

## **Air Board Agenda and Minibook**

This document is 73 pages long due to the inclusion of the full text of the majority of material provided to the Board members. For your information:

the Agenda begins on page 2;

the material relative to the Clean Air Mercury Rule (C06), including the regulation text, begins on page 4;

the material relative to the Virginia Mercury Control Program (F05), including the regulation text, begins on page 44;

the material relative to the Mercury Compliance Obligations in Nonattainment Areas (G06), including the regulation text, begins on page 56; and

the public participation material begins on page 67.

**TENTATIVE AGENDA AND MINIBOOK  
STATE AIR POLLUTION CONTROL BOARD MEETING  
TUESDAY, JANUARY 16, 2007**

**DEPARTMENT OF GAME AND INLAND FISHERIES  
BOARD ROOM  
4010 WEST BROAD STREET  
RICHMOND, VIRGINIA**

**Convene - 9:30 A.M.**

**Tab**

**I. Regulations**

Clean Air Mercury Rule (C06)	Sydnor/Major	A
Virginia Mercury Control Program (F05)	Sydnor/Mann	B
Mercury Compliance Obligations in Nonattainment Areas (G06)	Sydnor/Mann	C
Report - Public Participation On Mercury Proposals		D

**II. State Advisory Board Reports** Holmes

**III. Appearance by Mirant (not before 1:00 p.m.)**

**IV. Public Forum**

**IV. Other Business**

Future Meetings

**Adjourn**

**NOTE:** The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

**PUBLIC COMMENTS AT STATE AIR POLLUTION CONTROL BOARD MEETINGS:** The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for their consideration.

For **REGULATORY ACTIONS (adoption, amendment or repeal of regulations)**, public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period and one public meeting) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period and one public hearing). Notice of these comment periods is announced in the Virginia Register and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For **CASE DECISIONS (issuance and amendment of permits and consent special orders)**, the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is a 45-day comment period and one public hearing.

In light of these established procedures, the Board accepts public comment on regulatory actions, as well as general comments, at Board meetings in accordance with the following:

**REGULATORY ACTIONS:** Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for **final** adoption. At that time, those persons

who participated in the prior proceeding on the proposal (i.e., those who attended the public hearing or commented during the public comment period) are allowed up to 3 minutes to respond to the summary of the prior proceeding presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

**CASE DECISIONS:** Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of this permit. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then, in accordance with § 2.2-4021, allow others who participated in the prior proceeding (i.e., those who attended the public hearing or commented during the public comment period) up to 3 minutes to exercise their right to respond to the summary of the prior proceeding presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

**Pooling Minutes:** Those persons who participated in the prior proceeding and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes or 15 minutes, whichever is less.

**NEW INFORMATION** will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in **rare** instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who participated during the prior public comment period **shall** submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. For a regulatory action should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, an additional public comment period may be announced by the Department in order for all interested persons to have an opportunity to participate.

**PUBLIC FORUM:** The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than pending regulatory actions or pending case decisions. Anyone wishing to speak to the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentation to not exceed 3 minutes.

**The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.**

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 10009, Richmond, Virginia 23240, phone (804) 698-4378; fax (804) 698-4346; e-mail: [cmberndt@deq.virginia.gov](mailto:cmberndt@deq.virginia.gov).

**SUBJECT:** Regulations Concerning Clean Air Mercury Rule (Part VI of 9 VAC 5 Chapter 140, Rev. C06)

**SPEAKER:** Mary E. Major  
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Environmental Program Manager, Office of Air Regulatory Development  
Department of Environmental Quality

## **INTRODUCTION**

### **New state legislation**

The 2006 session of the General Assembly resulted in new legislation that requires the Board to adopt new regulations for the control of mercury (Hg) emissions within the Commonwealth, specifically Chapters 867 and 920, 2006 Acts of Assembly. These acts create a new Article 3 (air emissions control) in the Virginia Air Pollution Control Law, with two new sections as follows: § 10.1-1327 (definitions) and § 10.1-1328 (emissions rates and limitations).

§ 10.1-1328 C (see below) of the new legislation requires that the Board adopt a "state model rule" or "state trading rule" that will allow the state to implement the EPA Clean Air Mercury Rule (CAMR) and facilitate the trading of Hg allowances within the United States. However, the state model rule must differ from the federal model rule with regard to the size of the new source set-aside.

C. To ensure compliance with the EPA requirements regarding control of mercury emissions from electric generating units, the Board shall adopt and submit to the EPA the model Clean Air Mercury Rule (CAMR) promulgated by the EPA, including full participation by Virginia electric generating units in the EPA's national mercury trading program. This model rule shall include a set-aside of mercury allowances for new sources not to exceed 5% of the total state budget for each control period during the first five years of the program and 2% thereafter.

### **Federal Requirements**

On May 18, 2005 (70 FR 28606), EPA published the Clean Air Mercury Rule (CAMR), a rule that will significantly reduce mercury emissions from coal-fired power plants across the country. The rule is designed to reduce the regional deposition of mercury and its subsequent entry into the food chain. The final rule calls for an interim cap of 38 tons per year (tpy) of mercury emissions by 2010 and a second-phase cap of 15 tpy by 2018 (current emissions are approximately 48 tpy). CAMR is effective July 11, 2005, and the plans and associated regulations to implement the CAMR are due November 17, 2006.

The CAMR establishes "standards of performance" limiting mercury emissions from new and existing coal-fired power plants and creates a market-based cap-and-trade program that will reduce nationwide utility emissions of mercury in two distinct phases. The first phase cap, due in 2010, is 38 tons and emissions will be reduced by taking advantage of "co-benefit" reductions – that is, mercury reductions achieved by reducing sulfur dioxide (SO<sub>2</sub>) and nitrogen oxide (NO<sub>x</sub>) emissions under CAIR. In the second phase, due in 2018, coal-fired power plants will be subject to a second cap, which will reduce emissions to 15 tons upon full implementation.

In the CAMR, EPA has assigned each state an emissions "budget" for mercury, and each state must submit a plan detailing how it will meet its budget for reducing mercury from coal-fired power plants. The CAMR includes emissions guidelines for the affected coal-fired utility units. States have some flexibility in how they implement the program, but at a minimum, regulations must be at least as stringent as the guidelines.

Virginia's budget portions of the national annual emissions caps are 0.592 tons in 2010 and 0.234 tons in 2018.

### **Proposal**

Immediately following this agenda memo is a more detailed summary of the proposal, followed by the draft

regulation amendments that meet federal and state statutory and regulatory requirements. Approval of the amendments will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

## **SUMMARY OF DRAFT AMENDMENTS**

Part VI of 9 VAC 5-140 establishes the Hg Budget Trading Program for Coal Fired Electric Steam Generating Units as a means of mitigating mercury emissions in order to reduce the regional deposition of mercury and its subsequent entry into the food chain. This part addresses the following substantive provisions: applicability, permitting, allowance methodology, monitoring, banking, and compliance determination. Virginia's Hg annual trading budgets are 1,184 pounds in 2010 through 2017 and 468 pounds in 2018 and thereafter.

Beginning January 1, 2010, coal-fired electric generating units with a nameplate capacity greater than 25 MWe will be subject to the provisions of this part. To accommodate the Hg emissions from the affected units, the units are allocated from the budget a specific limited number of allowances (measured in tons per year) during the months of January 1 through December 31, otherwise known as the control period. The Hg allocations are determined through a methodology based upon heat input for existing units and electrical output for new units. January 1, 2001 is the cutoff for determining whether a unit is new or existing. If a unit does not use all of its allowances for a specific control period, those extra tons may be banked for future use or sold. If a unit exceeds the allocated allowances, additional allowances may be purchased or the source may use banked allowances to offset the amount of Hg generated above the allocated allowances.

Sources found to be out of compliance will be forced to surrender allowances for the next year on a ratio of 3:1; i.e., for every ounce over its allocations, three ounces will be forfeited from the next year's allocation.

Emissions will need to be monitored according to 40 CFR Part 75 of the Code of Federal Regulations for all sources subject to the regulation and for any sources wishing to opt into the program.

## **COMPARISON WITH FEDERAL MODEL RULE**

### Hg Allowance Allocation Methodology for Electrical Generating Units (EGUs)

In the EPA rule, the baseline heat input is based on fuel weighting. The baseline heat input for combined heat power (CHP) facilities is determined using a different methodology dependent on technology or fuel use and applied only to post 2001 units.

In the Virginia regulation, the baseline heat input is based on one heat rate for all units. The baseline heat input for combined heat power (CHP) facilities is determined using the same methodology for all technologies, fuels and units (both existing and new), consistent with the non-CHP methodology for existing units. These differences are included to (i) ensure that allowances are allocated based on a level playing field rather than allocating more allowances to units with historically high emissions, and (ii) simplify the implementation of the regulation.

### New Unit Set-aside

The EPA rule provides for an initial set-aside of five percent of the Hg trading budget to be set-aside for use by new units in the first five years, dropping to three percent in subsequent years.

The Virginia regulation provides for an initial set-aside of four percent of the Hg trading budget to be set-aside for use by new units in the first five years, dropping to one percent in subsequent years. The percentage for subsequent years is reduced in order to comply with the Code of Virginia.

### New Energy Efficiency/Renewable Energy Unit Set-aside

The EPA rule does not provide for any allowances for energy efficiency/renewable energy units.

The Virginia regulation provides allowances for a set-aside for new energy efficiency/renewable energy units

consisting of one percent of the Hg trading budget per control period. Procedures are included for the allocation of the allowances in the set-aside budget. The allocated allowances must be retired permanently, are not capable of being lawfully traded under the Hg Budget Trading Program, and are not to be submitted to EPA; the unallocated allowances expire after three years. This set-aside is included to encourage the use of energy efficiency/renewable energy units.

## **9 VAC 5 CHAPTER 140.**

### **REGULATION FOR EMISSIONS TRADING.**

#### **Hg Budget Trading Program for Coal Fired Electric Steam Generating Units** **(Part V of 9 VAC 5 Chapter 140)**

The substantive provisions of Part V are summarized below and the numbers in the brackets are the last four digits of the corresponding section numbers from the applicable provision of 9 VAC 5 Chapter 140 [9 VAC 5-140-XXXX].

1. The regulation applies to coal fired electric generating units (EGUs) with a nameplate capacity greater than 25 MWe. An EGU is a fossil fuel-fired stationary boiler or combustion turbine serving at any time a generator with nameplate capacity of more than 25 MWe producing electricity for sale. [5040]
2. The control period is January 1 through December 31 of each year. [definition of “control period” in 5020]
3. The Hg trading budgets for EGUs are (i) 0.592 tons (1,184 lb.) for each control period in 2010 through 2014 and (ii) 0.234 tons (468 lb.) for each control period in 2015 and thereafter. [5400]
4. A new unit set-aside budget is included consisting of 4.0% of the Hg trading budget for each control period in 2010 through 2014 or 1.0% for each control period in 2015 and thereafter. [definitions of “new unit set-aside budget” and new unit set-aside percentage” in 5020]
5. An energy efficient/renewable energy (EERE) set-aside budget is included consisting of 1.0% of the Hg trading budget for each control period in 2010 and thereafter. Procedures are included for the allocation of the allowances in the set-aside budget. The allocated allowances must be retired permanently, are not capable of being lawfully traded under the Hg Budget Trading Program, and are not to be submitted to EPA; the unallocated allowances expire after three years. [definition of “energy efficient/renewable energy set-aside budget” in 5020, 5420 E]
6. Existing units are those commencing operation prior to January 1, 2001. [5420 A 1 a]
7. New units are those commencing operation on or after January 1, 2001. [5420 A 1 b]
8. Initial allocations (2010 – 2014) for existing EGUs are issued on November 17, 2006. [5410 A]
9. Subsequent allocations (2015 and thereafter) for existing EGUs are issued annually beginning October 31, 2009, six years in advance. [5410 B]
10. Allowances for existing EGUs are calculated using the baseline heat input, determined by averaging the three highest years of the years 2000 through 2004, and allocated based on the total heat input of all the EGUs normalized over the Hg core trading budget. [5420 A 1 a and B]
11. Initial allocations (2010) for new EGUs are issued on October 31, 2010. [5410 C]
12. Subsequent allocations (2011 and thereafter) for new EGUs are issued annually beginning October 31, 2011. [5410 C]

13. Allowances for new EGUs are calculated using the converted heat input (electrical output), determined by averaging the three highest years of the first five years of operation, and allocated based on the total electrical output of all the EGUs normalized over the new unit set-aside budget. [5420 A 1 b and C]

14. New EGUs are allocated allowances from the Hg core trading budget (used for existing units) once they have a baseline heat input (i.e. after five years of operation). [5420 B and C]

15. Any allowances left over after the allocations to the new EGUs are reallocated to the existing EGUs. [5420 D]

16. Compliance is determined by comparing the amount of allowances in the owner's account with the total amount of emissions from all of the affected units. [5540]

17. Sources may bank any allowances not used during a specific control period. [5550]

18. Major sources subject to the regulation must obtain a budget permit reflecting the requirements of the Hg budget trading program. [5200 – 5240]

19 The program is administered almost in its entirety by EPA, except for the allocations of allowances and issuance of the Hg budget permits.

20 All sources must meet the monitoring requirements of 40 CFR Part 75 of the Code of Federal Regulations. [5700 – 5750]

**9 VAC 5 CHAPTER 140.**  
**REGULATION FOR EMISSIONS TRADING PROGRAMS.**

**PART VI.**

**Hg Budget Trading Program for Coal Fired Electric Steam Generating Units.**

**Article 1. Hg Budget Trading Program General Provisions**

9 VAC 5-140-5010. Purpose.

9 VAC 5-140-5020. Definitions.

9 VAC 5-140-5030. Measurements, abbreviations, and acronyms.

9 VAC 5-140-5040. Applicability.

9 VAC 6-140-5050. Retired unit exemption.

9 VAC 5-140-5060. Standard requirements.

9 VAC 5-140-5070. Computation of time.

9 VAC 5-140-5080. Appeal procedures.

**Article 2. Hg Designated Representative for Hg Budget Sources**

9 VAC 5-140-5100. Authorization and responsibilities of Hg designated representative.

9 VAC 5-140-5110. Alternate Hg designated representative.

9 VAC 5-140-5120. Changing Hg designated representative and alternate Hg designated representative; changes in owners and operators.

9 VAC 5-140-5130. Certificate of Representation.

9 VAC 5-140-5140. Objections concerning Hg designated representative.

9 VAC 5-140-5150. Delegation by Hg designated representative and alternate Hg designated representative.

**Article 3. Permits**

9 VAC 5-140-5200. General Hg Budget Trading Program permit requirements.

9 VAC 5-140-5210. Submission of Hg Budget permit applications.

9 VAC 5-140-5220. Information requirements for Hg Budget permit applications.

9 VAC 5-140-5230. Hg Budget permit contents and term.

9 VAC 5-140-5240. Hg Budget permit revisions.

9 VAC 5-140-5250. [Reserved]

#### **Article 4 – [Reserved]**

9 VAC 5-140-5300. [Reserved].

#### **Article 5. Hg Allowance Allocations**

9 VAC 5-140-5400. Hg trading budgets.

9 VAC 5-140-5410. Timing requirements for Hg allowance allocations.

9 VAC 5-140-5420. Hg allowance allocations.

#### **Article 6. Hg Allowance Tracking System**

9 VAC 5-140-5500. [Reserved]

9 VAC 5-140-5510. Establishment of accounts.

9 VAC 5-140-5520. Responsibilities of Hg authorized account representative.

9 VAC 5-140-5530. Recordation of Hg allowance allocations.

9 VAC 5-140-5540. Compliance with Hg Budget emissions limitation.

9 VAC 5-140-5550. Banking.

9 VAC 5-140-5560. Account error.

9 VAC 5-140-5570. Closing of general accounts.

#### **Article 7. Hg Allowance Transfers**

9 VAC 5-140-5600. Submission of Hg allowance transfers.

9 VAC 5-140-5610. EPA recordation.

9 VAC 5-140-5620. Notification.

#### **Article 8. Monitoring and Reporting**

9 VAC 5-140-5700. General requirements.

9 VAC 5-140-5710. Initial certification and recertification procedures.

9 VAC 5-140-5720. Out of control periods.

9 VAC 5-140-5730. Notifications.

9 VAC 5-140-5740. Recordkeeping and reporting.

9 VAC 5-140-5750. Petitions.

#### **Article 1. Hg Budget Trading Program General Provisions**

9 VAC 5-140-5010. Purpose.

This part establishes the general provisions and the designated representative, permitting, allowance, and monitoring provisions for the Mercury (Hg) Budget Trading Program, under § 111 of the Clean Air Act (CAA) and 40 CFR 60.24(h)(6), as a means of reducing Hg emissions. The board authorizes the administrator to assist the board in implementing the Hg Budget Trading Program by carrying out the functions set forth for the administrator in this part.

