) of this Rule, planning, awarding of contracts, and installation of MSW landfill air emission collection and control equipment capable of meeting the emission standards established under this Chapter, shall be accomplished within 30 months after the date the initial NMOC emission rate report shows NMOC emissions equal or exceed 50 megagrams per year.~~

(2) Within 30 months after the date of the most recent NMOC emission rate report that shows NMOC emissions equal or exceed 34 megagrams per year (50 megagrams per year for the closed landfill subcategory), if Tier 4 surface emissions monitoring shows a surface emission concentration of 500 parts per million methane or greater. ~~For each existing MSW landfill meeting the conditions in Rules 335-3-19-.02(2)(a) and (2)(b) whose NMOC emission rate is less than 50 megagrams per year on the effective date of Rule 335-3-19-.03, installation of collection and control systems capable of meeting emission standards established under this Chapter shall be accomplished within 30 months of the date when the condition in Rule 335-3-19-.02(2)(c) is met (i.e., the date of the first annual nonmethane organic compounds emission rate which equals or exceeds 50 megagrams per year).~~

**Author:** Ronald W. Gore

**Statutory Authority:** Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8.

**History:** Effective Date: January 15, 1998.

**Amended:** January 13, 2000-; XXXXXX, 2017.

**335-3-19-.05 Petition for Alternative Standards and Compliance Schedules.**

(1) A MSW landfill owner or operator may request through petition, alternative emission standards or a longer compliance schedule that is/are not specified in this Chapter through the following procedures.

(a) Petition Requirements. To enable the Department to rule on the Petition, the following information, where determined applicable by the Department, shall be included in the petition:

1. A clear and complete statement of the precise extent of the relief sought including specific identification of the particular provisions of the regulations from which the relief is sought. The criteria for relief include:

(i) Unreasonable cost of control resulting from landfill age, location, or basic design:

(ii) Physical impossibility of installing necessary control equipment; or

(iii) Other factors specific to the landfill that make application of a less stringent standard or final compliance time significantly more reasonable.

(2) An assessment, with supporting factual information, of the impact that the petition will impose on the public health and the environment in the affected area.

(3) Any additional information requested by the Department as necessary to evaluate the petition.

(4) A concise factual statement of the reasons the petitioner believes that alternative emission limits or a longer compliance schedule will not threaten the public health or unreasonably create environmental pollution.

(b) Extension of Prior or Existing Alternative Emission Standards or Compliance Schedule. A petition to extend a prior or existing petition granted by the Department shall be commenced by filing a new petition with the Department in accordance with the requirements of paragraph (1) of this ~~Rule~~rule. To the extent that the information required by paragraph (1) of this ~~Rule~~rule has been included in the prior petition for which extension is sought, a submission of that information shall not be required provided that the petition shall request the incorporation of the record, opinion and order in the prior proceeding into the new petition.

(c) Department Actions on Petitions. On receipt of a petition, the Department will authorize one of the following actions, as they shall determine:

1. The petition may be dismissed if the Department determines that it is not adequate under paragraph (1) of this ~~Rule~~rule.

2. The Department may grant the request of the petition, as petitioned or by imposing such conditions as this Division may require in the Major Source Operating Permit, including the establishment of schedules of compliance and

monitoring requirements, if EPA consents to the alternative emission standards or compliance schedule as submitted to EPA by the Department.

3. The Department may deny the petition. If such a denial is made, the Department shall notify the petitioner in writing, state the reasons for denial and outline procedures for appeal.

(d) Termination Procedures.

Any petition granted by the Department may be terminated by the Department whenever the Department finds, after an opportunity for the petitioner to demonstrate compliance and after notice and an opportunity for hearing, that the petitioner is in violation of any requirement, condition, schedule, limitation or any other provision of the petition or that operation under the petition does not meet the minimum requirements established by state and federal laws and regulations or is unreasonably threatening the public health.

**Author:** Ronald W. Gore

**Statutory Authority:** Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8.

**History:** Effective Date: January 15, 1998.

**Amended:** September 7, 2000-;XXXXXX, 2017.

**ADEM Admin. Code 335-3 – Appendix C**

## APPENDIX C

### Environmental Protection Agency Regulations Reference Documents

#### Cross Referenced to ADEM Rules and Regulations

#### New Source Performance Standards National Emission Standards For Hazardous Air Pollutants

The complete text of all finalized EPA regulations incorporated into these regulations is located in the documents listed below. Amendments, revisions, or clarifications of EPA regulations which have been codified in the CFR, as well as of finalized regulations which have not yet been codified, are not included in this listing and interested parties are advised to consult the Federal Register for such amendments or revisions. The exceptions listed below are identified by EPA as nondelegable to the States.

<b>ADEM Chapter 335-3-10</b>	<b>40 CFR Part 60</b>	<b>Exceptions</b>
335-3-10-.02(1) Subpart A	Subpart A	§60.8(b)(2) §60.8(b)(3) §60.11(e)(7) §60.11(e)(8) §60.13(g) §60.13(i) §60.13(j)(2)
335-3-10-.02(2)Subpart D	Subpart D	
335-3-10-.02(2)(a) Subpart Da	Subpart Da	§60.45a
335-3-10-.02(2)(b) Subpart Db	Subpart Db	§60.44b(f) §60.44b(g) §60.49b(a)(4)
335-3-10-.02(2)(c) Subpart Dc	Subpart Dc	§60.48c(a)(4)
335-3-10-.02(3) Subpart E	Subpart E	
335-3-10-.02(3)(a) Subpart Ea	Subpart Ea	
335-3-10-.02(3)(b) Subpart Eb	Subpart Eb	
335-3-10-.02(3)(c) Subpart Ec	Subpart Ec	§60.50c(i)
335-3-10-.02(4) Subpart F	Subpart F	§60.66

<b>ADEM Chapter 335-3-10</b>	<b>40 CFR Part 60</b>	<b>Exceptions</b>
335-3-10-.02(5) Subpart G	Subpart G	
335-3-10-.02(5)(a) Subpart Ga	Subpart Ga	
335-3-10-.02(6) Subpart H	Subpart H	
335-3-10-.02(7) Subpart I	Subpart I	
335-3-10-.02(8) Subpart J	Subpart J	§60.105(a)(13)(iii) §60.106(i)(12)
335-3-10-.02(8) (a) Subpart Ja	Subpart Ja	§60.109b
335-3-10-.02(9) Subpart K	Subpart K	
335-3-10-.02(9)(a) Subpart Ka	Subpart Ka	§60.114a
335-3-10-.02(9)(b) Subpart Kb	Subpart Kb	§60.111b(f)(4) §60.114(b) §60.116(e)(3)(iii) §60.116(e)(3)(iv) §60.116b(f)(2)(iii)
335-3-10-.02(12) Subpart L	Subpart L	
335-3-10-.02(13) Subpart M	Subpart M	
335-3-10-.02(14) Subpart N	Subpart N	
335-3-10-.02(14)(a) Subpart Na	Subpart Na	
335-3-10-.02(15) Subpart O	Subpart O	§60.153(e)
335-3-10-.02(16) Subpart P	Subpart P	
335-3-10-.02(17) Subpart Q	Subpart Q	
335-3-10-.02(18) Subpart R	Subpart R	
335-3-10-.02(19) Subpart S	Subpart S	
335-3-10-.02(20) Subpart T	Subpart T	
335-3-10-.02(21) Subpart U	Subpart U	
335-3-10-.02(22) Subpart V	Subpart V	
335-3-10-.02(23) Subpart W	Subpart W	
335-3-10-.02(24) Subpart X	Subpart X	
335-3-10-.02(25) Subpart Y	Subpart Y	
335-3-10-.02(26) Subpart Z	Subpart Z	
335-3-10-.02(27) Subpart AA	Subpart AA	