9 VAC 5-140-5020. Definitions.

A. As used in this part, all words or terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10), unless otherwise required by context.

B. For the purpose of this part and any related use, the words or terms shall have the meanings given them in this section.

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

“Allocate” or “allocation” means, with regard to Hg allowances, the determination by a permitting authority or the administrator of the amount of Hg allowances to be initially credited to a Hg Budget unit, a new unit set-aside, a new energy efficiency/renewable energy unit set-aside, or other entity.



"Allowance transfer deadline" means, for a control period, midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day), immediately following the control period and is the deadline by which a Hg allowance transfer must be submitted for recordation in a Hg Budget source's compliance account in order to be used to meet the source's Hg Budget emissions limitation for such control period in accordance with 9 VAC 5-140-5540.

"Alternate Hg designated representative" means, for a Hg Budget source and each Hg Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Article 2 (9 VAC 5-140-5100 et seq.) of this part, to act on behalf of the Hg designated representative in matters pertaining to the Hg Budget Trading Program. If the Hg Budget source is also a CAIR NO<sub>x</sub> source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO<sub>x</sub> Annual Trading Program. If the Hg Budget source is also a CAIR SO<sub>2</sub> source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO<sub>2</sub> Trading Program. If the Hg Budget source is also a CAIR NO<sub>x</sub> Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO<sub>x</sub> Ozone Season Trading Program. If the Hg Budget source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program.

"Automated data acquisition and handling system" or "DAHS" means that component of the continuous emission monitoring system (CEMS), or other emissions monitoring system approved for use under Article 8 (9 VAC 5-140-5700 et seq.) of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required under Article 8 (9 VAC 5-140-5700 et seq.) of this part.

"Biomass energy" means energy derived from the combustion or electro-chemical reaction (as with a fuel cell) of hydrocarbon materials of a biogenic origin using a solid, liquid or gaseous fuel. Biomass fuel materials include, but are not limited to, animal wastes (e.g., manure) and clean plant materials (e.g., wood chips, waste paper and crop wastes). Biomass fuels exclude products that have emissions that include heavy metals and other neurotoxins (e.g., municipal solid wastes). Biomass fuel materials may be converted to a gaseous fuel, such as landfills (i.e., landfill gas) or waste treatment facilities (i.e., digester gas), or to liquid fuels (e.g., biodiesel). To be considered a biomass facility, the facility must (i) employ maximum achievable control technology and continuous emission stack monitors for all chemical emissions of concern to human health and (ii) be listed in one of the following categories: anaerobic digestion systems operating on animal or plant wastes, methane gas, combustion of clean wood, bark or other plant material; or on combustion of fuels derived entirely from processing of clean wood, bark, or other plant or animal material, including processing by gasification, pyrolysis, fermentation, distillation, or densification.

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

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

"CAIR NO<sub>x</sub> Annual Trading Program" means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the administrator in accordance with Part II (9 VAC 5-140-1010 et seq.) of this chapter and 40 CFR 51.123(o)(1) or (2) or established by the administrator in accordance with Part II (9 VAC 5-140-1010 et seq.) of this chapter and 40 CFR 51.123(p) and 40 CFR 52.35, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

"CAIR NO<sub>x</sub> Ozone Season source" means a source that is subject to the CAIR NO<sub>x</sub> Ozone Season Trading Program.

"CAIR NO<sub>x</sub> Ozone Season Trading Program" means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the administrator in accordance with Part III (9 VAC 5-140-2010 et seq.) of this chapter and 40 CFR 51.123(aa)(1) or (2) and (bb)(1), (bb)(2), or (dd) or

established by the administrator in accordance with Part III (9 VAC 5-140-2010 et seq.) of this chapter and 40 CFR 51.123(ee) and 40 CFR 52.35, as a means of mitigating interstate transport of ozone and nitrogen oxides.

“CAIR NO<sub>x</sub> source” means a source that is subject to the CAIR NO<sub>x</sub> Annual Trading Program.

“CAIR SO<sub>2</sub> source” means a source that is subject to the CAIR SO<sub>2</sub> Trading Program.

“CAIR SO<sub>2</sub> Trading Program” means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the administrator in accordance with Part IV (9 VAC 5-140-3010 et seq.) of this chapter and 40 CFR 51.124(o)(1) or (2) or established by the administrator in accordance with Part IV (9 VAC 5-140-3010 et seq.) of this chapter and 40 CFR 51.124(r) and 40 CFR 52.36, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

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

“Coal” means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials (ASTM) “Standard Classification of Coals by Rank” (see 9 VAC 5-20-21).

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

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

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

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

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

a. For a topping-cycle cogeneration unit,

(1) Useful thermal energy not less than 5 percent of total energy output; and

(2) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

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

“Combustion turbine” means:

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

2. If the enclosed device under subdivision 1 of this definition is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

“Commence commercial operation” means, with regard to a unit:

1. To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in 9 VAC 5-140-5050.

a. For a unit that is a Hg Budget unit under 9 VAC 5-140-5040 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subdivision 1 of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

b. For a unit that is a Hg Budget unit under 9 VAC 5-140-5040 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subdivision 1 of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in subdivision 1 or 2 of this definition as appropriate.

2. Notwithstanding subdivision 1 of this definition and except as provided in 9 VAC 5-140-5050, for a unit that is not a Hg Budget unit under 9 VAC 5-140-5040 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subdivision 1 of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a Hg Budget unit under 9 VAC 5-140-5040.

a. For a unit with a date for commencement of commercial operation as defined in subdivision 2 of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

b. For a unit with a date for commencement of commercial operation as defined in subdivision 2 of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in subdivision 1 or 2 of this definition as appropriate.

"Commence operation" means:

1. To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber.

2. For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in subdivision 1 of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

3. For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in subdivision 1 of this definition, such date shall remain the replaced unit's date of commencement of operation and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in subdivision 1 of this definition, as appropriate.

"Common stack" means a single flue through which emissions from 2 or more units are exhausted.

"Compliance account" means a Hg Allowance Tracking System account, established by the administrator for a Hg Budget source under Article 6 (9 VAC 5-140-5500 et seq.) of this part, in which any Hg allowance allocations for the Hg Budget units at the source are initially recorded and in which are held any Hg allowances available for use for a control period in order to meet the source's Hg Budget emissions limitation in accordance with 9 VAC 5-140-5540.

“Continuous emission monitoring system” or “CEMS” means the equipment required under Article 8 (9 VAC 5-140-5700 et seq.) of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of Hg emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR Part 75. The following systems are the principal types of continuous emission monitoring systems required under Article 8 (9 VAC 5-140-5700 et seq.) of this part:

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

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

3. A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent  $\text{H}_2\text{O}$ .

4. A carbon dioxide monitoring system, consisting of a  $\text{CO}_2$  concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the  $\text{CO}_2$  concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of  $\text{CO}_2$  emissions, in percent  $\text{CO}_2$ ; and

5. An oxygen monitoring system, consisting of an  $\text{O}_2$  concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of  $\text{O}_2$ , in percent  $\text{O}_2$ .

“Control period” means the period beginning January 1 of a calendar year, except as provided in 9 VAC 5-140-5060 C 2, and ending on December 31 of the same year, inclusive.

“Emissions” means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the Hg designated representative and as determined by the administrator in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of this part.

“EERE proponent” means any person who owns, leases, operates or controls an energy efficiency unit or a renewable energy unit, or an EERE representative.

“EERE representative” means a party that aggregates one or more energy efficiency units or renewable energy units. An EERE representative may include, without limitation, a common owner of projects, an energy service company, an emission trading broker or a state or municipal entity.

"Energy efficiency unit" means an end-use energy efficiency project implemented after January 1, 2001 that reduces electricity consumption at a building or facility located in Virginia according to an energy efficiency verification protocol acceptable to the permitting authority. Projects resulting in energy savings at a Hg Budget unit are not encompassed within this definition.

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

"General account" means a Hg Allowance Tracking System account, established under 9 VAC 5-140-5510, that is not a compliance account.

“Generator” means a device that produces electricity.

“Gross electrical output” means, with regard to a cogeneration unit, electricity made available

for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

“Heat input” means, with regard to a specified period of time, the product (in MMBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/MMBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the administrator by the Hg designated representative and determined by the administrator in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

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

"Hg allowance" means a limited authorization issued by a permitting authority or the administrator under Article 5 (9 VAC 5-140-5400 et seq.) of this part, or under 40 CFR 62.15940 through 62.15943, to emit one ounce of mercury during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the Hg Budget Trading Program. An authorization to emit mercury that is not issued under Article 5 (9 VAC 5-140-5400 et seq.) of this part or under 40 CFR 62.15940 through 62.15943 shall not be a Hg allowance. No provision of the Hg Budget Trading Program, the Hg Budget permit application, the Hg Budget permit, or an exemption under 9 VAC 5-140-5040 B or 9 VAC 5-140-5050 and no provision of law shall be construed to limit the authority of the United States or board to terminate or limit such authorization, which does not constitute a property right.

"Hg allowance deduction" or "deduct Hg allowances" means the permanent withdrawal of Hg allowances by the administrator from a compliance account, e.g., in order to account for a specified number of ounces of total mercury emissions from all Hg Budget units at a Hg Budget source for a control period, determined in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of this part, or to account for excess emissions. No provision of the Hg Budget Trading Program, the Hg permit application, the Hg permit, or an exemption under 9 VAC 5-140-5040 2 or 9 VAC 5-140-5050 and no provision of law shall be construed to limit the authority of the United States or state to terminate or limit such authorization, which does not constitute a property right.

"Hg allowances held" or "hold Hg allowances" means the Hg allowances recorded by the administrator, or submitted to the administrator for recordation, in accordance with Article 6 (9 VAC 5-140-5500 et seq.) and Article 7 (9 VAC 5-140-5600 et seq.) of this part, in a Hg Allowance Tracking System account.

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

"Hg Allowance Tracking System account" means an account in the Hg Allowance Tracking System established by the administrator for purposes of recording the allocation, holding, transferring, or deducting of Hg allowances.

"Hg authorized account representative" means, with regard to a general account, a responsible natural person who is authorized, in accordance with Article 2 (9 VAC 5-140-5100 et seq.) and Article 6 (9 VAC 5-140-5500 et seq.), to transfer and otherwise dispose of Hg allowances held in the general account and, with regard to a compliance account, the Hg designated representative of the source.

“Hg Budget emissions limitation” means, for a Hg Budget source, the equivalent, in ounces of Hg emissions in a control period, of mercury of the Hg allowances available for deduction for the source under 9 VAC 5-140-5540 A and B for the control period.

"Hg Budget permit" means the terms and conditions in a title V operating permit or state operating permit, issued by the permitting authority under Article 3 (9 VAC 5-140-5200 et seq.) of this part,

including any permit revisions, specifying the Hg Budget Trading Program requirements applicable to a Hg Budget source, to each Hg Budget unit at the source, and to the owners and operators and the Hg designated representative of the source and each such unit.

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

“Hg Budget Trading Program” means a multi-state Hg air pollution control and emission reduction program approved and administered by the administrator in accordance with this part and 40 CFR 60.24(h)(6) or established by the administrator in accordance with Subpart LLL of 40 CFR Part 62, 40 CFR 60.24(h)(9), and 40 CFR 62.13(f), as a means of reducing national Hg emissions.

“Hg Budget unit” means a unit that is subject to the Hg Budget Trading Program under 9 VAC 5-140-5040.

"Hg core trading budget" means the amount of ounces (pounds multiplied by 16 ounces/lb) of Hg emissions in the Hg trading budget for the control period minus the new unit set-aside budget and the new energy efficiency/renewable energy unit set-aside budget.

"Hg designated representative" means, for a Hg Budget source and each Hg Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Article 2 (9 VAC 5-140-5100 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the Hg Budget Trading Program. If the Hg Budget source is also a CAIR NO<sub>x</sub> source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO<sub>x</sub> Annual Trading Program. If the Hg Budget source is also a CAIR SO<sub>2</sub> source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO<sub>2</sub> Trading Program. If the Hg Budget source is also a CAIR NO<sub>x</sub> Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO<sub>x</sub> Ozone Season Trading Program. If the Hg Budget source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program.

"Hg Trading Budget" means the total number of mercury pounds set forth in 9 VAC 5-140-5400 and apportioned to all Hg Budget units and energy efficiency/renewable energy units in accordance with the Hg Trading Budget Program, for use in a given control period.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved in subpart VV of 40 CFR Part 52 by the administrator under § 110 of the CAA, or promulgated under § 110(c) of the CAA, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the CAA and which implements the relevant requirements of the CAA.

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

1. For the life of the unit;
2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
3. For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

“Lignite” means coal that is classified as lignite A or B according to the American Society of Testing and Materials (ASTM) “Standard Classification of Coals by Rank” (see 9 VAC 5-20-21).

“Maximum design heat input” means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady-state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

“Monitoring system” means any monitoring system that meets the requirements of Article 8 (9 VAC 5-140-5700 et seq.) of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR Part 75.

“Municipal waste” means municipal waste as defined in § 129(g)(5) of the Clean Air Act.

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

"New energy efficiency/renewable energy unit set-aside budget" means the amount of ounces (pounds multiplied by 16 ounces/lb) of Hg emissions in the Hg trading budget for each control period in 2010 and thereafter multiplied by 1.0%, rounded to the nearest whole allowance as appropriate.

"New unit set-aside budget" means the amount of ounces (pounds multiplied by 16 ounces/lb) of Hg emissions in the Hg trading budget for the control period to which the new unit set-aside applies multiplied by the new unit set-aside percentage, rounded to the nearest whole allowance as appropriate.

"New unit set-aside percentage" means 4.0% for each control period in 2010 through 2014, or 1.0% for each control period in 2015 and thereafter.

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

“Ounce” means  $2.84 \times 10^7$  micrograms. For the purpose of determining compliance with the Hg Budget emissions limitation, total ounces of mercury emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of this part, but with any remaining fraction of an ounce equal to or greater than 0.50 ounces deemed to equal one ounce and any remaining fraction of an ounce less than 0.50 ounces deemed to equal zero ounces.

“Owner” means any of the following persons:

1. With regard to a Hg Budget source or a Hg Budget unit at a source, respectively:
  - a. Any holder of any portion of the legal or equitable title in a Hg Budget unit at the source or the Hg Budget unit;
  - b. Any holder of a leasehold interest in a Hg Budget unit at the source or the Hg Budget unit; or
  - c. Any purchaser of power from a Hg Budget unit at the source or the Hg Budget unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such Hg Budget unit; or

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

"Permitting authority" means the state air pollution control agency, local agency, other State agency, or other agency authorized by the administrator to issue or revise permits to meet the requirements of the Hg Budget Trading Program or, if no such agency has been so authorized, the administrator. For the Commonwealth of Virginia, the permitting authority shall be the State Air Pollution Control Board.

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

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

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

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

"Renewable energy unit" means an electric generator that began commercial operation after January 1, 2001 and is powered by (i) wind, solar, ocean thermal, wave, tidal, geothermal, or biomass energy, or (ii) fuel cells powered by hydrogen generated by a renewable energy source. Renewable energy does not include energy derived from: (i) material that has been treated or painted or derived from demolition or construction material; (ii) municipal, industrial or other multiple source solid waste; and (iii) co-firing of biomass with fossil fuels or solid waste.

"Replacement," "replace," or "replaced" means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

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

1. Atmospheric or pressurized fluidized bed combustion;
2. Integrated gasification combined cycle;
3. Magnetohydrodynamics;
4. Direct and indirect coal-fired turbines;
5. Integrated gasification fuel cells; or

6. As determined by the administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under subdivisions 1 through 5 of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

"Section 111(d) plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.24(h)(6) in accordance with § 111(d)(1) of the Clean Air



Act, or promulgated under 40 CFR 60.24(h)(6) in accordance with § 111(d)(2) of the Clean Air Act, and which implements the relevant requirements of the Clean Air Act.

“Sequential use of energy” means:

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

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

“Solid waste incineration unit” means a stationary, coal-fired boiler or stationary, coal-fired combustion turbine that is a “solid waste incineration unit” as defined in § 129(g)(1) of the Clean Air Act.

“Source” means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of § 502(c) of the Clean Air Act, a “source,” including a “source” with multiple units, shall be considered a single “facility.”

"State" means the Commonwealth of Virginia. The term "state" shall have its conventional meaning where such meaning is clear from the context.

"State operating permit" means a permit issued under Article 5 (9 VAC 5-80-800 et seq.) of Part II of 9 VAC 5 Chapter 80.

“State operating permit regulations” means the regulations codified in Article 5 (9 VAC 5-80-800 et seq.) of Part II of 9 VAC 5 Chapter 80.

“Subbituminous” means coal that is classified as subbituminous A, B, or C, according to the American Society of Testing and Materials (ASTM) “Standard Classification of Coals by Rank” (see 9 VAC 5-20-21).

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

1. In person;
2. By United States Postal Service; or
3. By other means of dispatch or transmission and delivery. Compliance with any “submission” or “service” deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Title V operating permit" means a permit issued under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of Part II of 9 VAC 5 Chapter 80.

"Title V operating permit regulations" means the regulations codified in Article 1 (9 VAC 5-80-50 et seq.), Article 2 (9 VAC 5-80-310 et seq.), Article 3 (9 VAC 5-80-360 et seq.), and Article 4 (9 VAC 5-80-710 et seq.) of Part II of 9 VAC 5 Chapter 80.

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

“Total energy input” means, with regard to a cogeneration unit, total energy of all forms

supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

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

“Unit” means a stationary coal-fired boiler or a stationary coal-fired combustion turbine.

“Unit operating day” means a calendar day in which a unit combusts any fuel.

“Unit operating hour” or “hour of unit operation” means an hour in which a unit combusts any fuel.

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

“Useful thermal energy” means, with regard to a cogeneration unit, thermal energy that is:

1. Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;
2. Used in a heating application (e.g., space heating or domestic hot water heating); or
3. Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

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

9 VAC 5-140-5030. Measurements, abbreviations, and acronyms.

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

Btu - British thermal unit.

CO<sub>2</sub> - carbon dioxide.

H<sub>2</sub>O - water.

Hg - mercury.

hr - hour.

kW - kilowatt electrical.

kWh - kilowatt hour.

lb - pound.

MMBtu - million Btu.

MWe - megawatt electrical.

MWh - megawatt hour.

NO<sub>x</sub> - nitrogen oxides.

O<sub>2</sub> - oxygen.

ppm - parts per million.

scfh - standard cubic feet per hour.

SO<sub>2</sub> - sulfur dioxide.

yr - year.

9 VAC 5-140-5040. Applicability.

A. Except as provided in subsection B of this section:

1. The following units shall be Hg Budget units, and any source that includes one or more such

units shall be a Hg Budget source, subject to the requirements of this part: Any stationary, coal-fired boiler or stationary, coal-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, 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 subdivision 1 of this subsection, is not a Hg Budget unit begins to combust coal or coal-derived fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a Hg Budget unit as provided in subdivision 1 of this subsection on the first date on which it both combusts coal or coal-derived fuel and serves such generator.

B. The units that meet the requirements set forth in subdivisions 1 a or 2 of this subsection shall not be Hg Budget units:

1.a. Any unit that is a Hg Budget unit under subdivisions A 1 or 2 of this section:

(1) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(2) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

b. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of subdivision 1 a of this subsection for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become an Hg Budget 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 subdivision 1 a (2) of this subsection.

2. Any unit that is an Hg Budget unit under subdivision A 1 or 2 of this section, is a solid waste incineration unit combusting municipal waste, and is subject to the requirements of:

a. Article 54 (9 VAC 5-40-7950 et seq.) of Part II of 9 VAC 5 Chapter 40 (emission standards for large municipal waste combustors);

b. Subpart Eb in 9 VAC 5-50-410 (standards of performance for large municipal waste combustors);

c. Subpart AAAA in 9 VAC 5-50-410 (standards of performance for small municipal waste combustors); or

d. Article 46 (9 VAC 5-40-6550) of Part II of 9 VAC 5 Chapter 40 (emission standards for small municipal waste combustors).

9 VAC 5-140-5050. Retired unit exemption.

A.1. Any Hg Budget unit that is permanently retired shall be exempt from the Hg Budget Trading Program, except for the provisions of this section, 9 VAC 5-140-5020, 9 VAC 5-140-5030, 9 VAC 5-140-5040, 9 VAC 5-140-5060 C 4 through 7, 9 VAC 5-140-5070, 9 VAC 5-140-5080, Article 2 (9 VAC 5-10-5100 et seq.) of this part, and 9 VAC 5-140-5400.

2. The exemption under subdivision 1 of this subsection shall become effective the day on which the Hg Budget unit is permanently retired. Within 30 days of the unit's permanent retirement, the Hg designated representative shall submit a statement to the permitting authority and shall submit a copy of the statement to the administrator. The statement shall state, in a format acceptable to the permitting authority, that

the unit was permanently retired on a specific date and will comply with the requirements of subsection B of this section.

3. After receipt of the statement under subdivision 2 of this subsection, the permitting authority will amend any permit under Article 3 (9 VAC 5-140-5200 et seq.) of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under subdivision 1 of this subsection and subsection B of this section.

B. Special provisions for exempt units shall be as follows.

1. A unit exempt under subsection A of this section shall not emit any mercury, starting on the date that the exemption takes effect.

2. The permitting authority will allocate Hg allowances under Article 5 (9 VAC 5-140-5400 et seq.) of this part to a unit exempt under subsection A of this section.

3. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under subsection A of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

4. The owners and operators and, to the extent applicable, the Hg designated representative of a unit exempt under subsection A of this section shall comply with the requirements of the Hg Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

5. A unit exempt under subsection A of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the Hg designated representative of the source submits a complete Hg Budget permit application under 9 VAC 5-140-5220 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the unit resumes operation.

6. On the earlier of the following dates, a unit exempt under subsection A of this section shall lose its exemption:

a. The date on which the Hg designated representative submits a Hg Budget permit application for the unit under subdivision 5 of this subsection;

b. The date on which the Hg designated representative is required under subdivision 5 of this subsection to submit a Hg Budget permit application for the unit; or

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

7. For the purpose of applying monitoring, reporting, and recordkeeping requirements under Article 8 (9 VAC 5-140-5700 et seq.) of this part, a unit that loses its exemption under subsection A of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

9 VAC 5-140-5060. Standard requirements.

A. Permit requirements shall be as follows.

1. The Hg designated representative of each Hg Budget source required to have a title V operating permit and each Hg Budget unit required to have a title V operating permit at the source shall:

a. Submit to the permitting authority a complete Hg Budget permit application under 9 VAC 5-140-5220 in accordance with the deadlines specified in 9 VAC 5-140-5210; and

b. Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a Hg Budget permit application and issue or deny a Hg Budget permit.

2. The owners and operators of each Hg Budget source required to have a title V operating permit and each Hg Budget unit required to have a title V operating permit at the source shall have a Hg Budget permit issued by the permitting authority under Article 3 (9 VAC 5-140-5200 et seq.) of this part for the source and operate the source and the unit in compliance with such Hg Budget permit.

3. The owners and operators of a Hg Budget source that is not otherwise required to have a title V operating permit and each Hg Budget unit that is not otherwise required to have a title V operating permit are not required to submit a Hg Budget permit application, and to have a Hg Budget permit, under Article 3 (9 VAC 5-140-5200 et seq.) of this part for such Hg Budget source and such Hg Budget unit.

B. Monitoring, reporting, and recordkeeping shall be performed as follows.

1. The owners and operators, and the Hg designated representative, of each Hg Budget source and each Hg Budget unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of Article 8 (9 VAC 5-140-5700 et seq.) of this part.

2. The emissions measurements recorded and reported in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of this part shall be used to determine compliance by each Hg Budget source with the Hg Budget emissions limitation under subsection C of this section.

C. Mercury emission requirements shall be as follows.

1. As of the allowance transfer deadline for a control period, the owners and operators of each Hg Budget source and each Hg Budget unit at the source shall hold, in the source's compliance account, Hg allowances available for compliance deductions for the control period 9 VAC 5-140-5540 A in an amount not less than the ounces of total mercury emissions for the control period from all Hg Budget units at the source, as determined in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of this part.

2. A Hg Budget unit shall be subject to the requirements under subdivision 1 of this section for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under 9 VAC 5-140-5700 C 1 or 2 and for each control period thereafter.

3. A Hg allowance shall not be deducted, for compliance with the requirements under subdivision 1 of this section, for a control period in a calendar year before the year for which the Hg allowance was allocated.

4. Hg allowances shall be held in, deducted from, or transferred into or among Hg Allowance Tracking System accounts in accordance with Article 6 (9 VAC 5-140-5500 et seq.) and Article 7 (9 VAC 5-140-5600 et seq.) of this part.

5. A Hg allowance is a limited authorization to emit one ounce of mercury in accordance with the Hg Budget Trading Program. No provision of the Hg Budget Trading Program, the Hg Budget permit application, the Hg Budget permit, or an exemption under 9 VAC 5-140-5050 and no provision of law shall be construed to limit the authority of the board or the United States to terminate or limit such authorization.

6. A Hg allowance does not constitute a property right.

7. Upon recordation by the administrator under Article 5 (9 VAC 5-140-5400 et seq.), Article 6 (9 VAC 5-140-5500 et seq.) and Article 7 (9 VAC 5-140-5600 et seq.) of this part, every allocation, transfer, or deduction of a Hg allowance to or from a Hg Budget source's compliance account is incorporated automatically

in any Hg Budget permit of the source.

D. If a Hg Budget source emits mercury during any control period in excess of the Hg Budget emissions limitation:

1. The owners and operators of the source and each Hg Budget unit at the source shall surrender the Hg allowances required for deduction under 9 VAC 5-140-5540 D 1 and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or the Virginia Air Pollution Control Law; and

2. Each ounce of such excess emissions and each day of such control period shall constitute a separate violation of this part, the Clean Air Act, and the Virginia Air Pollution Control Law.

E. Recordkeeping and reporting shall be performed as follows.

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

a. The certificate of representation under 9 VAC 5-140-5130 for the Hg designated representative for the source and each Hg Budget unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under 9 VAC 5-140-5130 changing the Hg designated representative.

b. All emissions monitoring information, in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of this part, provided that to the extent that Article 8 (9 VAC 5-140-5700 et seq.) of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

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

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

2. The Hg designated representative of a Hg Budget source and each Hg Budget unit at the source shall submit the reports required under the Hg Budget Trading Program, including those under Article 8 (9 VAC 5-140-5700 et seq.) of this part.

F. Liability shall be assigned as follows.

1. Each Hg Budget source and each Hg Budget unit shall meet the requirements of the Hg Budget Trading Program.

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

3. Any provision of the Hg Budget Trading Program that applies to a Hg Budget unit or the Hg designated representative of a Hg Budget unit shall also apply to the owners and operators of such unit.

G. No provision of the Hg Budget Trading Program, a Hg Budget permit application, a Hg Budget permit, or an exemption under 9 VAC 5-140-5050 shall be construed as exempting or excluding the owners and operators, and the Hg designated representative, of a Hg Budget source or Hg Budget unit from compliance with any other provision of the applicable, approved implementation plan, a federally enforceable permit, the

Virginia Air Pollution Control Law or the Clean Air Act.

9 VAC 5-140-5070. Computation of time.

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

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

C. Unless otherwise stated, if the final day of any time period, under the Hg Budget Trading Program, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day.

9 VAC 5-140-5080. Appeal procedures.

The appeal procedures for decisions of the administrator under the Hg Budget Trading Program are set forth in 40 CFR Part 78.

## **Article 2. Hg Designated Representative for Hg Budget Sources**

9 VAC 5-140-5100. Authorization and responsibilities of Hg designated representative.

A. Except as provided under 9 VAC 5-140-5110, each Hg Budget source, including all Hg Budget units at the source, shall have one and only one Hg designated representative, with regard to all matters under the Hg Budget Trading Program concerning the source or any Hg Budget unit at the source.

B. The Hg designated representative of the Hg Budget source shall be selected by an agreement binding on the owners and operators of the source and all Hg Budget units at the source and shall act in accordance with the certification statement in 9 VAC 5-140-5130 A 4 d.

C. Upon receipt by the administrator of a complete certificate of representation under 9 VAC 5-140-5130, the Hg designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the Hg Budget source represented and each Hg Budget unit at the source in all matters pertaining to the Hg Budget Trading Program, notwithstanding any agreement between the Hg designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the Hg designated representative by the permitting authority, the administrator, or a court regarding the source or unit.

D. No Hg Budget permit will be issued, no emissions data reports will be accepted, and no Hg Allowance Tracking System account will be established for a Hg Budget unit at a source, until the administrator has received a complete certificate of representation under 9 VAC 5-140-5130 for a Hg designated representative of the source and the Hg Budget units at the source.

E.1. Each submission under the Hg Budget Trading Program shall be submitted, signed, and certified by the Hg designated representative for each Hg Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the Hg designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

2. The permitting authority and the administrator will accept or act on a submission made on behalf of owners or operators of a Hg Budget source or a Hg Budget unit only if the submission has been made,

signed, and certified in accordance with subdivision 1 of this subsection.

9 VAC 5-140-5110. Alternate Hg designated representative.

A. A certificate of representation under 9 VAC 5-140-5130 may designate one and only one alternate Hg designated representative, who may act on behalf of the Hg designated representative. The agreement by which the alternate Hg designated representative is selected shall include a procedure for authorizing the alternate Hg designated representative to act in lieu of the Hg designated representative.

B. Upon receipt by the administrator of a complete certificate of representation under 9 VAC 5-1140-5130, any representation, action, inaction, or submission by the alternate Hg designated representative shall be deemed to be a representation, action, inaction, or submission by the Hg designated representative.

C. Except in this section and 9 VAC 5-140-5020, 9 VAC 5-140-5100 A and D, 9 VAC 5-140-5120, 9 VAC 5-140-5130, 9 VAC 5-140-5150, and 9 VAC 5-140-5510, whenever the term "Hg designated representative" is used in this part, the term shall be construed to include the Hg designated representative or any alternate Hg designated representative.

9 VAC 5-140-5120. Changing Hg designated representative and alternate Hg designated representative; changes in owners and operators.

A. The Hg designated representative may be changed at any time upon receipt by the administrator of a superseding complete certificate of representation under 9 VAC 5-140-5130. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Hg designated representative before the time and date when the administrator receives the superseding certificate of representation shall be binding on the new Hg designated representative and the owners and operators of the Hg Budget source and the Hg Budget units at the source.

B. The alternate Hg designated representative may be changed at any time upon receipt by the administrator of a superseding complete certificate of representation under 9 VAC 5-140-5130. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg designated representative before the time and date when the administrator receives the superseding certificate of representation shall be binding on the new alternate Hg designated representative and the owners and operators of the Hg Budget source and the Hg Budget units at the source.