<b>ADEM Chapter 335-3-10</b>	<b>40 CFR Part 60</b>	<b>Exceptions</b>
335-3-10-.02(27)(a) Subpart AAa	Subpart AAa	
335-3-10-.02(28) Subpart BB	Subpart BB	
335-3-10-.02(28) Subpart BBa	Subpart BBa	
335-3-10-.02(29) Subpart CC	Subpart CC	
335-3-10-.02(30) Subpart DD	Subpart DD	
335-3-10-.02(31) Subpart EE	Subpart EE	§60.316(d)
335-3-10-.02(32) Subpart FF	Reserved	
335-3-10-.02(33) Subpart GG	Subpart GG	§60.334(b)(2) §60.335(f)(1)
335-3-10-.02(34) Subpart HH	Subpart HH	
335-3-10-.02(35) Subpart II	Reserved	
335-3-10-.02(36) Subpart JJ	Reserved	
335-3-10-.02(37) Subpart KK	Subpart KK	
335-3-10-.02(38) Subpart LL	Subpart LL	
335-3-10-.02(39) Subpart MM	Subpart MM	
335-3-10-.02(40) Subpart NN	Subpart NN	
335-3-10-.02(41) Subpart OO	Reserved	
335-3-10-.02(42) Subpart PP	Subpart PP	
335-3-10-.02(43) Subpart QQ	Subpart QQ	
335-3-10-.02(44) Subpart RR	Subpart RR	§60.446(c)
335-3-10-.02(45) Subpart SS	Subpart SS	§60.456(d)
335-3-10-.02(46) Subpart TT	Subpart TT	§60.466(d)
335-3-10-.02(47) Subpart UU	Subpart UU	§60.474(g)
335-3-10-.02(48) Subpart VV	Subpart VV	§60.482-1(c)(2) §60.484
335-3-10-.02(48)(a) Subpart VVa	Subpart VVa	
335-3-10-.02(49) Subpart WW	Subpart WW	§60.496(c)
335-3-10-.02(50) Subpart XX	Subpart XX	§60.502(e)(6)
335-3-10-.02(51) Subpart YY	Reserved	
335-3-10-.02(52) Subpart ZZ	Reserved	
335-3-10-.02(53) Subpart AAA	Reserved	

<b>ADEM Chapter 335-3-10</b>	<b>40 CFR Part 60</b>	<b>Exceptions</b>
335-3-10-.02(54) Subpart BBB	Subpart BBB	§60.543(c)(2)(ii)(B)
335-3-10-.02(55) Subpart CCC	Reserved	
335-3-10-.02(56) Subpart DDD	Subpart DDD	§60.562-2(c)
335-3-10-.02(57) Subpart EEE	Reserved	
335-3-10-.02(58) Subpart FFF	Subpart FFF	
335-3-10-.02(59) Subpart GGG	Subpart GGG	
335-3-10-.02(59)(a) Subpart GGGa	Subpart GGGa	
335-3-10-.02(60) Subpart HHH	Subpart HHH	
335-3-10-.02(61) Subpart III	Subpart III	§60.613(e)
335-3-10-.02(62) Subpart JJJ	Subpart JJJ	
335-3-10-.02(63) Subpart KKK	Subpart KKK	
335-3-10-.02(64) Subpart LLL	Subpart LLL	
335-3-10-.02(65) Subpart MMM	Reserved	
335-3-10-.02(66) Subpart NNN	Subpart NNN	§60.663(e)
335-3-10-.02(67) Subpart OOO	Subpart OOO	
335-3-10-.02(68) Subpart PPP	Subpart PPP	
335-3-10-.02(69) Subpart QQQ	Subpart QQQ	
335-3-10-.02(70) Subpart RRR	Subpart RRR	§60.703(e)
335-3-10-.02(71) Subpart SSS	Subpart SSS	§60.711(a)(16) §60.713(b)(1)(i) §60.713(b)(1)(ii) §60.713(b)(5)(i) §60.713(d) §60.715(a) §60.716
335-3-10-.02(72) Subpart TTT	Subpart TTT	§60.723(b)(1) §60.723(b)(2)(i)(C) §60.723(b)(2)(iv) §60.724(e) §60.725(b)
335-3-10-.02(73) Subpart UUU	Subpart UUU	

<b>ADEM Chapter 335-3-10</b>	<b>40 CFR Part 60</b>	<b>Exceptions</b>
335-3-10-.02(74) Subpart VVV	Subpart VVV	§60.743(a)(3)(v)(A) §60.743(a)(3)(v)(B) §60.743(e) §60.745(a) §60.746
335-3-10-.02(75) Subpart WWW	Subpart WWW	§60.754(a)(5)
335-3-10-.02(76) <del>Reserved</del> Subpart <u>XXX</u>	<del>Reserved</del> Subpart <u>XXX</u>	<u>§60.764(a)(5)</u>
335-3-10-.02(77) Reserved	Reserved	
335-3-10-.02(78) Reserved	Reserved	
335-3-10-.02(79) Subpart AAAA	Subpart AAAA	
335-3-10-.02(80) Reserved	Reserved	
335-3-10-.02(81) Subpart CCCC	Subpart CCCC	§60.2030 §60.2115 §60.2100(b)(2)
335-3-10-.02(82) Reserved	Reserved	
335-3-10-.02(83) Reserved	Reserved	
335-3-10-.02(84) Reserved	Reserved	
335-3-10-.02(85) Reserved	Reserved	
335-3-10-.02(86) Reserved	Reserved	
335-3-10-.02(87) Subpart IIII	Subpart IIII	
335-3-10-.02(88) Subpart JJJJ	Subpart JJJJ	
335-3-10-.02(89) Subpart KKKK	Subpart KKKK	
335-3-10-.02(90) Subpart LLLL	Subpart LLLL	§60.4785(c)
335-3-10-.02(91) Subpart OOOO	Subpart OOOO	
<u>335-3-10-.02(91a) Subpart OOOOa</u>	<u>Subpart OOOOa</u>	
<u>335-3-10-.02 (92) Reserved</u>	<u>Reserved</u>	
<u>335-3-10-.02 (93) Reserved</u>	<u>Reserved</u>	
<u>335-3-10-.02 (94) Reserved</u>	<u>Reserved</u>	
<u>335-3-10-.02 (95) Reserved</u>	<u>Reserved</u>	
<u>335-3-10-.02 (96) TTTT</u>	<u>Subpart TTTT</u>	<u>§60.5575(b)</u>