C. Changes in owners and operators shall be established as follows.

1. In the event an owner or operator of a Hg Budget source or a Hg Budget unit is not included in the list of owners and operators in the certificate of representation under 9 VAC 5-140-5130, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the Hg designated representative and any alternate Hg designated representative of the source or unit, and the decisions and orders of the permitting authority, the administrator, or a court, as if the owner or operator were included in such list.

2. Within 30 days following any change in the owners and operators of a Hg Budget source or a Hg Budget unit, including the addition of a new owner or operator, the Hg designated representative or any alternate Hg designated representative shall submit a revision to the certificate of representation under 9 VAC 5-140-5130 amending the list of owners and operators to include the change.

9 VAC 5-140-5130. Certificate of representation.

A. A complete certificate of representation for a Hg designated representative or an alternate Hg designated representative shall include the following elements in a format prescribed by the administrator:

1. Identification of the Hg Budget source, and each Hg Budget unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.



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

3. A list of the owners and operators of the Hg Budget source and of each Hg Budget unit at the source.

4. The following certification statements by the Hg designated representative and any alternate Hg designated representative:

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

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

c. "I certify that the owners and operators of the source and of each Hg Budget unit at the source shall be bound by any order issued to me by the administrator, the permitting authority, or a court regarding the source or unit."

d. "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a Hg Budget unit, or where a utility or industrial customer purchases power from a Hg Budget unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'Hg designated representative' or 'alternate Hg designated representative,' as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each Hg Budget unit at the source; and Hg allowances and proceeds of transactions involving Hg allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of Hg allowances by contract, Hg allowances and proceeds of transactions involving Hg allowances will be deemed to be held or distributed in accordance with the contract."

5. The signature of the Hg designated representative and any alternate Hg designated representative and the dates signed.

B. Unless otherwise required by the permitting authority or the administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the administrator. Neither the permitting authority nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

9 VAC 5-140-5140. Objections concerning Hg designated representative.

A. Once a complete certificate of representation under 9 VAC 5-140-5130 has been submitted and received, the permitting authority and the administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under 9 VAC 5-140-5130 is received by the administrator.

B. Except as provided in 9 VAC 5-140-5120 A or B, no objection or other communication submitted to the permitting authority or the administrator concerning the authorization, or any representation, action, inaction, or submission, of the Hg designated representative shall affect any representation, action, inaction, or submission of the Hg designated representative or the finality of any decision or order by the permitting authority or the administrator under the Hg Budget Trading Program.

C. Neither the permitting authority nor the administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any Hg designated

representative, including private legal disputes concerning the proceeds of Hg allowance transfers.

9 VAC 5-140-5150. Delegation by Hg designated representative and alternate Hg designated representative.

A. A Hg designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the administrator provided for or required under this part.

B. An alternate Hg designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the administrator provided for or required under this part.

C. In order to delegate authority to make an electronic submission to the administrator in accordance with subsection A or B of this section, the Hg designated representative or alternate Hg designated representative, as appropriate, must submit to the administrator a notice of delegation, in a format prescribed by the administrator, that includes the following elements:

1. The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such Hg designated representative or alternate Hg designated representative;

2. The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an “agent”);

3. For each such natural person, a list of the type or types of electronic submissions under subsections A or B of this section for which authority is delegated to him or her; and

4. The following certification statements by such Hg designated representative or alternate Hg designated representative:

a. “I agree that any electronic submission to the administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a Hg designated representative or alternate Hg designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 9 VAC 5-140-5150 D shall be deemed to be an electronic submission by me.”

b. “Until this notice of delegation is superseded by another notice of delegation under 9 VAC 5-140-5150 D, I agree to maintain an e-mail account and to notify the administrator immediately of any change in my e-mail address, unless all delegation of authority by me under 9 VAC 5-140-5150 is terminated.”

D. A notice of delegation submitted under subsection C of this section shall be effective, with regard to the Hg designated representative or alternate Hg designated representative identified in such notice, upon receipt of such notice by the administrator and until receipt by the administrator of a superseding notice of delegation submitted by such Hg designated representative or alternate Hg designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

E. Any electronic submission covered by the certification in subdivision C 4 a of this section and made in accordance with a notice of delegation effective under subsection D of this section shall be deemed to be an electronic submission by the Hg designated representative or alternative Hg designated representative submitting such notice of delegation.

### **Article 3. Permits**

9 VAC 5-140-5200. General Hg Budget Trading Program permit requirements.

A. For each Hg Budget source required to have a title V operating permit, such permit shall include a Hg Budget permit administered by the permitting authority for the title V operating permit. The Hg Budget portion of the title V permit shall be administered in accordance with the permitting authority’s title V operating permit regulations, except as provided otherwise by subsection B of this section, 9 VAC 5-140-5050, and 9

VAC 5-140-5210 through 9 VAC 5-140-5240.

B. Each Hg Budget permit shall contain, with regard to the Hg Budget source and the Hg Budget units at the source covered by the Hg Budget permit, all applicable Hg Budget Trading Program requirements and shall be a complete and separable portion of the title V operating permit.

9 VAC 5-140-5210. Submission of Hg Budget permit applications.

A. The Hg designated representative of any Hg Budget source required to have a title V operating permit shall submit to the permitting authority a complete Hg Budget permit application under 9 VAC 5-140-5220 for the source covering each Hg Budget unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the Hg Budget unit commences commercial operation.

B. For a Hg Budget source required to have a title V operating permit, the Hg designated representative shall submit a complete Hg Budget permit application under 9 VAC 5-140-5220 for the source covering each Hg Budget unit at the source to renew the Hg Budget permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.

9 VAC 5-140-5220. Information requirements for Hg Budget permit applications.

A complete Hg Budget permit application shall include the following elements concerning the Hg Budget source for which the application is submitted, in a format prescribed by the permitting authority:

1. Identification of the Hg Budget source;
2. Identification of each Hg Budget unit at the Hg Budget source; and
3. The standard requirements under 9 VAC 5-140-5060.

9 VAC 5-140-5230. Hg Budget permit contents and term.

A. Each Hg Budget permit will contain, in a format prescribed by the permitting authority, all elements required for a complete Hg Budget permit application under 9 VAC 5-140-5220.

B. Each Hg Budget permit is deemed to incorporate automatically the definitions of terms under 9 VAC 5-140-5020 and, upon recordation by the administrator under Article 5 (9 VAC 5-140-5400 et seq.), Article 6 (9 VAC 5-140-5500 et seq.) and Article 7 (9 VAC 5-140-5600 et seq.) of this part, every allocation, transfer, or deduction of a Hg allowance to or from the compliance account of the Hg Budget source covered by the permit.

C. The term of the Hg Budget permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the Hg Budget permit with issuance, revision, or renewal of the Hg Budget source's title V operating permit.

9 VAC 5-140-5240. Hg Budget permit revisions.

Except as provided in 9 VAC 5-140-5230 B, the permitting authority will revise the Hg Budget permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.

9 VAC 5-140-5250. [Reserved].

#### **Article 4. [Reserved]**

9 VAC 5-140-5300. [Reserved].

#### **Article 5. Hg Allowance Allocations**

9 VAC 5-140-5400. Hg trading budgets.

The Hg trading budgets for annual allocations of Hg allowances apportioned to all Hg Budget units and energy efficiency units and renewable energy units for the control periods are as follows:

1. For use in each control period in 2010 – 2017, the total number of Hg pounds is 1,184.
2. For use in each control period in 2018 and thereafter, the total number of Hg pounds is 468.

9 VAC 5-140-5410. Timing requirements for Hg allowance allocations.

A. By November 17, 2006, the permitting authority will submit to the administrator the Hg allowance allocations, in a format prescribed by the administrator and in accordance with 9 VAC 5-140-5420 A and B, for the control periods in 2010, 2011, 2012, 2013, and 2014.

B. By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the administrator the Hg allowance allocations, in a format prescribed by the administrator and in accordance with 9 VAC 5-140-5420 A and B, for the control period in the sixth year after the year of the applicable deadline for submission under this section.

C. By October 31, 2010 and October 31 of each year thereafter, the permitting authority will submit to the administrator the Hg allowance allocations, in a format prescribed by the administrator and in accordance with 9 VAC 5-140-5420 A, C, and D, for the control period in the year of the applicable deadline for submission under this section.

9 VAC 5-140-5420. Hg allowance allocations.

A.1. The baseline heat input (in MMBtu) used with respect to Hg allowance allocations under subsection B of this section for each Hg Budget unit will be:

- a. For units commencing operation before January 1, 2001, the average of the three highest amounts of the unit's control period heat input for 2000 through 2004.
- b. For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

2.a. A unit's control period heat input for a calendar year under subdivision 1 a of this subsection, and a unit's total ounces of Hg emissions during a calendar year under subdivision C 3 of this section, will be determined in accordance with 40 CFR Part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year. The unit's types and amounts of fuel combusted, under subdivision 1 a of this subsection, will be based on the best available data reported to the permitting authority for the unit.

b. A unit's converted control period heat input for a calendar year specified under subdivision 1 b of this subsection equals:

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

(2) For a unit that has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control

period gross electrical output of the unit multiplied by 7,900 Btu/kWh, plus the useful thermal energy (in Btu) produced during the control period, divided by 0.8, and with the sum divided by 1,000,000 Btu/MMBtu.

B.1. For each control period in 2010 and thereafter, the permitting authority will allocate to all Hg Budget units that have a baseline heat input (as determined under subsection A of this section) a total amount of Hg allowances equal to the Hg core trading budget (except as provided in subsection D of this section).

2. The permitting authority will allocate Hg allowances to each Hg Budget unit under subdivision 1 of this subsection in an amount determined by multiplying the total amount of Hg allowances allocated under subdivision 1 of this subsection by the ratio of the baseline heat input of such Hg Budget unit to the total amount of baseline heat input of all such Hg Budget units and rounding to the nearest whole allowance as appropriate.

C. For each control period in 2010 and thereafter, the permitting authority will allocate Hg allowances to Hg Budget units that are not allocated Hg allowances under subsection B of this section because the units do not yet have a baseline heat input under subsection A of this section or because the units have a baseline heat input but all Hg allowances available under subsection B of this section for the control period are already allocated, in accordance with the following procedures:

1. The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated Hg allowances equal to the new unit set-aside budget.

2. The Hg designated representative of such a Hg Budget unit may submit to the permitting authority a request, in a format acceptable to the permitting authority, to be allocated Hg allowances, starting with the later of the control period in 2010 or the first control period after the control period in which the Hg Budget unit commences commercial operation and until the first control period for which the unit is allocated Hg allowances under subsection B of this section. A separate Hg allowance allocation request for each control period for which Hg allowances are sought must be submitted on or before May 1 of such control period and after the date on which the Hg Budget unit commences commercial operation.

3. In a Hg allowance allocation request under subdivision 2 of this subsection, the Hg designated representative may request for a control period Hg allowances in an amount not exceeding the Hg Budget unit's total ounces of Hg emissions during the calendar year immediately before such control period.

4. The permitting authority will review each Hg allowance allocation request under subdivision 2 of this subsection and will allocate Hg allowances for each control period pursuant to such request as follows:

a. The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of subdivisions 2 and 3 of this subsection.

b. On or after May 1 of the control period, the permitting authority will determine the sum of the Hg allowances requested (as adjusted under subdivision a of this subdivision) in all allowance allocation requests accepted under subdivision a of this subdivision for the control period.

c. If the amount of Hg allowances in the new unit set-aside for the control period is greater than or equal to the sum under subdivision b of this subdivision, then the permitting authority will allocate the amount of Hg allowances requested (as adjusted under subdivision a of this subdivision) to each Hg Budget unit covered by an allowance allocation request accepted under subdivision a of this subdivision.

d. If the amount of Hg allowances in the new unit set-aside for the control period is less than the sum under subdivision b of this subdivision, then the permitting authority will allocate to each Hg Budget unit covered by an allowance allocation request accepted under subdivision a of this subdivision the amount of the Hg allowances requested (as adjusted under subdivision a of this subdivision), multiplied by the amount of Hg allowances in the new unit set-aside for the control period, divided by the sum determined under subdivision b of this subdivision, and rounded to the nearest whole allowance as appropriate.

e. The permitting authority will notify each Hg designated representative that submitted an allowance allocation request of the amount of Hg allowances (if any) allocated for the control period to the Hg Budget unit covered by the request.

D. If, after completion of the procedures under subdivision C 4 of this section for a control period, any unallocated Hg allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each Hg Budget unit that was allocated Hg allowances under subsection B of this section an amount of Hg allowances equal to the total amount of such remaining unallocated Hg allowances, multiplied by the unit's allocation under subsection B of this section, divided by the Hg core trading budget, and rounded to the nearest whole allowance as appropriate.

E. For each control period in 2010 and thereafter, the permitting authority will allocate Hg allowances not to exceed the new energy efficiency/renewable energy unit set-aside budget to qualifying energy efficiency units and renewable energy units in accordance with the following procedures:

1. The EERE proponent of an energy efficiency unit or a renewable energy unit may submit to the permitting authority a request, in a format acceptable to the permitting authority, to be allocated Hg allowances, starting with the later of the control period in 2010 or the first control period after the control period in which the energy efficiency unit is implemented or the renewable energy unit commences commercial operation. The Hg allowance allocation request must be submitted on or before July 1 of each control period for which the Hg allowances are requested and after the date on which the energy efficiency unit is implemented or the renewable energy unit commences commercial operation.

2. EERE proponents may submit an application that aggregates two or more energy efficiency units or renewable energy units. The permitting authority will not allocate Hg allowances for energy efficiency units or renewable energy units totaling less than one whole allowance or any fraction thereof. If more than one proponent submits an application for allowances for the same energy efficiency unit or renewable energy unit for the same calendar year, the permitting authority, at its discretion, may refuse to accept the applications.

3. In a Hg allowance allocation request under subdivisions 1 and 2 of this subsection, the EERE proponent may request for a control period Hg allowances in an amount not exceeding:

a. For a renewable energy unit, the control period gross electrical output of the facility during the calendar year immediately before such control period multiplied by  $21 \times 10^{-6}$  lb/MWh and multiplied by 16 and rounded to nearest whole allowance as appropriate.

b. For an energy efficiency unit, the control period verified reduction in electricity consumption during the calendar year immediately before such control period multiplied by  $21 \times 10^{-6}$  lb/MWh and multiplied by 16 and rounded to the nearest whole allowance as appropriate.

4. The permitting authority will review each Hg allowance allocation request under subdivisions 1 and 2 of this subsection and will allocate Hg allowances for each control period pursuant to such request as follows:

a. The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of subdivisions 1, 2 and 3 of this subsection.

b. On or after October 1 of the control period, the permitting authority will determine the sum of the Hg allowances requested (as adjusted under subdivision a of this subsection) in all allowance allocation requests accepted under subdivision a of this subsection for the control period.

c. If the amount of Hg allowances in the new energy efficiency/renewable energy unit set-aside budget for the control period is greater than or equal to the sum under subdivision b of this subsection, the permitting authority will allocate the amount of Hg allowances requested (as adjusted under subdivision a of this subsection) to each energy efficiency unit or renewable energy unit covered by an allowance allocation request accepted under subdivision a of this subsection.

d. If the amount of Hg allowances in the new energy efficiency/renewable energy unit set-aside budget for the control period is less than the sum under subdivision b of this subdivision, the permitting authority will allocate to each energy efficiency unit or renewable energy unit covered by an allowance allocation request accepted under subdivision a of this subdivision the amount of the Hg allowances requested (as adjusted under subdivision a of this subdivision), multiplied by the amount of Hg allowances in the new energy efficiency/renewable energy unit set-aside budget for the control period, divided by the sum determined under subdivision b of this subdivision, and rounded to the nearest whole allowance as appropriate.

5. By October 31, 2009 and October 31 of each year thereafter, the permitting authority will notify each EERE proponent that submitted an allowance allocation request under subdivisions 1 and 2 of this subsection of the amount of Hg allowances (if any) allocated under subdivision 4 of this subsection for the control period to the energy efficiency unit or renewable energy unit covered by the request.

6. If, after completion of the procedures under subdivisions 4 and 5 of this subsection for a control period, any unallocated Hg allowances have remained in the new energy efficiency/renewable energy unit set-aside budget for more than three control periods, the permitting authority will permanently retire those allowances, and they will not be available for compliance for any Hg budget unit.

7. The permitting authority will not submit to the administrator the Hg allowance allocations under subdivision 4 of this subsection.

8. Hg allowances allocated under subdivision 4 of this subsection shall (i) be retired permanently by the EERE proponent making the request under subdivision 2 of this subsection, (ii) shall not be considered valid or capable of being lawfully traded under the Hg Budget Trading Program, and (iii) shall not be available for compliance for any Hg budget unit.

#### **Article 6. Hg Allowance Tracking System**

9 VAC 5-140-5500. [Reserved]

9 VAC 5-140-5510. Establishment of accounts.

A. Upon receipt of a complete certificate of representation under 9 VAC 5-140-5130, the administrator will establish a compliance account for the Hg Budget source for which the certificate of representation was submitted unless the source already has a compliance account.

B. General accounts shall be established as follows.

1. Applications for general accounts shall be submitted as follows.

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

b. A complete application for a general account shall be submitted to the administrator and shall include the following elements in a format prescribed by the administrator:

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

(2) Organization name and type of organization, if applicable;

(3) A list of all persons subject to a binding agreement for the Hg authorized account representative and any alternate Hg authorized account representative to represent their ownership interest with respect to the Hg allowances held in the general account;

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

(5) The signature of the Hg authorized account representative and any alternate Hg authorized account representative and the dates signed.

c. Unless otherwise required by the permitting authority or the administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the administrator. Neither the permitting authority nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

2. Hg authorized account representatives and alternate Hg authorized account representatives shall be authorized as follows.

a. Upon receipt by the administrator of a complete application for a general account under subdivision 1 of this subsection:

(1) The administrator will establish a general account for the person or persons for whom the application is submitted.

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

(3) Any representation, action, inaction, or submission by any alternate Hg authorized account representative shall be deemed to be a representation, action, inaction, or submission by the Hg authorized account representative.

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

c. The administrator will accept or act on a submission concerning the general account



only if the submission has been made, signed, and certified in accordance with subdivision 2 b of this subsection.

3. Hg authorized account representatives, alternate Hg authorized account representatives, and persons with ownership interest shall be changed as follows.

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

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

c.(1) In the event a person having an ownership interest with respect to Hg allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the Hg authorized account representative and any alternate Hg authorized account representative of the account, and the decisions and orders of the administrator or a court, as if the person were included in such list.

(2) Within 30 days following any change in the persons having an ownership interest with respect to Hg allowances in the general account, including the addition of a new person, the Hg authorized account representative or any alternate Hg authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the Hg allowances in the general account to include the change.

4. Objections concerning Hg authorized account representative and alternate Hg authorized account representative are subject to the following.

a. Once a complete application for a general account under subdivision 1 of this subsection has been submitted and received, the administrator will rely on the application unless and until a superseding complete application for a general account under subdivision 1 of this subsection is received by the administrator.

b. Except as provided in subdivision 3 a or b of this subsection, no objection or other communication submitted to the administrator concerning the authorization, or any representation, action, inaction, or submission of the Hg authorized account representative or any alternate Hg authorized account representative for a general account shall affect any representation, action, inaction, or submission of the Hg authorized account representative or any alternate Hg authorized account representative or the finality of any decision or order by the administrator under the Hg Budget Trading Program.

c. The administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the Hg authorized account representative or any alternate Hg authorized account representative for a general account, including private legal disputes concerning the proceeds of Hg allowance transfers.

5. Delegation by Hg authorized account representative and alternate Hg authorized account representative shall be accomplished as follows.

a. A Hg authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the administrator provided for or required under Article 6 (9 VAC 5-140-5500 et seq.) and Article 7 (9 VAC 5-140-5600 et seq.) of this part.

b. An alternate Hg authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the administrator provided for or required under Article 6 (9 VAC 5-140-5500 et seq.) and Article 7 (9 VAC 5-140-5600 et seq.) of this part.

c. In order to delegate authority to make an electronic submission to the administrator in accordance with subdivision a or b of this subdivision, the Hg authorized account representative or alternate Hg authorized account representative, as appropriate, must submit to the administrator a notice of delegation, in a format prescribed by the administrator, that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such Hg authorized account representative or alternate Hg authorized account representative;

(2) The name, address, e-mail address, telephone number, and, facsimile transmission number (if any) of each such natural person (referred to as an “agent”);

(3) For each such natural person, a list of the type or types of electronic submissions under subdivisions a or b of this subdivision for which authority is delegated to him or her;

(4) The following certification statement by such Hg authorized account representative or alternate Hg authorized account representative: “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a Hg authorized account representative or alternate Hg authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 9 VAC 5-140-5510 B 5 d shall be deemed to be an electronic submission by me.” ; and

(5) The following certification statement by such Hg authorized account representative or alternate Hg authorized account representative: “Until this notice of delegation is superseded by another notice of delegation under 9 VAC 5-140-5510 B 5 d, I agree to maintain an email account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority under 9 VAC 5-140-5510 B 5 is terminated.”

d. A notice of delegation submitted under subdivision c of this subdivision shall be effective, with regard to the Hg authorized account representative or alternate Hg authorized account representative identified in such notice, upon receipt of such notice by the administrator and until receipt by the administrator of a superseding notice of delegation submitted by such Hg authorized account representative or alternate Hg authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

e. Any electronic submission covered by the certification in subdivision c (4) of this subdivision and made in accordance with a notice of delegation effective under subdivision d of this subdivision shall be deemed to be an electronic submission by the Hg designated representative or alternate Hg designated representative submitting such notice of delegation.

C. The administrator will assign a unique identifying number to each account established under subsection A or B of this section.

9 VAC 5-140-5520. Responsibilities of Hg authorized account representative.

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

account.

9 VAC 5-140-5530. Recordation of Hg allowance allocations.

A. By December 1, 2007, the administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the permitting authority in accordance with 9 VAC 5-140-5410 A, for the control periods in 2010, 2011, 2012, 2013, and 2014.

B. By December 1, 2009, the administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the permitting authority in accordance with 9 VAC 5-140-5410 B, for the control period in 2015.

C. By December 1, 2010 and December 1 of each year thereafter, the administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the permitting authority in accordance with 9 VAC 5-140-5410 B, for the control period in the sixth year after the year of the applicable deadline for recordation under this section.

D. By December 1, 2010 and December 1 of each year thereafter, the administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the permitting authority in accordance with 9 VAC 5-140-5410 C, for the control period in the year of the applicable deadline for recordation under this section.

E. When recording the allocation of Hg allowances for a Hg Budget unit in a compliance account, the administrator will assign each Hg allowance a unique identification number that will include digits identifying the year of the control period for which the Hg allowance is allocated.

9 VAC 5-140-5540. Compliance with Hg Budget emissions limitation.

A. The Hg allowances are available to be deducted for compliance with a source's Hg Budget emissions limitation for a control period in a given calendar year only if the Hg allowances:

1. Were allocated for the control period in the year or a prior year; and
2. Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a Hg allowance transfer correctly submitted for recordation under 9 VAC 5-140-5600 and 9 VAC 5-140-5610 by the allowance transfer deadline for the control period.

B. Following the recordation, in accordance with 9 VAC 5-140-5610, of Hg allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the administrator will deduct from the compliance account Hg allowances available under subsection A of this section in order to determine whether the source meets the Hg Budget emissions limitation for the control period, as follows:

1. Until the amount of Hg allowances deducted equals the number of ounces of total Hg emissions, determined in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of this part, from all Hg Budget units at the source for the control period; or
2. If there are insufficient Hg allowances to complete the deductions in subdivision 1 of this subsection, until no more Hg allowances available under subsection A of this section remain in the compliance account.

C.1. The Hg authorized account representative for a source's compliance account may request that specific Hg allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with subsection B or D of this section. Such request shall be submitted to the administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the administrator, the identification of the Hg Budget source and the appropriate serial numbers.

2. The administrator will deduct Hg allowances under subsection B or D of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of Hg allowances by serial number under subdivision C 1 of this section, on a first-in, first-out accounting basis in the following order:

a. Any Hg allowances that were allocated to the units at the source, in the order of recordation; and then

b. Any Hg allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to 9 VAC 5-140-5600 and 9 VAC 5-140-5610, in the order of recordation.

D. Deductions for excess emissions shall meet the following.

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

2. Any allowance deduction required under subdivision 1 of this subsection shall not affect the liability of the owners and operators of the Hg Budget source or the Hg Budget units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or the Virginia Air Pollution Control Law.

E. The administrator will record in the appropriate compliance account all deductions from such an account under subsections B and D of this section.

F. The administrator's action on submissions may include the following.

1. The administrator may review and conduct independent audits concerning any submission under the Hg Budget Trading Program and make appropriate adjustments of the information in the submissions.

2. The administrator may deduct Hg allowances from or transfer Hg allowances to a source's compliance account based on the information in the submissions, as adjusted under subdivision 1 of this subsection, and record such deductions and transfers.

9 VAC 5-140-5550. Banking.

A. Hg allowances may be banked for future use or transfer in a compliance account or a general account in accordance with subsection B of this section.

B. Any Hg allowance that is held in a compliance account or a general account will remain in such account unless and until the Hg allowance is deducted or transferred under 9 VAC 5-140-5540, 9 VAC 5-140-5560, or Article 7 (9 VAC 5-140-5600 et seq.) of this part.

9 VAC 5-140-5560. Account error.

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

9 VAC 5-140-5570. Closing of general accounts.

A. The Hg authorized account representative of a general account may submit to the administrator a request to close the account, which shall include a correctly submitted allowance transfer under 9 VAC 5-140-5600 and 9 VAC 5-140-5610 for any Hg allowances in the account to one or more other Hg Allowance Tracking System accounts.

B. If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any Hg allowances, the administrator may notify the Hg authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the administrator receives a correctly submitted transfer of Hg allowances into the account under 9 VAC 5-140-5600 and 9 VAC 5-140-5610 or a statement submitted by the Hg authorized account representative demonstrating to the satisfaction of the administrator good cause as to why the account should not be closed.

### **Article 7. Hg Allowance Transfers**

9 VAC 5-140-5600. Submission of Hg allowance transfers.

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

1. The account numbers for both the transferor and transferee accounts;
2. The serial number of each Hg allowance that is in the transferor account and is to be transferred; and
3. The name and signature of the Hg authorized account representative of the transferor account and the date signed.

9 VAC 5-140-5610. EPA recordation.

A. Within 5 business days (except as provided in subsection B of this section) of receiving a Hg allowance transfer, the administrator will record a Hg allowance transfer by moving each Hg allowance from the transferor account to the transferee account as specified by the request, provided that:

1. The transfer is correctly submitted under 9 VAC 5-140-5600; and
2. The transferor account includes each Hg allowance identified by serial number in the transfer.

B. A Hg allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any Hg allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the administrator completes the deductions under 9 VAC 5-140-5540 for the control period immediately before such allowance transfer deadline.

C. Where a Hg allowance transfer submitted for recordation fails to meet the requirements of subsection A of this section, the administrator will not record such transfer.

9 VAC 5-140-5620. Notification.

A. Within 5 business days of recordation of a Hg allowance transfer under 9 VAC 5-140-5610, the administrator will notify the Hg authorized account representatives of both the transferor and transferee accounts.

B. Within 10 business days of receipt of a Hg allowance transfer that fails to meet the requirements of 9 VAC 5-140-5610 A, the administrator will notify the Hg authorized account representatives of both accounts subject to the transfer of:

1. A decision not to record the transfer, and
2. The reasons for such non-recordation.

C. Nothing in this section shall preclude the submission of a Hg allowance transfer for recordation following notification of non-recordation.

## **Article 8. Monitoring and Reporting**

9 VAC 5-140-5700. General requirements.

A. The owners and operators, and to the extent applicable, the Hg designated representative, of a Hg Budget unit shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this article and subpart I of 40 CFR Part 75. For purposes of complying with such requirements, the definitions in 9 VAC 5-140-5020 and in 40 CFR 72.2 shall apply, and the terms “affected unit,” “designated representative,” and “continuous emission monitoring system (CEMS)” in 40 CFR Part 75 shall be deemed to refer to the terms “Hg Budget unit,” “Hg designated representative,” and “continuous emission monitoring system (CEMS)” respectively, as defined in 9 VAC 5-140-5020. The owner or operator of a unit that is not a Hg Budget unit but that is monitored under 40 CFR 75.82(b)(2)(i) shall comply with the same monitoring, recordkeeping, and reporting requirements as a Hg Budget unit.

B. The owner or operator of each Hg Budget unit shall:

1. Install all monitoring systems required under this article for monitoring Hg mass emissions and individual unit heat input (including all systems required to monitor Hg concentration, stack gas moisture content, stack gas flow rate, and CO<sub>2</sub> or O<sub>2</sub> concentration, as applicable, in accordance with 40 CFR 75.81 and 75.82);

2. Successfully complete all certification tests required under 9 VAC 5-140-5710 and meet all other requirements of this article, and subpart I of 40 CFR Part 75 applicable to the monitoring systems under subdivision 1 of this subsection; and

3. Record, report, and quality-assure the data from the monitoring systems under subdivision 1 of this subsection.

C. Except as provided in subsection F of this section, the owner or operator shall meet the monitoring system certification and other requirements of subdivisions B 1 and 2 of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under subdivision B 1 of this section on and after the following dates.

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

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

a. January 1, 2009; or

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

3. For the owner or operator of a Hg Budget unit for which construction of a new stack or flue or installation of add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system is completed after the applicable deadline under subdivision 1 or 2 of this subsection, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue, add-on Hg emissions controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system.

D. The owner or operator of a Hg Budget unit that does not meet the applicable compliance date set forth in subsection C of this section for any monitoring system under subdivision B 1 of this section shall, for

each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for Hg concentration, stack gas flow rate, stack gas moisture content, and any other parameters required to determine Hg mass emissions and heat input in accordance with 40 CFR 75.80(g).

E. The following prohibitions shall apply.

1. No owner or operator of a Hg Budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this article without having obtained prior written approval in accordance with 9 VAC 5-140-5750.

2. No owner or operator of a Hg Budget unit shall operate the unit so as to discharge, or allow to be discharged, Hg emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this article, and subpart I of 40 CFR Part 75.

3. No owner or operator of a Hg Budget unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording Hg mass emissions discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this article, and subpart I of 40 CFR Part 75.

4. No owner or operator of a Hg Budget unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this article, except under any one of the following circumstances:

a. During the period that the unit is covered by an exemption under 9 VAC 5-140-5050 that is in effect;

b. The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this article, and subpart I of 40 CFR Part 75, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

c. The Hg designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with 9 VAC 5-140-5710 C 3 a.

F. The owner or operator of a Hg Budget unit is subject to the applicable provisions of 40 CFR Part 75 concerning units in long-term cold storage.

9 VAC 5-140-5710. Initial certification and recertification procedures.

A. The owner or operator of a Hg Budget unit shall be exempt from the initial certification requirements of this section for a monitoring system under 9 VAC 5-140-5700 B 1 if the following conditions are met:

1. The monitoring system has been previously certified in accordance with 40 CFR Part 75; and

2. The applicable quality-assurance and quality-control requirements of 40 CFR 75.21 and appendix B to 40 CFR Part 75 are fully met for the certified monitoring system described in subdivision 1 of this subsection.

B. The recertification provisions of this section shall apply to a monitoring system under 9 VAC 5-140-5700 B 1 exempt from initial certification requirements under subsection A of this section.

C. Except as provided in subsection A of this section, the owner or operator of a Hg Budget unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system (sorber trap monitoring

system) under 40 CFR 75.15) under 9 VAC 5-140-5700 B 1. The owner or operator of a unit that qualifies to use the Hg low mass emissions excepted monitoring methodology under 40 CFR 75.81(b) or that qualifies to use an alternative monitoring system under subpart E of 40 CFR Part 75 shall comply with the procedures in subsection D or E of this section respectively.