<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 61</b>	<b>Exceptions</b>
335-3-11-.02(4) Subpart E	Subpart E	§61.53(c)(4) §61.55(d)
335-3-11-.02(5) Subpart F	Subpart F	§61.66 §61.67(g)
335-3-11-.02(9) Subpart J	Subpart J	§61.112(c)
335-3-11-.02(11) Subpart L	Subpart L	§61.136(d)
335-3-11-.02(12) Subpart M	Subpart M	§61.149(c)(2) §61.150(a)(4) §61.151(c) §61.152(b)(3) §61.154(d) §61.155(a)
335-3-11-.02(13) Subpart N	Subpart N	§61.162(c) §61.163(h) §61.164(a)
335-3-11-.02(14) Subpart O	Subpart O	§61.174(a)
335-3-11-.02(15) Subpart P	Subpart P	
335-3-11-.02(21) Subpart V	Subpart V	§61.242-1(c)(2) §61.244
335-3-11-.02(22) Reserved	Reserved	
335-3-11-.02(23) Reserved	Reserved	
335-3-11-.02(24) Subpart Y	Subpart Y	§61.273
335-3-11-.02(25) Reserved	Reserved	
335-3-11-.02(26) Reserved	Reserved	
335-3-11-.02(27) Subpart BB	Subpart BB	
335-3-11-.02(28) Reserved	Reserved	
335-3-11-.02(29) Reserved	Reserved	
335-3-11-.02(30) Reserved	Reserved	

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 61</b>	<b>Exceptions</b>
335-3-11-.02(31) Subpart FF	Subpart FF	§61.353

**History:** Effective Date: May 25, 1976.

**Amended:** June 23, 1981; February 13, 1985; June 9, 1987; November 1, 1990; March 28, 1991; July 31, 1991; September 19, 1991; October 30, 1992; December 28, 1993; January 13, 2000; March 14, 2002; October 2, 2003; March 22, 2005; December 12, 2005; January 22, 2008; November 24, 2015-;XXXXXX, 2017.

335-3-11-.03(1) Appendix B	Appendix B
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**History:** Effective Date: June 16, 1988

**Amended:** March 28, 1991; November 21, 1996; March 14, 2002; November 24, 2015-;XXXXXX, 2017.

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(1) Subpart A	Subpart A	§63.6(g) §63.6(h)(9) §63.7(e)(2)(ii) §63.7(f) §63.8(f) §63.10(f)
335-3-11-.06(2) Subpart B	Subpart B	
335-3-11-.06(3) Subpart D	Subpart D	
335-3-11-.06(4) Reserved	Reserved	
335-3-11-.06(5) Subpart F	Subpart F <sup>1</sup>	See Footnote
335-3-11-.06(6) Subpart G	Subpart G	§63.153(c)(1)-(4)

<sup>1</sup> The following are not delegable: (1) Approval of alternatives to requirements in §§ 63.100, 63.102, and 63.104. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-4-11-.06(7) Subpart H	Subpart H <sup>2</sup>	See Footnote
335-3-11-.06(8) Subpart I	Subpart I <sup>3</sup>	See Footnote
335-3-11-.06(9) Reserved	Reserved	
335-3-11-.06(10) Reserved	Reserved	
335-3-11-.06(11) Subpart L	Subpart L <sup>4</sup>	See Footnote
335-3-11-.06(12) Subpart M	Subpart M <sup>5</sup>	See Footnote

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<sup>2</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.160, 63.162 through 63.176, 63.178 through 63.179. Follow the applicable procedures of § 63.177 to request an alternative means of emission limitation for batch processes and enclosed-vented process units. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>3</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.190 and 63.192(a) through (b), (e), and (h) through (j). Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>4</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.300 and 63.302 through 63.308 (except the authorities in 63.306(a)(2) and (d)). (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of any changes to section 2 of Method 303 in appendix A of this part. (4) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(13) Subpart N	Subpart N	§63.348(c)(1)-(4)
335-3-11-.06(14) Subpart O	Subpart O	§63.368(c)(1)-(4)
335-3-11-.06(15) Reserved	Reserved	
335-3-11-.06(16) Subpart Q	Subpart Q <sup>6</sup>	See Footnote
335-3-11-.06(17) Subpart R	Subpart R <sup>7</sup>	See Footnote
335-3-11-.06(18) Subpart S	Subpart S <sup>8</sup>	See Footnote

<sup>5</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.320 and 63.322(a) through (j). Follow the requirements in § 63.325 to demonstrate that alternative equipment or procedures are equivalent to the requirements of § 63.322. (2) Approval of major alternatives to test methods under 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>6</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.400 and 63.402 through 63.403. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>7</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.420, 63.422 through 63.423, and 63.424. Any owner or operator requesting to use an alternative means of emission limitation for storage vessels covered by § 63.423 must follow the procedures in § 63.426. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart, and any alternatives to § 63.427(a)(1) through (4) per § 63.427(a)(5). (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>8</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.440, 63.443 through 63.447 and 63.450. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. (2) Approval of alternatives to using §§ 63.457(b)(5)(iii), 63.457(c)(5)(ii) through (iii), and 63.257(c)(5)(ii), and any major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of alternatives using § 64.453(m) and any major alternatives to monitoring under

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(19) Subpart T	Subpart T <sup>9</sup>	See Footnote
335-3-11-.06(20) Subpart U	Subpart U <sup>10</sup>	See Footnote
335-3-11-.06(21) Reserved	Reserved	
335-3-11-.06(22) Subpart W	Subpart W <sup>11</sup>	See Footnote