1. The owner or operator shall ensure that each continuous monitoring system under 9 VAC 5-140-5700 B 1 (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20 by the applicable deadline in 9 VAC 5-140-5700 C. In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this part in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20 is required.

2. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system, or an excepted monitoring system (sorbet trap monitoring system) under 40 CFR 75.15, under 9 VAC 5-140-5700 B 1 that may significantly affect the ability of the system to accurately measure or record Hg mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21 or appendix B to 40 CFR Part 75, the owner or operator shall recertify the monitoring system in accordance with 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system, and each excepted monitoring system (sorbet trap monitoring system) under 40 CFR 75.15, whose accuracy is potentially affected by the change, in accordance with 40 CFR 75.20(b). Examples of changes to a continuous emission monitoring system that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site.

3. Subdivisions a through d of this subdivision apply to both initial certification and recertification of a continuous monitoring system under 9 VAC 5-140-5700 B 1. For recertifications, replace the words "certification" and "initial certification" with the word "recertification," replace the word "certified" with the word "recertified," and follow the procedures in 40 CFR 75.20(b)(5) in lieu of the procedures in subdivision e of this subdivision.

a. The Hg designated representative shall submit to the permitting authority, the appropriate EPA Regional Office, and the administrator written notice of the dates of certification testing, in accordance with 9 VAC 5-140-5730.

b. The Hg designated representative shall submit to the permitting authority a certification application for each monitoring system. A complete certification application shall include the information specified in 40 CFR 75.63.

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

d. The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under subdivision b of this subdivision. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the Hg Budget Trading Program.



(1) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(2) If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the Hg designated representative shall submit the additional information required to complete the certification application. If the Hg designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under subdivision (3) of this subdivision. The 120-day review period shall not begin before receipt of a complete certification application.

(3) If the certification application shows that any monitoring system does not meet the performance requirements of 40 CFR Part 75 or if the certification application is incomplete and the requirement for disapproval under subdivision (2) of this subdivision is met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under 40 CFR 75.20(a)(3)). The owner or operator shall follow the procedures for loss of certification in subdivision e of this subdivision for each monitoring system that is disapproved for initial certification.

(4) The permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with 9 VAC 5-140-5720.

e. If the permitting authority issues a notice of disapproval of a certification application under subdivision d (3) of this subdivision or a notice of disapproval of certification status under subdivision d (4) of this subdivision, then:

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

(a) For a disapproved Hg pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of Hg and the maximum potential flow rate, as defined in sections 2.1.7.1 and 2.1.4.1 of appendix A to 40 CFR Part 75.

(b) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO<sub>2</sub> concentration or the minimum potential O<sub>2</sub> concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to 40 CFR Part 75.

(c) For a disapproved excepted monitoring system (sorbent trap monitoring system) under 40 CFR 75.15 and disapproved flow monitor, respectively, the maximum potential concentration of Hg and maximum potential flow rate, as defined in sections 2.1.7.1 and 2.1.4.1 of appendix A to 40 CFR Part 75.

(2) The Hg designated representative shall submit a notification of certification retest dates and a new certification application in accordance with subdivisions 3 a and b of this subsection.

(3) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

D. The owner or operator of a unit qualified to use the Hg low mass emissions (HgLME) excepted methodology under 40 CFR 75.81(b) shall meet the applicable certification and recertification requirements in 40 CFR 75.81(c) through (f).

E. The Hg designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the administrator under subpart E of 40 CFR Part 75 shall comply with the applicable notification and application procedures of 40 CFR 75.20(f).

9 VAC 5-140-5720. Out of control periods.

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

B. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under 9 VAC 5-140-5710 or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this section, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the administrator. By issuing the notice of disapproval, the permitting authority revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in 9 VAC 5-140-5710 for each disapproved monitoring system.

9 VAC 5-140-5730. Notifications.

The Hg designated representative for a Hg Budget unit shall submit written notice to the permitting authority and the administrator in accordance with 40 CFR 75.61.

9 VAC 5-140-5740. Recordkeeping and reporting.

A. The Hg designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements of 40 CFR 75.84, and the requirements of 9 VAC 5-140-5100 E 1.

B. The owner or operator of a Hg Budget unit shall comply with requirements of 40 CFR 75.84(e).

C. The Hg designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under 9 VAC 5-140-5710, including the information required under 40 CFR 75.63.

D. The Hg designated representative shall submit quarterly reports, as follows:

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

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

b. For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under 9 VAC 5-140-5700 C, unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009.

2. The Hg designated representative shall submit each quarterly report to the administrator

within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR 75.84(f).

3. For Hg Budget units that are also subject to an Acid Rain emissions limitation or the CAIR NO<sub>x</sub> Annual Trading Program, CAIR SO<sub>2</sub> Trading Program, or CAIR NO<sub>x</sub> Ozone Season Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of 40 CFR Part 75 as applicable, in addition to the Hg mass emission data, heat input data, and other information required by this section, 9 VAC 5-140-5700 through 9 VAC 5-140-5730, and 9 VAC 5-140-5750.

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

1. The monitoring data submitted were recorded in accordance with the applicable requirements of this section, 9 VAC 5-140-5700 through 9 VAC 5-140-5730, 9 VAC 5-140-5750, and 40 CFR Part 75, including the quality assurance procedures and specifications; and

2. For a unit with add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system and for all hours where Hg data are substituted in accordance with 40 CFR 75.34(a)(1),

a.(1) The Hg add-on emission controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to 40 CFR Part 75, or

(2) With regard to a flue gas desulfurization system or a selective catalytic reduction system, quality-assured SO<sub>2</sub> emission data recorded in accordance with 40 CFR Part 75 document that the flue gas desulfurization system was operating properly, or quality-assured NO<sub>x</sub> emission data recorded in accordance with 40 CFR Part 75 document that the selective catalytic system was operating properly, as applicable, and

b. The substitute data values do not systematically underestimate Hg emissions.

9 VAC 5-140-5750. Petitions.

The Hg designated representative of a Hg Budget unit may submit a petition under 40 CFR 75.66 to the administrator requesting approval to apply an alternative to any requirement of 9 VAC 5-140-5700 through 9 VAC 5-140-5740. Application of an alternative to any requirement of 9 VAC 5-140-5700 through 9 VAC 5-140-5740 is in accordance with this section and 9 VAC 5-140-5700 through 9 VAC 5-140-5740 only to the extent that the petition is approved in writing by the administrator, in consultation with the permitting authority.

C06-REG-BD

**SUBJECT:** Regulations Concerning the Virginia Mercury (Hg) Control Program (Part V of 9 VAC 5 Chapter 140, Rev. F05)

**SPEAKER:** Robert Mann  
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Director, Office of Air Regulatory Development  
Department of Environmental Quality

## **INTRODUCTION**

The 2006 session of the General Assembly resulted in new legislation that requires the Board to adopt new regulations for the control of mercury (Hg) emissions within the Commonwealth, specifically Chapters 867 and 920, 2006 Acts of Assembly. These acts create a new Article 3 (air emissions control) in the Virginia Air Pollution Control Law, with two new sections as follows: § 10.1-1327 (definitions) and § 10.1-1328 (emissions rates and limitations).

§ 10.1-1328 D (see below) of the legislation requires the Board to adopt "a separate state-specific rule" that is not to be submitted to EPA. This state-specific rule is to apply to the owner of one or more electrical generating units that are located within the Commonwealth and whose combined emissions of mercury from such units exceeded 200 pounds in 1999. The legislation also states that the state-specific rule shall differ from the state model rule only in very specific respects. Immediately following this agenda memo are the draft regulation amendments to implement this provision of the Code of Virginia.

D. To further protect Virginia's environment regarding control of mercury emissions from electric generating units, the Board shall adopt a separate state-specific rule that shall not be submitted to the EPA. This state-specific rule shall apply to the owner of one or more electric generating units that are located within the Commonwealth and whose combined emissions of mercury from such units exceeded 200 pounds in 1999. This state-specific rule shall differ from the model CAMR only in the following respects:

1. For the owner of one or more electric generating units that are located within the Commonwealth and whose combined emissions of mercury from such units exceeded 900 pounds in 1999, the state-specific rule shall allocate a separate set of state-only mercury allowances equal to the CAMR allocation, and such owner shall be permitted to demonstrate compliance with the state-specific rule by showing that total mercury emissions from all of its electric generating units located within the Commonwealth do not exceed the total mercury allowances allocated to those units in the aggregate, and the compliance date for Phase 2 emission limits shall be January 1, 2015.
2. The owner of one or more electric generating units that are located within the Commonwealth and whose combined emissions of mercury from those units in 1999 were less than 900 pounds and whose combined capacity within the Commonwealth is greater than or equal to 600 MW, shall be permitted to satisfy its compliance obligations under the state-specific rule through the surrender of CAMR allowances that meet the following requirements: the allowances to be used are allocated to a facility under the control of the same owner or operator or under common control by the same parent corporation; the allowances used are generated and capable of being lawfully traded under the CAMR; and the surplus allowances are generated through the installation of emission controls at a facility located a straight line distance from the border of the Commonwealth of less than or equal to 200 km.
3. The owners subject to the state-specific rule shall not be permitted to purchase allowances to demonstrate compliance with the regulations the Board adopts to implement this subsection. This prohibition does not include the transfer of credits authorized by subdivision 2.
4. Nothing in the state-specific mercury rule shall be construed to prohibit the banking, use, or selling of allowances under the CAMR, and compliance with the CAMR and the state-specific mercury rule shall be determined separately and in accordance with the terms of each rule.

## **SUMMARY OF DRAFT AMENDMENTS**

Part V of 9 VAC 5-140 establishes the Virginia Mercury (Hg) Control Program (hereinafter called the state-specific rule) as a means of preventing emissions that may be detrimental to the public health and/or welfare and Virginia's environmental needs. The baseline document for development of the state-specific rule is the Hg Budget Trading Program for Coal Fired Electric Steam Generating Units, codified in Part VI of 9 VAC 5-140 (hereinafter called the state model rule).

The state-specific rule is summarized below and the numbers in the brackets are the last four digits of the corresponding section numbers from the applicable provision of 9 VAC 5 Chapter 140 [9 VAC 5-140-XXXX].

Beginning January 1, 2010, coal-fired electric generating units with a nameplate capacity greater than 25 MWe will be subject to the state-specific rule. However, the state-specific rule applies only to the owner of one or more electric generating units that are located within the Commonwealth and whose combined emissions of Hg from such units exceeded 200 pounds in 1999; this is a smaller universe of sources than is subject to the state model rule. [4030]

Virginia's Hg annual control budgets under the state-specific rule are the same as the Hg trading budgets under the state model rule: 1,184 pounds in 2010 through 2017 and 468 pounds in 2018 and thereafter. Any allowances that would be allocated under the state model rule to a unit not subject to the state-specific rule will not be allocated. These allowances will be retired permanently and are not to be submitted to EPA. [4040]

The state-specific rule is linked to the state model rule by either cross-referencing or incorporation by reference. Nothing in the state-specific rule shall be construed to prohibit the banking, use, or selling of allowances under the state model rule. If the provisions of the state model rule and the state-specific rule conflict, the provisions of the state-specific rule prevail. Compliance with the state model rule and the state-specific rule is determined separately and in accordance with the terms of each rule. [4050]

The state-specific rule uses annual emissions caps (see below) to limit emissions of mercury. Violation of the annual emissions cap is a violation of the Code of Virginia. The allowances under the state-specific rule have no market value under any trading program, including the EPA Hg trading program. [4060]

The state-specific rule provides that each covered unit be allocated a separate set of allowances (called Virginia state-only Hg allowances) equal to the amount of allowances allocated under the state model rule. The allowances (measured in ounces per year) are allocated for the months of January 1 through December 31, otherwise known as the control period. Under the state-specific rule, the allowances will be the basis for the establishment of an independent annual emissions cap equivalent to the number of allowances issued to the unit. With some exceptions, compliance with the emissions cap would not rely on the use of allowances under the state model rule but would be accomplished by comparing the actual emissions with the emissions cap (based on the Virginia state-only Hg allowances). Compliance must be demonstrated annually, for the preceding control period. Provisions are included to allow compliance to be demonstrated in the aggregate (a comparison of (i) the sum of the Hg emissions from the units and (ii) the sum of the Virginia state-only Hg allowances allocated to the units) for all units under common ownership.

The state-specific rule has different compliance requirements depending on the size of the power generation system to which the unit belongs. There are three sizes: large, medium and small.

The units in a large power generation system will be allocated a separate set of allowances equal to the amount of allowances allocated under the state model rule except that the allowances for the control periods in 2015, 2016 and 2017 will be reduced by 60.47%. The leftover allowances due to the difference between the state model rule and state-specific rule will not be allocated. The owner of these units will be required to demonstrate compliance using the aggregate system. [4100-4140]

The units in a medium power generation system will be allocated a separate set of allowances equal to the amount of allowances allocated under the state model rule. The owner of these units will be required to

demonstrate compliance using the aggregate system. The owner of these units will also be allowed to satisfy its compliance obligations under the state-specific rule through the conversion of CAMR allowances to Virginia state-only Hg allowances. The CAMR allowances must meet the following requirements: the allowances to be used are allocated to a unit under common control; the allowances used are generated and capable of being lawfully traded under the state model rule; and the surplus allowances are generated through the installation of emission controls at a facility located a straight line distance from the border of the Commonwealth of less than or equal to 200 km. [4200-4250]

The units in a small power generation system will be allocated a separate set of allowances equal to the amount of allowances allocated under the state model rule. The owner of these units will be required to demonstrate compliance using the aggregate system. [4300-4340]

## **9 VAC 5 CHAPTER 140.**

### **REGULATION FOR EMISSIONS TRADING AND BUDGET PROGRAMS.**

#### **PART V.**

#### **Virginia Mercury (Hg) Control Program.**

##### **Article 1. General Provisions.**

- 9 VAC 5-140-4010. Purpose.
- 9 VAC 5-140-4020. Definitions.
- 9 VAC 5-140-4030. Applicability.
- 9 VAC 5-140-4040. Hg control budgets.
- 9 VAC 5-140-4050. Relationship to Hg Budget Trading Program for Coal Fired Electric Steam Generating Units.
- 9 VAC 6-140-4060. Standard requirements.

##### **Article 2. Virginia State-only Hg Allowance Allocations and Compliance for Large Power Generation Systems.**

- 9 VAC 5-140-4100. Applicability.
- 9 VAC 5-140-4110. Timing requirements for Virginia state-only Hg allowance allocations.
- 9 VAC 5-140-4120. Virginia state-only Hg allowance allocations.
- 9 VAC 5-140-4130. Establishment of Hg Annual Emissions Cap.
- 9 VAC 5-140-4140. Hg emissions compliance demonstration.

##### **Article 3. Virginia State-only Hg Allowance Allocations and Compliance for Medium Power Generation Systems.**

- 9 VAC 5-140-4200. Applicability.
- 9 VAC 5-140-4210. Timing requirements for Virginia state-only Hg allowance allocations.
- 9 VAC 5-140-4220. Virginia state-only Hg allowance allocations.
- 9 VAC 5-140-4230. Establishment of Hg Annual Emissions Cap.
- 9 VAC 5-140-4240. Hg emissions compliance demonstration.
- 9 VAC 5-140-4250. Hg emissions compliance credits for CAMR Hg allowances.

##### **Article 4. Virginia State-only Hg Allowance Allocations and Compliance for Small Power Generation Systems.**

- 9 VAC 5-140-4300. Applicability.
- 9 VAC 5-140-4310. Timing requirements for Virginia state-only Hg allowance allocations.
- 9 VAC 5-140-4320. Virginia state-only Hg allowance allocations.
- 9 VAC 5-140-4330. Establishment of Hg Annual Emissions Cap.
- 9 VAC 5-140-4340. Hg emissions compliance demonstration.

##### **Article 1.** **General Provisions.**

9 VAC 5-140-4010. Purpose.

This part establishes the applicability, budget, allowance, and compliance provisions for the Virginia Mercury (Hg) Control Program, under § 10.1-1328 D of the Code of Virginia, as a means of preventing emissions that may be detrimental to the public health and/or welfare and Virginia's environmental needs.

9 VAC 5-140-4020. Definitions.

A. Unless otherwise required by context, all terms used in this part and not defined here shall have the meaning given them in 9 VAC 5-140-5020 (Definitions), 9 VAC 5 Chapter 10 (9 VAC 5-10), or commonly ascribed to them by recognized authorities, in that order of priority.

B. For the purpose of this part and any related use, the words or terms shall have the meaning given them in this subsection.

“Allocate” or “allocation” means the determination by the permitting authority of the amount of Virginia state-only Hg allowances to be initially credited to a Hg Budget unit or a new unit set-aside under Article 2 (9 VAC 5-140-4100 et seq.), Article 3 (9 VAC 5-140-4200 et seq.) or Article 4 (9 VAC 5-140-4300 et seq.) of this part.

“CAMR Hg allowances” means Hg allowances allocated by any state that are valid for compliance use and capable of being lawfully traded under the Hg Budget Trading Program.

“Combined capacity” means the electrical capacity (in MWe) of all units in a single power generation system.

“Combined Hg emissions” means the Hg emissions from all units in a single power generation system.

“Hg annual emissions cap” means, for a Hg Budget unit, an annual emissions limit based on the amount of ounces (pounds multiplied by 16 ounces/lb) of Hg emissions in the Hg control budget allocated for a control period in accordance with 9 VAC 5-140-4120, 9 VAC 5-140-4220, or 9 VAC 5-140-4320.

"Hg Budget facility" means one or more Hg Budget units at a single location.

"Hg Control Budget" means the total number of mercury pounds set forth in 9 VAC 5-140-4040 and apportioned to all Hg Budget units in accordance with the Virginia Mercury (Hg) Control Program, for use in a given control period.

“Virginia Mercury (Hg) Control Program” means a Hg air pollution control and emission reduction program administered by the permitting authority in accordance with this part, as a means of preventing Hg emissions that may be detrimental to the public health and/or welfare and Virginia's environmental needs.

"Large power generation system" means a group of Hg Budget units with combined Hg emissions that exceeded 900 pounds in 1999.

"Medium power generation system" means a group of Hg Budget units with combined Hg emissions in 1999 that were less than 900 pounds and with a combined capacity that is greater than or equal to 600 MWe.

“Permitting authority” means the State Air Pollution Control Board.

“Power generation system” means a group of Hg Budget units under common ownership located within the Commonwealth. Includes all units currently owned.

"Small power generation system" means a group of Hg Budget units with combined Hg

emissions in 1999 that were less than 900 pounds and with a combined capacity that is less than 600 MWe.

"Virginia state-only Hg allowance" means a limited authorization issued by the permitting authority under Article 2 (9 VAC 5-140-4100 et seq.), Article 3 (9 VAC 5-140-4200 et seq.) or Article 4 (9 VAC 5-140-4300 et seq.) of this part to emit one ounce of mercury during a control period of the specified calendar year for which the authorization is allocated under the Virginia Mercury (Hg) Control Program. An authorization to emit mercury that is not issued under Article 2 (9 VAC 5-140-4100 et seq.), Article 3 (9 VAC 5-140-4200 et seq.) or Article 4 (9 VAC 5-140-4300 et seq.) of this part shall not be a Virginia state-only Hg allowance.

9 VAC 5-140-4030. Applicability.

A. Except as provided in subsection C of this section, this part shall apply to Hg Budget units subject to 9 VAC 5-140-5040 (Applicability) of Article 1 of Part VI of this chapter.

B. A Hg Budget unit shall be subject to the requirements under this part for the control period starting on the later of January 1, 2010 and for each control period thereafter.

C. This part shall not apply to Hg Budget units in a single power generation system with combined Hg emissions equal to or less than 200 pounds in 1999.

9 VAC 5-140-4040. Hg control budgets.

A. The Hg control budgets for annual allocations of Virginia state-only Hg allowances apportioned to all Hg Budget units for the control periods are as follows:

1. For use in each control period in 2010 – 2017, the total number of Hg pounds is 1,184.
2. For use in each control period in 2018 and thereafter, the total number of Hg pounds is 468.

B. The permitting authority will permanently retire any Virginia state-only Hg allowances not allocated under Article 2 (9 VAC 5-140-4100 et seq.), Article 3 (9 VAC 5-140-4200 et seq.) or Article 4 (9 VAC 5-140-4300 et seq.) of this part and they will not be available for compliance for any Hg Budget unit.

C. The permitting authority will not submit to the administrator any of the Virginia state-only Hg allowances in the Hg control budget.

9 VAC 5-140-4050. Relationship to Hg Budget Trading Program for Coal Fired Electric Steam Generating Units.

A. The provisions of the Hg Budget Trading Program for Coal Fired Electric Steam Generating Units, codified in Part VI (9 VAC 5-140-5010 et seq.) of this chapter, are incorporated by reference as if fully repeated herein.

B. The board does not authorize the administrator to assist the board in implementing the Hg Budget Trading Program for Coal Fired Electric Steam Generating Units by carrying out the functions set forth for the administrator in this part.

C. In cases where the provisions of the Hg Budget Trading Program for Coal Fired Electric Steam Generating Units conflict with those of this part, the provisions of this part shall prevail.

D. Compliance with the Hg Budget Trading Program for Coal Fired Electric Steam Generating Units and this part shall be determined separately and in accordance with the terms of the provisions of each part.

E. Nothing in this part shall be construed to prohibit any Hg Budget unit or Hg Budget facility from participating in the Hg Budget Trading Program for Coal Fired Electric Steam Generating Units.



9 VAC 5-140-4060. Standard requirements.

A. Mercury emission requirements shall be as follows.

1. No owner, operator or other person shall cause or permit to be discharged into the atmosphere from any Hg Budget unit any Hg emissions in excess of the applicable Hg annual emissions cap.

2. A Hg Budget unit shall be subject to the requirements under subdivision 1 of this section for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under 9 VAC 5-140-5700 C 1 or 2 and for each control period thereafter.

3. A Virginia state-only Hg allowance is a limited authorization to emit one ounce of mercury in accordance with the Virginia Mercury (Hg) Control Program. No provision of the Virginia Mercury (Hg) Control Program and no provision of law shall be construed to limit the authority of the board to terminate or limit such authorization.

4. A Virginia state-only Hg allowance does not constitute a property right.

5. The Virginia state-only Hg allowances have no market value under any trading program and are not capable of being lawfully traded under the Hg Budget Trading Program.

B. If a Hg Budget unit or Hg Budget facility emits mercury during any control period in excess of the Hg annual emissions cap:

1. The owners and operators of the facility and each Hg Budget unit at the facility shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Virginia Air Pollution Control Law; and

2. Each ounce of such excess emissions and each day of such control period shall constitute a separate violation of this part, and the Virginia Air Pollution Control Law.

C. Liability shall be assigned as follows.

1. Each Hg Budget facility and each Hg Budget unit shall meet the requirements of the Virginia Mercury (Hg) Control Program.

2. Any provision of the Virginia Mercury (Hg) Control Program that applies to a Hg Budget facility shall also apply to the owners and operators of such facility and of the Hg Budget units at the facility.

3. Any provision of the Virginia Mercury (Hg) Control Program that applies to a Hg Budget unit shall also apply to the owners and operators of such unit.

D. No provision of the Virginia Mercury (Hg) Control Program shall be construed as exempting or excluding the owners and operators from compliance with any other provision of the applicable, approved implementation plan, a federally enforceable permit, the Virginia Air Pollution Control Law or the Clean Air Act.

**Article 2.**  
**Virginia State-only Hg Allowance Allocations and Compliance**  
**for Large Power Generation Systems.**

9 VAC 5-140-4100. Applicability.

The provisions of this article apply to Hg Budget units in a single large power generation system.

9 VAC 5-140-4110. Timing requirements for Virginia state-only Hg allowance allocations.

By the dates specified in 9 VAC 5-140-5410 (Timing requirements for Hg allowance allocations) of Article 5 of Part VI of this chapter, the permitting authority will notify the owners of the Hg Budget units subject to 9 VAC 5-140-4100 of the amount of Virginia state-only Hg allowances allocated under 9 VAC 5-140-4120.

9 VAC 5-140-4120. Virginia state-only Hg allowance allocations.

A. Except as provided in subsection B of this section, the permitting authority will allocate Virginia state-only Hg allowances to each Hg Budget unit in an amount equal to the amount of Hg allowances allocated under 9 VAC 5-140-5420 (Hg allowance allocations) of Article 5 of Part VI of this chapter.

B. For the control periods in 2015, 2016 and 2017, the amount of allowances allocated under subsection A of this section will be reduced by 60.47%.

9 VAC 5-140-4130. Establishment of Hg Annual Emissions Cap.

A. For each control period, the Hg annual emissions cap for each Hg Budget unit shall be equal to the number of Virginia state-only Hg allowances (expressed in ounces) allocated for the Hg Budget unit for the control period in accordance with 9 VAC 5-140-4120.

B. Compliance with the Hg annual emissions cap in subsection A of this section shall be based on a comparison of (i) the total Hg emissions (expressed in ounces) from each Hg Budget unit during the control period, as determined in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of Part VI of this chapter, and (ii) the Hg annual emissions cap for the control period set forth in subsection A of this section.

C. The owner or operator of an Hg Budget unit subject to this section shall be in violation of 9 VAC 5-140-4060 A if the owner or operator fails to submit by April 1 of each year for the preceding control period (i) documentation to verify compliance with the Hg annual emissions cap set forth in subsection A of this section or (ii) an Hg emissions compliance demonstration in accordance with 9 VAC 5-140-4140.

9 VAC 5-140-4140. Hg emissions compliance demonstration.

A. Compliance with the Hg annual emissions cap set forth in 9 VAC 5-140-4130 A may also be achieved through an Hg emissions compliance demonstration meeting the requirements of this section.

B. The Hg emissions compliance demonstration submitted pursuant to this section may include one or more Hg Budget units in a single power generation system.

C. Hg emissions compliance demonstrations shall be submitted to the permitting authority by April 1 of each year for the preceding control period.

D. A complete Hg emissions compliance demonstration shall include the following elements in a format acceptable to the permitting authority:

1. Identification of each Hg Budget unit in the Hg emissions compliance demonstration.
2. The number of Virginia state-only Hg allowances (expressed in ounces) allocated for each Hg Budget unit for the preceding control period.
3. The total Hg emissions (expressed in ounces) from each Hg Budget unit during the preceding control period.
4. The calculation for the equation in subsection E of this section.

E. Compliance with this section shall be demonstrated with the following equation:

$$\sum_{i=1} (AME_i) \leq \sum_{i=1} (X)$$

where:

n is the number of Hg Budget units in the Hg emissions compliance demonstration (n may equal 1).

$\Sigma$  is the sum of all i Hg Budget units.

i is an Hg Budget unit identified in subsection B of this section.

AME (Actual Mercury Emissions) are the total Hg emissions (expressed in ounces) from each Hg Budget unit during the preceding control period, as determined in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of Part VI of this chapter.

X is the number of Virginia state-only Hg allowances (expressed in ounces) allocated for the Hg Budget unit for the preceding control period in accordance with 9 VAC 5-140-4120.

F. The emissions measurements recorded and reported in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of Part VI of this chapter shall be used to determine compliance by each Hg Budget unit with the Hg annual emissions cap set forth in 9 VAC 5-140-4130 A.

**Article 3.**  
**Virginia State-only Hg Allowance Allocations and Compliance for Medium Power Generation Systems.**

9 VAC 5-140-4200. Applicability.

The provisions of this article apply to Hg Budget units in a single medium power generation system.

9 VAC 5-140-4210. Timing requirements for Virginia state-only Hg allowance allocations.

By the dates specified in 9 VAC 5-140-5410 (Timing requirements for Hg allowance allocations) of Article 5 of Part VI of this chapter, the permitting authority will notify the owners of the Hg Budget units subject to 9 VAC 5-140-4200 of the amount of Virginia state-only Hg allowances allocated under 9 VAC 5-140-4220.

9 VAC 5-140-4220. Virginia state-only Hg allowance allocations.

The permitting authority will allocate Virginia state-only Hg allowances to each Hg Budget unit in an amount equal to the amount of Hg allowances allocated under 9 VAC 5-140-5420 (Hg allowance allocations) of Article 5 of Part VI of this chapter.

9 VAC 5-140-4230. Establishment of Hg Annual Emissions Cap.

A. For each control period, the Hg annual emissions cap for each Hg Budget unit shall be equal to the number of Virginia state-only Hg allowances (expressed in ounces) allocated for the Hg Budget unit for the control period in accordance with 9 VAC 5-140-4220.

B. Compliance with the Hg annual emissions cap in subsection A of this section shall be based on a comparison of (i) the total Hg emissions (expressed in ounces) from each Hg Budget unit during the control period, as determined in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of Part VI of this chapter, and (ii) the Hg annual emissions cap for the control period set forth in subsection A of this section.

C. The owner or operator of an Hg Budget unit subject to this section shall be in violation of 9 VAC 5-140-4060 A if the owner or operator fails to submit by April 1 of each year for the preceding control period (i) documentation to verify compliance with the Hg annual emissions cap set forth in subsection A of this section or

(ii) an Hg emissions compliance demonstration in accordance with 9 VAC 5-140-4240.

9 VAC 5-140-4240. Hg emissions compliance demonstration.

A. Compliance with the Hg annual emissions cap set forth in 9 VAC 5-140-4230 A may also be achieved through an Hg emissions compliance demonstration meeting the requirements of this section.

B. The Hg emissions compliance demonstration submitted pursuant to this section may include one or more Hg Budget units in a single power generation system.

C. Hg emissions compliance demonstrations shall be submitted to the permitting authority by April 1 of each year for the preceding control period.

D. A complete Hg emissions compliance demonstration shall include the following elements in a format acceptable to the permitting authority:

1. Identification of each Hg Budget unit in the Hg emissions compliance demonstration.
2. The number of Virginia state-only Hg allowances (expressed in ounces) allocated for each Hg Budget unit for the preceding control period.
3. The total Hg emissions (expressed in ounces) from each Hg Budget unit during the preceding control period.
4. The calculation for the equation in subsection E of this section.

E. Compliance with this section shall be demonstrated with the following equation:

$$\sum_{i=1}^n (AME_i) \leq \sum_{i=1}^n (X)$$

where:

n is the number of Hg Budget units in the Hg emissions compliance demonstration (n may equal 1).

$\Sigma$  is the sum of all i Hg Budget units.

i is an Hg Budget unit identified in subsection B of this section.

AME (Actual Mercury Emissions) are the total Hg emissions (expressed in ounces) from each Hg Budget unit during the preceding control period, as determined in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of Part VI of this chapter.

X is the number of Virginia state-only Hg allowances (expressed in ounces) allocated for the Hg Budget unit for the preceding control period in accordance with 9 VAC 5-140-4220.

F. The emissions measurements recorded and reported in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of Part VI of this chapter shall be used to determine compliance by each Hg Budget unit with the Hg annual emissions cap set forth in 9 VAC 5-140-4230 A.

9 VAC 5-140-4250. Hg emissions compliance credits for CAMR Hg allowances.

A. The owner of a medium power generation system may include in the Hg emissions compliance demonstration under 9 VAC 5-140-4240 CAMR Hg allowances that meet the following requirements:

1. The allowances are surrendered to the Commonwealth and converted into Virginia state-only

Hg allowances in accordance with subsection B of this section;

2. The allowances are allocated to a Hg Budget unit under the control of the same owner or operator or under common control by the same parent corporation;

3. The allowances used are generated and capable of being lawfully traded under the Hg Budget Trading Program; and

4. The surplus allowances are generated through the installation of emission controls at a Hg Budget facility located outside the Commonwealth and a straight line distance from the border of the Commonwealth of less than or equal to 200 km.