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§ 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>9</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.460, 63.462(a) through (d), and 63.463 through 63.464 (except for the authorities in § 63.463(d)(9)). Use the procedures in § 63.469 to request the use of alternative equipment or procedures. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>10</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.480 through 63.481, 63.483(a) through (c), 63.484, 63.485(a) through (k), (m), through (s), (u), 63.486 through 63.487, 63.488(a), (b)(1) through (4), (5)(iv) through (v), (6) through (7), (c) through (i), 63.493 through 63.494, 63.500(a)(1) through (3), (b), 63.501, 63.502(a) through (f), (i), (k) through (m), and 63.503. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>11</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.520, 63.521, 63.523, and 63.524. Where these standards reference another rule, the cited provisions in that rule will be delegated according to the delegation provisions of that rule. (2) Approval of major alternatives to test methods for under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(23) Subpart X	Subpart X	§63.551(c)(1)-(4)
335-3-11-.06(24) Subpart Y	Subpart Y	§63.568(c)(1)-(4)
335-3-11-.06(25) Reserved	Reserved	
335-3-11-.06(26) Subpart AA	Subpart AA <sup>12</sup>	<u>§63.611(b)(1)-(5)</u> See Footnote
335-3-11-.06(27) Subpart BB	Subpart BB <sup>13</sup>	<u>§63.632(b)</u> See Footnote
335-3-11-.06(28) Subpart CC	Subpart CC	§63.656(c)(1)-(4)
335-3-11-.06(29) Subpart DD	Subpart DD <sup>14</sup>	See Footnote
335-3-11-.06(30) Subpart EE	Subpart EE <sup>15</sup>	See Footnote

<sup>12</sup> ~~The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.600, 63.602 through 63.604, and 63.609 through 63.610. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.~~

<sup>13</sup> ~~The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.620, 63.622 through 63.624, and 63.629 through 63.631. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.~~

<sup>14</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.680, 63.683 through 63.691, and 63.693. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>15</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.701 and 63.703. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(31) Reserved	Reserved	
335-3-11-.06(32) Subpart GG	Subpart GG	§63.759(c)(1)-(4)
335-3-11-.06(33) Subpart HH	Subpart HH <sup>16</sup>	See Footnote
335-3-11-.06(34) Subpart II	Subpart II <sup>17</sup>	See Footnote
335-3-11-.06(35) Subpart JJ	Subpart JJ <sup>18</sup>	See Footnote
335-3-11-.06(36) Subpart KK	Subpart KK <sup>19</sup>	See Footnote

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in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>16</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.760, 63.764 through 63.766, 63.769, 63.771, and 63.777. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>17</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.780 through 63.781, and 63.783 through 63.784. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>18</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.800, 63.802, and 63.803(a)(1), (b), (c) introductory text, and (d) through (l). (2) Approval of alternatives to the monitoring and compliance requirements in §§ 63.804(f)(4)(iv)(D) and (E), 63.804(g)(4)(iii)(C), 63.804(g)(4)(vi), and 63.804(g)(6)(vi). (3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart, as well as approval of any alternatives to the specific test methods under §§ 63.805(a), 63.805(d)(2)(v), and 63.805(e)(1). (4) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(37) Reserved	Reserved	
335-3-11-.06(38) Subpart MM	Subpart MM <sup>20</sup>	See Footnote
335-3-11-.06(39) Reserved	Reserved	
335-3-11-.06(40) Subpart OO	Subpart OO <sup>21</sup>	See Footnote
335-3-11-.06(41) Subpart PP	Subpart PP <sup>22</sup>	See Footnote
335-3-11-.06(42) Subpart QQ	Subpart QQ <sup>23</sup>	See Footnote

<sup>19</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.820 through 63.821 and 63.823 through 63.826. (2) Approval of alternatives to the test method for organic HAP content determination in § 63.827(b) and alternatives to the test method for volatile matter in § 63.827(c), and major alternatives to other test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in defined in § 63.90, and as required in this subpart.

<sup>20</sup> The following are not delegable: (1) Pursuant to §63.6(g), approval of alternatives to standards in §63.862. (2) Pursuant to §63.7(e)(2)(ii) and (f) and as defined in §63.90, approval of major alternatives to test methods. (3) Pursuant to §63.8(f) and as defined in §63.90, approval of major alternatives to monitoring. (4) Pursuant to §63.10(f) and as defined in §63.90, approval of major alternatives to recordkeeping and reporting.

<sup>21</sup> The following are not delegable: (1) Approval of alternatives to the requirements in § 63.900 and 63.902. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>22</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.920 and 63.922 through 63.924. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(43) Subpart RR	Subpart RR <sup>24</sup>	See Footnote
335-3-11-.06(44) Subpart SS	Subpart SS <sup>25</sup>	See Footnote
335-3-11-.06(45) Subpart TT	Subpart TT <sup>26</sup>	See Footnote
335-3-11-.06(46) Subpart UU	Subpart UU <sup>27</sup>	See Footnote

<sup>23</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.940, 63.942, and 63.943. Where these standards reference subpart DD, the cited provisions will be delegated according to the delegation provisions of subpart DD. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>24</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.960 and 63.962. Where these standards reference subpart DD, the cited provisions will be delegated according to the delegation provisions subpart DD of this part. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>25</sup> The following are not delegable: (1) Approval of alternatives to the non-opacity emissions standards in § 63.983(a) and (d), 63.984, 63.985(a), 63.986(a), 63.987 (a), 63.988(a), 63.990(a), 63.993(a), 63.994(a), and 63.995(a) under § 63.6(g). Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. (2) Reserved. (3) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (4) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90. (5) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>26</sup> The following are not delegable: (1) Approval of alternatives to the non-opacity emissions standards in § 63.1003 through 63.1015, under § 63.6(g). Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. (2) Reserved. (3) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (4) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90. (5) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(47) Subpart VV	Subpart VV <sup>28</sup>	See Footnote
335-3-11-.06(48) Subpart WW	Subpart WW <sup>29</sup>	See Footnote
335-3-11-.06(49) Subpart XX	Subpart XX <sup>30</sup>	See Footnote
335-3-11-.06(50) Subpart YY	Subpart YY	§63.1114(b)(1)-(5)
335-3-11-.06(51) Reserved	Reserved	
335-3-11-.06(52) Reserved	Reserved	

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<sup>27</sup> The following are not delegable: (1) Approval of alternatives to the non-opacity emissions standards in § 63.1022 through 63.1034, under § 63.6(g), and the standards for quality improvement programs in § 63.1035. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. (2) Reserved. (3) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (4) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90. (5) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>28</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.1040 and 63.1042 through 63.1045. Where these standards reference subpart DD, the cited provisions will be delegated according to the delegation provisions of subpart DD of this part. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>29</sup> The following are not delegable: (1) Approval of alternatives to the non-opacity emissions standards in §§ 63.1062 and 63.1063(a) and (b) for alternative means of emission limitation, under § 63.6(g). (2) Reserved. (3) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (4) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90. (5) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>30</sup> The following are not delegable: (1) Approval of alternatives to the non-opacity emissions standards in §§ 63.1085, 63.1086 and 63.1095 under § 63.6(g). Where these standards reference another subpart, the cited provisions will be delegated provisions of the referenced subpart. (2) Reserved. (3) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (4) Approval of major changes to monitoring under § 63.90. (5) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(53) Reserved	Reserved	
335-3-11-.06(54) Subpart CCC	Subpart CCC <sup>31</sup>	See Footnote
335-3-11-.06(55) Subpart DDD	Subpart DDD <sup>32</sup>	<del>§See</del> <del>Footnote</del> <a href="#">63.1195(c)</a>
335-3-11-.06(56) Subpart EEE	Subpart EEE <sup>33</sup>	See Footnote
335-3-11-.06(57) Reserved	Reserved	
335-3-11-.06(58) Subpart GGG	Subpart GGG	§63.1261(c)(1)-(4)
335-3-11-.06(59) Subpart HHH	Subpart HHH <sup>34</sup>	See Footnote

<sup>31</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.1155, 63.1157 through 63.1159, and 63.1160(a). (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of any alternative measurement methods for HCl and CL<sub>2</sub> to those specified in § 63.1161(d)(1). (4) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (5) Approval of any alternative monitoring requirements to those specified in §§ 63.1162(a)(2) through (5) and 63.1162(b)(1) through (3). (6) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart. (7) Waiver of recordkeeping requirements specified in § 63.1165. (8) Approval of an alternative schedule for conducting performance tests to the requirement specified in § 63.1162 (a)(1).

~~<sup>32</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.1177 through 63.1180. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.~~

<sup>33</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.1200, 63.1203 through 63.1205, and 63.1206(a). (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>34</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.1270, 63.1274 through 63.1275, 63.1281, and 63.1287. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(60) Subpart III	Subpart III	§63.1309(c)(1)-(4)
335-3-11-.06(61) Subpart JJJ	Subpart JJJ	§63.1336(c)(1)-(4)
335-3-11-.06(62) Reserved	Reserved	
335-3-11-.06(63) Subpart LLL	Subpart LLL	§63.1358
335-3-11-.06(64) Subpart MMM	Subpart MMM	§63.1369(c)(1)-(4)
335-3-11-.06(65) Subpart NNN	Subpart NNN <sup>35</sup>	§ See Footnote 63.1388(c)
335-3-11-.06(66) Subpart OOO	Subpart OOO	§63.1419(c)(1)-(4)
335-3-11-.06(67) Subpart PPP	Subpart PPP	§63.1421(c)(1)-(4)
335-3-11-.06(68) Reserved	Reserved	
335-3-11-.06(69) Subpart RRR	Subpart RRR	§63.1519(c)(1)-(4)
335-3-11-.06(70) Reserved	Reserved	
335-3-11-.06(71) Reserved	Reserved	
335-3-11-.06(72) Subpart UUU	Subpart UUU <sup>36</sup>	§63.1578(c)(1)-(5) See Footnote
335-3-11-.06(73) Subpart VVV	Subpart VVV <sup>37</sup>	See Footnote

alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

~~35. The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.1380, 63., and 63.1387. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.~~

~~36. The following are not delegable: (1) Approval of alternatives to the non-opacity emission limitations and work practice standards in §§63.1564 through 63.1569 under §63.6(g). (2) Approval of alternative opacity emission limitations in §§63.1564 through 63.1569 under §63.6(h)(9). (3) Approval of major alternatives to test methods under §63.7(e)(2)(ii) and (f) and as defined in §63.90. (4) Approval of major alternatives to monitoring under §63.8(f) and as defined in §63.90. (5) Approval of major alternatives to recordkeeping and reporting under §63.10(f) and as defined in §63.90.~~

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(74) Reserved	Reserved	
335-3-11-.06(75) Subpart XXX	Subpart XXX <sup>38</sup>	See Footnote
335-3-11-.06(76) Reserved	Reserved	
335-3-11-.06(77) Reserved	Reserved	
335-3-11-.06(78) Subpart AAAA	Subpart AAAA <sup>39</sup>	See Footnote
335-3-11-.06(79) Reserved	Reserved	
335-3-11-.06(80) Subpart CCCC	Subpart CCCC	
335-3-11-.06(81) Subpart DDDD	Subpart DDDD <sup>40</sup>	See Footnote
335-3-11-.06(82) Subpart EEEE	Subpart EEEE <sup>41</sup>	See Footnote

<sup>37</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.1580, 63.1583 through 63.1584, and 63.1586 through 63.1587. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>38</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.1650 and 63.1652 through 63.1654. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart. (3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

<sup>39</sup> The following is not delegable: Approval of alternatives to the standards in §63.1955.

<sup>40</sup> The following is not delegable: (1) Approval of alternatives to the compliance options, operating requirements, and work practice requirements in §§ 63.2240 and 63.2241 as specified in § 63.6(g). For the purposes of delegation authority under 40 CFR part 63, subpart E, "compliance options" represent "emission limits"; "operating requirements" represent "operating limits"; and "work practice requirements" represent "work practice standards." (2) Approval of major alternatives to test methods as specified in § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major alternatives to monitoring as specified in § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting as specified in § 63.10(f) and as defined in § 63.90. (5) Approval of PCWP sources demonstrations of eligibility for the low-risk subcategory developed according to appendix B of this subpart.

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(83) Subpart FFFF	Subpart FFFF <sup>42</sup>	See Footnote
335-3-11-.06(84) Subpart GGGG	Subpart GGGG	
335-3-11-.06(85) Subpart HHHH	Subpart HHHH <sup>43</sup>	See Footnote
335-3-11-.06(86) Subpart IIII	Subpart IIII <sup>44</sup>	See Footnote
335-3-11-.06(87) Subpart JJJJ	Subpart JJJJ <sup>45</sup>	See Footnote
335-3-11-.06(88) Subpart KKKK	Subpart KKKK <sup>46</sup>	See Footnote

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<sup>41</sup> The following are not delegable: (1) Approval of alternatives to the non-opacity emission limitations, operating limits, and work practice standards in § 63.2346(a) through (c) under § 63.6(g). (2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>42</sup> The following are not delegable: (1) Approval of alternatives to the non-opacity emission limits and work practice standards in § 63.2450(a) under § 63.6(g). (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>43</sup> The following are not delegable: (1) The authority under § 63.6(g) to approve alternatives to the emission limits in §§ 63.2983 and operating limits in § 63.2984. (2) The authority under § 63.7(e)(2)(ii) and (f) to approve of major alternatives (as defined in § 63.90) to the test methods in § 63.2993. (3) The authority under § 63.8(f) to approve major alternatives (as defined in § 63.90) to the monitoring requirements in §§ 63.2996 and 63.2997. (4) The authority under § 63.10(f) to approve major alternatives (as defined in § 63.90) to recordkeeping, notification, and reporting requirements in §§ 63.2998 through 63.3000.

<sup>44</sup> The following are not delegable: (1) Approval of alternatives to the work practice standards in § 63.3094 under § 63.6(g). (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>45</sup> The following are not delegable: (1) § 63.3360(c), approval of alternate test method for organic HAP content determination; (2) § 63.3360(d), approval of alternate test method for volatile matter determination.

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(89) Reserved	Reserved	
335-3-11-.06(90) Subpart MMMM	Subpart MMMM <sup>47</sup>	See Footnote
335-3-11-.06(91) Subpart NNNN	Subpart NNNN <sup>48</sup>	See Footnote
335-3-11-.06(92) Subpart OOOO	Subpart OOOO <sup>49</sup>	See Footnote
335-3-11-.06(93) Subpart PPPP	Subpart PPPP <sup>50</sup>	See Footnote
335-3-11-.06(94) Subpart QQQQ	Subpart QQQQ <sup>51</sup>	See Footnote

<sup>46</sup> The following are not delegable: (1) Approval of alternatives to the work practice standards in § 63.3493. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>47</sup> The following are not delegable: (1) Approval of alternatives to the requirements in § 63.3881 through 3883 and § 63.3890 through 3893. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>48</sup> The following are not delegable: (1) Approval of alternatives to the work practice standards in § 63.4093 under § 63.6(g). (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>49</sup> The following are not delegable: (1) Approval of alternatives to the work practice standards in § 63.4293 under § 63.6(g). (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>50</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.4481 through 4483 and §§ 63.4490 through 4493. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>51</sup> The following are not delegable: (1) Approval of alternatives to the work practice standards under § 63.4693. (2) Approval of major alternatives to test

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(95) Subpart RRRR	Subpart RRRR <sup>52</sup>	See Footnote
335-3-11-.06(96) Subpart SSSS	Subpart SSSS <sup>53</sup>	See Footnote
335-3-11-.06(97) Reserved	Reserved	
335-3-11-.06(98) Reserved	Reserved	
335-3-11-.06(99) Subpart VVVV	Subpart VVVV <sup>54</sup>	§63.5698 §63.5728 §63.5731(a) §63.5734 §63.5740(a) §63.5743 §63.5746(g)
335-3-11-.06(100) Subpart WWWW	Subpart WWWW <sup>55</sup>	See Footnote

methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>52</sup> The following are not delegable: (1) Approval of alternatives to the work practice standards in § 63.4893 under § 63.6(g). (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), and as defined in § 63.90. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>53</sup> The following are not delegable: (1) Approval of alternatives to the emission limitation in §63.5120. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in §63.5160. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.5150. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in §§ 63.5180 and 63.5190.

<sup>54</sup> The following are also not delegable: Pursuant to § 63.7(e)(2)(ii) and (f), the authority to approve alternatives to the test methods in §§ 63.5719(b), 63.5719(c), 63.5725(d)(1), and 63.5758; pursuant to § 63.8(f), the authority to approve major alternatives to the monitoring requirements in § 63.5725; pursuant to § 63.10(f), the authority to approve major alternatives to the reporting and recordkeeping requirements listed in §§ 63.5764, 63.5767, and 63.5770.

<sup>55</sup> The following are not delegable: (1) Approval of alternatives to the organic HAP emissions standards in § 63.5805 under § 63.6(g). (2) Approval of major

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(101) Subpart XXXX	Subpart XXXX <sup>56</sup>	See Footnote
335-3-11-.06(102) Subpart YYYY	Subpart YYYY <sup>57</sup>	See Footnote
335-3-11-.06(103) Subpart ZZZZ	Subpart ZZZZ	§63.6670(c)(1)-(5)
335-3-11-.06(104) Subpart AAAAA	Subpart AAAAA <sup>58</sup>	See Footnote
335-3-11-.06(105) Subpart BBBB	Subpart BBBB <sup>59</sup>	See Footnote
335-3-11-.06(106) Subpart CCCCC	Subpart CCCCC <sup>60</sup>	See Footnote

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changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>56</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.5981 through 63.5984, 63.5986, and 63.5988. (2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>57</sup> The following are not delegable: (1) Approval of alternatives to the emission limitations or operating limitations in § 63.6100 under § 63.6(g). (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90. (5) Approval of a performance test which was conducted prior to the effective date of the rule to determine outlet formaldehyde concentration as specified in § 63.6110(b).

<sup>58</sup> The following are not delegable: (1) Approval of alternatives to the non-opacity emission limitations in § 63.7090(a). (2) Approval of alternative opacity emission limitations in § 63.7090(a). (3) Approval of alternatives to the operating limits in § 63.7090(b). (4) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (5) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (6) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>59</sup> The following are not delegable: (1) Approval of alternatives to the non-opacity emission limitations in § 63.7184 under § 63.6(g). (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and defined in § 63.90.

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(107) Subpart DDDDD	Subpart DDDDD	§63.7570(b)
335-3-11-.06(108) Subpart EEEEE	Subpart EEEEE <sup>61</sup>	See Footnote
335-3-11-.06(109) Subpart FFFFF	Subpart FFFFF <sup>62</sup>	See Footnote
335-3-11-.06(110) Subpart GGGGG	Subpart GGGGG <sup>63</sup>	See Footnote

<sup>60</sup> The following are not delegable: (1) Approval of alternatives to work practice standards for fugitive pushing emissions in § 63.7291(a) for a by-product coke oven battery with vertical flues, fugitive pushing emissions in § 63.7292(a) for a by-product coke oven battery with horizontal flues, fugitive pushing emissions in § 63.7293 for a non-recovery coke oven battery, soaking for a by-product coke oven battery in § 63.7294(a), and quenching for a coke oven battery in § 63.7295(b) under § 63.6(g). (2) Approval of alternatives opacity emission limitations for a by-product coke oven battery under § 63.6(h)(9). (3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90, except for alternative procedures in § 63.7334(a)(7). (4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90. (6) Approval of the work practice plan for by-product coke oven batteries with horizontal flues submitted under § 63.7292(a)(1).

<sup>61</sup> The following are not delegable: (1) Approval of alternatives to non-opacity emissions limitations in § 63.7690 and work practice standards in § 63.7700 under § 63.6(g). (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>62</sup> The following are not delegable: (1) Approval of alternative opacity emission limits in Table 1 to this subpart under § 63.6(h)(9). (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90, except for approval of an alternative method for the oil content of the sinter plant feedstock or volatile organic compound measurements for the sinter plant windbox exhaust stream stack as provided in § 63.7824(f). (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>63</sup> The following are not delegable: (1) Approval of alternatives to the non-opacity emissions limitations and work practice standards in this subpart under § 63.6(g). (2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(111) Subpart HHHHH	Subpart HHHHH <sup>64</sup>	See Footnote
335-3-11-.06(112) Subpart IIII	Subpart IIII <sup>65</sup>	See Footnote
335-3-11-.06(113) <u>ReservedSubpart JJJJJ</u>	<u>ReservedSubpart JJJJJ</u>	<u>§63.8510(c)</u>
335-3-11-.06(114) <u>ReservedSubpart KKKKK</u>	<u>ReservedSubpart KKKKK</u>	<u>§63.8660(c)</u>
335-3-11-.06(115) Subpart LLLL	Subpart LLLL <sup>66</sup>	See Footnote
335-3-11-.06(116) Reserved	Reserved	
335-3-11-.06(117) Subpart NNNNN	Subpart NNNNN <sup>67</sup>	See Footnote

changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>64</sup> The following are not delegable: (1) Approval of alternatives to the non-opacity emission limits and work practice standards in § 63.8000(a) under § 63.6(g). (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>65</sup> The following are not delegable: (1) Approval of alternatives under § 63.6(g) to the non-opacity emission limitations in § 63.8190 and work practice standards in § 63.8192. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>66</sup> The following are not delegable: (1) Approval of alternatives to the requirements in §§ 63.8681, 63.8682, 63.8683, 63.8684(a) through (c), 63.8686, 63.8687, 63.8688, 63.8689, 63.8690, and 63.8691. (2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>67</sup> The following are not delegable: (1) Approval of alternatives to requirements in §§ 63.8980, 63.8985, 63.8990, 63.8995, and 63.9000. (2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(118) Reserved	Reserved	
335-3-11-.06(119) Subpart P P P P P	Subpart P P P P P <sup>68</sup>	See Footnote
335-3-11-.06(120) Subpart Q Q Q Q Q	Subpart Q Q Q Q Q <sup>69</sup>	See Footnote
335-3-11-.06(121) Subpart R R R R R	Subpart R R R R R <sup>70</sup>	See Footnote
335-3-11-.06(122) Reserved	Reserved	
335-3-11-.06(123) Subpart T T T T T	Subpart T T T T T <sup>71</sup>	See Footnote
335-3-11-.06(124) Subpart U U U U U	Subpart U U U U U	§63.10041(b)(1)-(4)
335-3-11-.06(125) Reserved	Reserved	
335-3-11-.06(126) Reserved	Reserved	
335-3-11-.06(127) Reserved	Reserved	

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<sup>68</sup> The following are not delegable: (1) Approval of alternatives to the emission limitations in § 63.9300 under § 63.6(g). (2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>69</sup> The following are not delegable: (1) Approval of alternatives to the emission limitations in § 63.9500(a) and (b) under § 63.6(g). (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>70</sup> The following are not delegable: (1) Approval of non-opacity emission limitations and work practice standards under § 63.6(h)(9) and as defined in § 63.90. (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<sup>71</sup> The following are not delegable: (1) Approval of alternatives to the non-opacity emission limitations in § 63.9890 and work practice standards in § 63.9891 under § 63.6(g). (2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90. (3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90. (4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(128) Subpart YYYYY	Subpart YYYYY	§63.10691(c)(1)-(6)
335-3-11-.06(129) Subpart ZZZZZ	Subpart ZZZZZ	§63.10905(c)(1)-(6)
335-3-11-.06(130) Reserved	Reserved	
335-3-11-.06(131) Reserved	Reserved	
335-3-11-.06(132) Reserved	Reserved	
335-3-11-.06(133) Subpart DDDDD	Subpart DDDDD	§63.11145(b)
335-3-11-.06(134) Subpart EEEEE	Subpart EEEEE <sup>72</sup>	See Footnote
335-3-11-.06(135) Subpart FFFFF	Subpart FFFFF <sup>73</sup>	See Footnote
335-3-11-.06(136) Subpart GGGGG	Subpart GGGGG <sup>74</sup>	See Footnote

<sup>72</sup> The following are not delegable: (1) Approval of an alternative non-opacity emissions standard under § 63.6(g). (2) Approval of an alternative opacity emissions standard under § 63.6(h)(9). (3) Approval of a major change to a test method under § 63.7(e)(2)(ii) and (f). A "major change to test method" is defined in § 63.90. (4) Approval of a major change to monitoring under § 63.8(f). A "major change to monitoring" is defined in § 63.90. (5) Approval of a major change to recordkeeping/reporting under § 63.10(f). A "major change to recordkeeping/reporting" is defined in § 63.90.

<sup>73</sup> The following are not delegable: (1) Approval of an alternative non-opacity emissions standard under §63.6(g). (2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A "major change to test method" is defined in § 63.90. (3) Approval of a major change to monitoring under § 63.8(f). A "major change to monitoring" is defined in § 63.90. (4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A "major change to recordkeeping/reporting" is defined in § 63.90.

<sup>74</sup> For primary zinc production facilities, the following are not delegable: (1) Approval of an alternative non-opacity emissions standard under § 63.6(g). (2) Approval of an alternative opacity emissions standard under § 63.6(h)(9). (3) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A "major change to test method" is defined in § 63.90. (4) Approval of a major change to monitoring under § 63.8(f). A "major change to monitoring" is defined in § 63.90. (5) Approval of a major change to recordkeeping/reporting under § 63.10(f). A "major change to recordkeeping/reporting" is defined in § 63.90. For primary beryllium manufacturing facilities, the following are not delegable: (1) Approval of an alternative non-opacity emissions standard under 40 CFR 61.12(d). (2) Approval of a major change to test methods under 40 CFR 61.13(h). A "major change to test method" is defined in §63.90. (3) Approval of a major change to monitoring under 40 CFR 61.14(g). A "major change to monitoring" is defined in § 63.90. (4) Approval of a major change to recordkeeping/reporting under 40 CFR 61.10. A "major change to recordkeeping/reporting" is defined in § 63.90.

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(137) Reserved	Reserved	
335-3-11-.06(138) Reserved	Reserved	
335-3-11-.06(139) Reserved	Reserved	
335-3-11-.06(140) Reserved	Reserved	
335-3-11-.06(141) Subpart LLLLLL	Subpart LLLLLL	§63.11399(b)(1)-(4)
335-3-11-.06(142) Subpart MMMMMM	Subpart MMMMMM	§63.11406(b)(1)-(4)
335-3-11-.06(143) Reserved	Reserved	
335-3-11-.06(144) <del>Reserved</del> Subpart OOOOOO	<del>Reserved</del> Subpart OOOOOO	<a href="#">§63.11420(b)(1)-(4)</a>
335-3-11-.06(145) Reserved	Reserved	
335-3-11-.06(146) Subpart QQQQQQ	Subpart QQQQQQ <sup>75</sup>	See Footnote
335-3-11-.06(147) Reserved	Reserved	
335-3-11-.06(148) Reserved	Reserved	
335-3-11-.06(149) Subpart TTTTTT	Subpart TTTTTT	§63.11473(c)(1)-(4)
335-3-11-.06(150) Reserved	Reserved	
335-3-11-.06(151) Subpart VVVVVV	Subpart VVVVVV	§63.11503(b)(1)-(4)
335-3-11-.06(152) Reserved	Reserved	
335-3-11-.06(153) Reserved	Reserved	
335-3-11-.06(154) Subpart YYYYYY	Subpart YYYYYY	§63.11531(c)(1)-(5)
335-3-11-.06(155) Subpart ZZZZZZ	Subpart ZZZZZZ	§63.11557(c)(1)-(5)
335-3-11-.06(156) Subpart AAAAAA	Subpart AAAAAA	§63.11567(b)
335-3-11-.06(157) Reserved	Reserved	

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<sup>75</sup> The following are not delegable: (1) Approval of an alternative nonopacity emissions standard under § 63.6(g). (2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A “major change to test method” is defined in § 63.90 (3) Approval of a major change to monitoring under § 63.8(f). A “major change to monitoring” is defined in § 63.90. (4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A “major change to recordkeeping/reporting” is defined in § 63.90.

<b>ADEM Chapter 335-3-11</b>	<b>40 CFR Part 63</b>	<b>Exceptions</b>
335-3-11-.06(158) Subpart CCCCCC	Subpart CCCCCC <sup>76</sup>	See Footnote
335-3-11-.06(159) Subpart DDDDDDD	Subpart DDDDDDD <sup>77</sup>	See Footnote
335-3-11-.06(160) Reserved	Reserved	
335-3-11-.06(161) Reserved	Reserved	
335-3-11-.06(162) Reserved	Reserved	
335-3-11-.06(163) Subpart HHHHHHH	Subpart HHHHHHH	§63.12000(b)

**History:** Effective Date: November 23, 1995.

**Amended:** November 21, 1996; September 25, 1997; March 27, 1998; November 19, 1998; July 15, 1999; January 13, 2000; September 7, 2000; March 14, 2002; October 3, 2002; April 3, 2003; October 2, 2003; March 22, 2005; December 12, 2005; July 11, 2006; April 3, 2007; January 22, 2008; August 5, 2008; January 19, 2009; March 30, 2010; May 23, 2011; May 29, 2012; January 22, 2013; May 28, 2013; September 24, 2013; November 24, 2015; [XXXXXX, 2017](#).

335-3-11-.07(1) Appendix A	Appendix A	Sect. 2, Method 303
335-3-11-.07(2) Appendix B	Appendix B	
335-3-11-.07(3) Appendix C	Appendix C	
335-3-11-.07(4) Appendix D	Appendix D	
335-3-11-.07(5) Appendix E	Appendix E	

<sup>76</sup> The following are not delegable: (1) Approval of an alternative nonopacity emissions standard under § 63.6(g). (2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A “major change to test method” is defined in § 63.90 (3) Approval of a major change to monitoring under § 63.8(f). A “major change to monitoring” is defined in § 63.90. (4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A “major change to recordkeeping/reporting” is defined in § 63.90.

<sup>77</sup> The following are not delegable: (1) Approval of an alternative nonopacity emissions standard under § 63.6(g). (2) Approval of an alternative opacity emissions standard under § 63.6(h)(9). (3) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A “major change to test method” is defined in § 63.90. (4) Approval of a major change to monitoring under § 63.8(f). A “major change to monitoring” is defined in § 63.90. (5) Approval of a major change to recordkeeping and reporting under § 63.10(f). A “major change to recordkeeping/reporting” is defined in § 63.90.

**ADEM Chapter 335-3-11****40 CFR Part 63****Exceptions**

**History:** Effective Date: November 23, 1995.

**Amended:** November 21, 1996; September 25, 1997; November 19, 1998; July 15, 1999; January 13, 2000; March 14, 2002; March 30, 2010; May 23, 2011; May 28, 2013; November 24, 2015; ~~XXXXXX~~, 2017.

**ADEM Chapter 335-3-11A****40 CFR Part 65****Exceptions**

335-3-11A-.02(1) Subpart A

Subpart A

§65.8

§65.46

§65.102

§65.156(b)(1)(ii)

§65.158(a)(2)(ii)

335-3-11A-.02(2) Reserved

Reserved

335-3-11A-.02(3) Subpart C

Subpart C

335-3-11A-.02(4) Subpart D

Subpart D

335-3-11A-.02(5) Subpart E

Subpart E

335-3-11A-.02(6) Subpart F

Subpart F

335-3-11A-.02(7) Subpart G

Subpart G

**History:** Effective Date: March 14, 2002.

**Amended:** August 5, 2008; November 24, 2015.

**Attachment 4**

BEFORE THE  
ENVIRONMENTAL MANAGEMENT COMMISSION  
OF THE  
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the matter of:	)	
	)	
Petition for Rulemaking to Amend	)	
ADEM Administrative Code	)	EMC Rulemaking Petition 17-03
Rule 335-6-6-.12, Conditions Applicable	)	
to All NPDES Permits	)	
Petitioners – Alabama Rivers Alliance, Inc.,	)	
et al.	)	

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MOTION

Deny Petition for Rulemaking based on ADEM Administrative Code Rule 335-2-2-.05, Consideration of Petition, paragraphs (g) and (i), with the reasons for denial being that adoption of the proposed rule would negatively impact the overall regulatory scheme of the Department and consideration of any other relevant factors, evidence, data, or information, and refer this proposed rule to the Rulemaking Committee to determine by working with the Department and stakeholders the need for any additional rules or modifications to existing rules for public notification of SSOs

ORDER

This cause coming before the Alabama Environmental Management Commission pursuant to the above-referenced Petition for Rulemaking (“Petition”) and arguments supporting said Petition, and the Views of the Director of the Alabama Department of Environmental Management having been considered, it is hereby ORDERED:

That the above-referenced motion is hereby adopted;

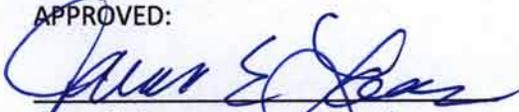
That this action has been taken and this order issued by the Alabama Environmental Management Commission effective April 21, 2017; and

That a copy of this order shall be served upon the parties either personally or by certified mail, return receipt requested.

Environmental Management Commission Order  
Page 2

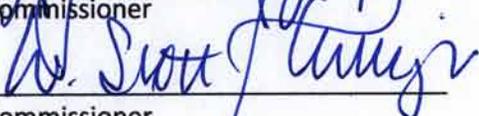
ISSUED this 21st day of April 2017.

APPROVED:

  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Commissioner

DISAPPROVED:

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

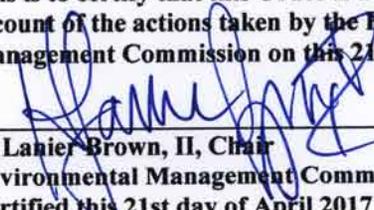
  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Commissioner

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Commissioner

\_\_\_\_\_  
Commissioner

This is to certify that this Order is a true and accurate  
account of the actions taken by the Environmental  
Management Commission on this 21st day of April 2017.

  
\_\_\_\_\_  
H. Lahier Brown, II, Chair  
Environmental Management Commission  
Certified this 21st day of April 2017