B. In order to convert a CAMR Hg allowance into a Virginia state-only Hg allowance, the Hg designated representative shall transfer the allowance to a general account owned by the Commonwealth in accordance with Article 7 (9 VAC 5-140-5600 et seq.) of Part VI of this chapter. For purpose of this conversion one CAMR Hg allowance shall be equal to one Virginia state-only Hg allowance.

C. In order to receive Hg emissions compliance credits for CAMR Hg allowances, a complete Hg emissions compliance demonstration under 9 VAC 5-140-4240 shall include the following elements in a format acceptable to the permitting authority:

1. Identification of the Hg Budget units to which the CAMR Hg allowances were allocated under the Hg Budget Trading Program and evidence that the Hg Budget units are under the control of the same owner or operator or under common control by the same parent corporation.

2. Evidence that the Hg Budget units identified in subdivision 1 of this subsection are located a straight line distance from the border of the Commonwealth of less than or equal to 200 km.

3. The number and identification by serial number of the CAMR Hg allowances (expressed in ounces) allocated for each Hg Budget unit identified in subdivision 1 of this subsection for the control period covered by the compliance demonstration.

4. A demonstration to the satisfaction of the permitting authority that the CAMR Hg allowances are surplus and generated through the installation of emission controls at a Hg Budget facility where the Hg Budget units identified in subdivision 1 are located.

**Article 4.**  
**Virginia State-only Hg Allowance Allocations and Compliance**  
**for Small Power Generation Systems.**

9 VAC 5-140-4300. Applicability.

The provisions of this article apply to Hg Budget units in a single small power generation system.

9 VAC 5-140-4310. Timing requirements for Virginia state-only Hg allowance allocations.

By the dates specified in 9 VAC 5-140-5410 (Timing requirements for Hg allowance allocations) of Article 5 of Part VI of this chapter, the permitting authority will notify the owners of the Hg Budget units subject to 9 VAC 5-140-4300 of the amount of Virginia state-only Hg allowances allocated under 9 VAC 5-140-4320.

9 VAC 5-140-4320. Virginia state-only Hg allowance allocations.

The permitting authority will allocate Virginia state-only Hg allowances to each Hg Budget unit in an amount equal to the amount of Hg allowances allocated under 9 VAC 5-140-5420 (Hg allowance allocations) of Article 5 of Part VI of this chapter.

9 VAC 5-140-4330. Establishment of Hg Annual Emissions Cap.

A. For each control period, the Hg annual emissions cap for each Hg Budget unit shall be equal to the number of Virginia state-only Hg allowances (expressed in ounces) allocated for the Hg Budget unit for the control period in accordance with 9 VAC 5-140-4320.

B. Compliance with the Hg annual emissions cap in subsection A of this section shall be based on a comparison of (i) the total Hg emissions (expressed in ounces) from each Hg Budget unit during the control period, as determined in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of Part VI of this chapter, and (ii) the Hg annual emissions cap for the control period set forth in subsection A of this section.

C. The owner or operator of an Hg Budget unit subject to this section shall be in violation of 9 VAC 5-140-4060 A if the owner or operator fails to submit by April 1 of each year for the preceding control period (i) documentation to verify compliance with the Hg annual emissions cap set forth in subsection A of this section or (ii) an Hg emissions compliance demonstration in accordance with 9 VAC 5-140-4340.

9 VAC 5-140-4340. Hg emissions compliance demonstration.

A. Compliance with the Hg annual emissions cap set forth in 9 VAC 5-140-4330 A may also be achieved through an Hg emissions compliance demonstration meeting the requirements of this section.

B. The Hg emissions compliance demonstration submitted pursuant to this section may include one or more Hg Budget units in a single power generation system.

C. Hg emissions compliance demonstrations shall be submitted to the permitting authority by April 1 of each year for the preceding control period.

D. A complete Hg emissions compliance demonstration shall include the following elements in a format acceptable to the permitting authority:

1. Identification of each Hg Budget unit in the Hg emissions compliance demonstration.
2. The number of Virginia state-only Hg allowances (expressed in ounces) allocated for each Hg Budget unit for the preceding control period.
3. The total Hg emissions (expressed in ounces) from each Hg Budget unit during the preceding control period.
4. The calculation for the equation in subsection E of this section.

E. Compliance with this section shall be demonstrated with the following equation:

$$\sum_{i=1}^n (AME_i) \leq \sum_{i=1}^n (X)$$

where:

n is the number of Hg Budget units in the Hg emissions compliance demonstration (n may equal 1).

$\Sigma$  is the sum of all i Hg Budget units.

i is an Hg Budget unit identified in subsection B of this section.

AME (Actual Mercury Emissions) are the total Hg emissions (expressed in ounces) from each Hg Budget unit during the preceding control period, as determined in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of Part VI of this chapter.

X is the number of Virginia state-only Hg allowances (expressed in ounces) allocated for the Hg Budget unit for the preceding control period in accordance with 9 VAC 5-140-4120.

F. The emissions measurements recorded and reported in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of Part VI of this chapter shall be used to determine compliance by each Hg Budget unit with the Hg annual emissions cap set forth in 9 VAC 5-140-4330 A.

**SUBJECT:** Regulations Concerning Mercury Compliance Obligations in Nonattainment Areas (Part VII of 9 VAC 5 Chapter 140, Rev. G06)

**SPEAKER:** Robert Mann  
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Director, Office of Air Regulatory Development  
Department of Environmental Quality

## **INTRODUCTION**

The 2006 session of the General Assembly resulted in new legislation that requires the Board to adopt new regulations for the control of mercury (Hg) emissions within the Commonwealth, specifically Chapters 867 and 920, 2006 Acts of Assembly. These acts create a new Article 3 (air emissions control) in the Virginia Air Pollution Control Law, with two new sections as follows: § 10.1-1327 (definitions) and § 10.1-1328 (emissions rates and limitations).

§ 10.1-1328 F (see below) of the legislation requires the Board to "prohibit any electric generating facility located within a nonattainment area from meeting its mercury compliance obligations through the purchase of allowances from another facility." There is an exception if the facility is able to demonstrate compliance with allowances allocated to another facility that is under the control of the same owner or operator or under common control by the same parent corporation and is located within 200 km of Virginia's border. Immediately following this agenda memo are the draft regulation amendments to implement this provision of the Code of Virginia.

F. To further protect Virginia's environment, the Board shall prohibit any electric generating facility located within a nonattainment area from meeting its mercury compliance obligations through the purchase of allowances from another facility, except that such facilities shall be able to demonstrate compliance with allowances allocated to another facility that is under the control of the same owner or operator or under common control by the same parent corporation and is located within 200km of Virginia's border.

## **SUMMARY OF DRAFT AMENDMENTS**

Part VII of 9 VAC 5-140 establishes the Virginia Mercury (Hg) Compliance Program for Nonattainment Areas (hereinafter called the nonattainment area rule), as a means of addressing Hg compliance obligations in nonattainment areas for coal-fired electric generating units subject to the (i) Virginia Mercury (Hg) Control Program, codified in Part V of 9 VAC 5-140 (herein after called the state-specific rule) and (ii) the Hg Budget Trading Program for Coal Fired Electric Steam Generating Units, codified in Part VI of 9 VAC 5-140 (hereinafter called the state model rule).

The nonattainment area rule is summarized below and the numbers in the brackets are the last four digits of the corresponding section numbers from the applicable provision of 9 VAC 5 Chapter 140 [9 VAC 5-140-XXXX].

Beginning January 1, 2010, coal-fired electric generating units with a nameplate capacity greater than 25 MWe will be subject to the nonattainment area rule. However, the nonattainment area rule applies only to electric generating facilities that are under common ownership and located within a nonattainment area; this is a smaller universe of sources than is subject to the state model rule or the state-specific rule. [6030]

The nonattainment area rule uses annual emissions caps (see below) to limit emissions of mercury. Violation of the annual emissions cap is a violation of the Code of Virginia. The allowances under the nonattainment area rule have no market value under any trading program, including the EPA Hg trading program, and are not to be submitted to EPA. [6040]

The nonattainment area rule has two sets of compliance requirements, each of which is substantively the same in procedure. This is necessary because the units subject to and the allocations under the state model rule and the



state-specific rule are not the same.

The nonattainment area rule provides that each covered unit will be allocated a separate set of allowances (called Virginia Hg nonattainment area allowances) equal to the amount of allowances allocated under the state model rule or state-specific rule, as the case may be. The allowances (measured in ounces per year) are allocated for the months of January 1 through December 31, otherwise known as the control period. Under the nonattainment area rule, the allowances will be the basis for the establishment of an independent annual emissions cap equivalent to the number of allowances issued to the unit. With some exceptions, compliance with the emissions cap would not rely on the use of allowances under the state model rule or state-specific rule but would be accomplished by comparing the actual emissions with the emissions cap (based on the Virginia Hg nonattainment area allowances). Compliance must be demonstrated annually, for the preceding control period. Provisions are included to allow compliance to be demonstrated in the aggregate (a comparison of (i) the sum of the Hg emissions from the units and (ii) the sum of the Virginia Hg nonattainment area allowances allocated to the units) for all units under common ownership. [6100-6150, 6200-6250]

The owner of the covered units will also be allowed to satisfy its compliance obligations under the nonattainment area rule through the conversion of CAMR allowances to Virginia Hg nonattainment area allowances. The CAMR allowances must be allocated to another facility that is under the control of the same owner or operator or under common control by the same parent corporation and is located within 200 km of Virginia's border. [6160, 6260]

However, should the units be located in a state that is not participating in the EPA administered Hg Budget trading program, the owner of the covered units will also be allowed to satisfy its compliance obligations under the nonattainment area rule through the conversion of state-only allowances to Virginia Hg nonattainment area allowances. The state-only allowances must be allocated to another facility that is under the control of the same owner or operator or under common control by the same parent corporation and is located within 200 km of Virginia's border. [6170, 6270]

## **9 VAC 5 CHAPTER 140.**

### **REGULATION FOR EMISSIONS TRADING AND BUDGET PROGRAMS.**

#### **PART VII.**

#### **Virginia Mercury (Hg) Compliance Program for Nonattainment Areas.**

##### **Article 1. General Provisions.**

- 9 VAC 5-140-6010. Purpose.
- 9 VAC 5-140-6020. Definitions.
- 9 VAC 5-140-6030. Applicability.
- 9 VAC 6-140-6040. Standard requirements.

##### **Article 2. Virginia State-only Hg Allowance Allocations and Compliance Obligations for Hg Budget Units Subject to the Virginia Mercury (Hg) Control Program.**

- 9 VAC 5-140-6100. Applicability.
- 9 VAC 5-140-6110. Definitions.
- 9 VAC 5-140-6120. Timing requirements for Virginia Hg nonattainment area allowance allocations.
- 9 VAC 5-140-6130. Virginia Hg nonattainment area allowance allocations.
- 9 VAC 5-140-6140. Establishment of Hg Annual Emissions Cap.
- 9 VAC 5-140-6150. Hg emissions compliance demonstration.
- 9 VAC 5-140-6160. Hg emissions compliance credits for CAMR Hg allowances.
- 9 VAC 5-140-6170. Hg emissions compliance credits for state-only Hg allowances.

##### **Article 3. Virginia State-only Hg Allowance Allocations and Compliance Obligations for Hg Budget Units Subject to the Hg Budget Trading Program for Coal Fired Electric Steam Generating Units.**

9 VAC 5-140-6200.	Applicability.
9 VAC 5-140-6210.	Definitions.
9 VAC 5-140-6220.	Timing requirements for Virginia Hg nonattainment area allowance allocations.
9 VAC 5-140-6230.	Virginia Hg nonattainment area allowance allocations.
9 VAC 5-140-6240.	Establishment of Hg Annual Emissions Cap.
9 VAC 5-140-6250.	Hg emissions compliance demonstration.
9 VAC 5-140-6260.	Hg emissions compliance credits for CAMR Hg allowances.
9 VAC 5-140-6270.	Hg emissions compliance credits for state-only Hg allowances.

## **Article 1.**

### **General Provisions.**

9 VAC 5-140-6010. Purpose.

This part establishes the applicability, budget, allowance, and compliance provisions for the Virginia Mercury (Hg) Compliance Program for Nonattainment Areas, under § 10.1-1328 F of the Code of Virginia, as a means of addressing Hg compliance obligations in nonattainment areas.

9 VAC 5-140-6020. Definitions.

A. Unless otherwise required by context, all terms used in this part and not defined here shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10), or commonly ascribed to them by recognized authorities, in that order of priority.

B. For the purpose of this part and any related use, the words or terms shall have the meaning given them in this subsection.

“CAMR Hg allowances” means Hg allowances allocated by any state that are valid for compliance use and capable of being lawfully traded under the Hg Budget Trading Program.

“Hg annual nonattainment area emissions cap” means, for a Hg Budget unit, an annual emissions limit based on the amount of ounces (pounds multiplied by 16 ounces/lb) of Hg emissions allocated for a control period in accordance with 9 VAC 5-140-6130 or 9 VAC 5-140-6230.

"Hg Budget facility" means one or more Hg Budget units at a single location.

“Virginia Mercury (Hg) Compliance Program for Nonattainment Areas” means a Hg air pollution control and emission reduction program administered by the permitting authority in accordance with this part, as a means of addressing Hg compliance obligations in nonattainment areas.

“Permitting authority” means the State Air Pollution Control Board.

“State-only Hg allowance” means an allowance allocated by a state that is valid for compliance use by a Hg budget unit in a trading program administered by the promulgating state and not capable of being lawfully traded under the Hg Budget Trading Program.

"Virginia Hg nonattainment area allowance" means a limited authorization issued by the permitting authority under Article 2 (9 VAC 5-140-6100 et seq.) or Article 3 (9 VAC 5-140-6200 et seq.) of this part to emit one ounce of mercury during a control period of the specified calendar year for which the authorization is allocated under the Virginia Mercury (Hg) Compliance Program for Nonattainment Areas. An authorization to emit mercury that is not issued under Article 2 (9 VAC 5-140-6100 et seq.) or Article 3 (9 VAC 5-140-6200 et seq.) of this part shall not be a Virginia Hg nonattainment area allowance.

9 VAC 5-140-6030. Applicability.

A. Subject to the limitations in subsection C of this section, this part shall apply to Hg Budget units subject to 9 VAC 5-140-4040 (Applicability) of Article 1 of Part V of this chapter and 9 VAC 5-140-5040 (Applicability) of Article 1 of Part VI of this chapter.

B. A Hg Budget unit shall be subject to the requirements under this part for the control period starting on the later of January 1, 2010 and for each control period thereafter.

C. This part shall apply only to Hg Budget units located in a nonattainment area designated in 9 VAC 5-20-204.

9 VAC 5-140-6040. Standard requirements.

A. Mercury emission requirements shall be as follows.

1. No owner, operator or other person shall cause or permit to be discharged into the atmosphere from any Hg Budget unit any Hg emissions in excess of the applicable Hg annual nonattainment area emissions cap.

2. A Hg Budget unit shall be subject to the requirements under subdivision 1 of this section for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under 9 VAC 5-140-5700 C 1 or 2 and for each control period thereafter.

3. A Virginia Hg nonattainment area allowance is a limited authorization to emit one ounce of mercury in accordance with the Mercury (Hg) Compliance Program for Nonattainment Areas. No provision of the Mercury (Hg) Compliance Program for Nonattainment Areas and no provision of law shall be construed to limit the authority of the board to terminate or limit such authorization.

4. A Virginia Hg nonattainment area allowance does not constitute a property right.

5. The Virginia Hg nonattainment area allowances have no market value under any trading program and are not capable of being lawfully traded under the Hg Budget Trading Program.

6. The permitting authority will not submit to the administrator any of the Virginia Hg nonattainment area allowances.

B. If a Hg Budget unit or Hg Budget facility emits mercury during any control period in excess of the Hg annual nonattainment area emissions cap:

1. The owners and operators of the facility and each Hg Budget unit at the facility shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Virginia Air Pollution Control Law; and

2. Each ounce of such excess emissions and each day of such control period shall constitute a separate violation of this part, and the Virginia Air Pollution Control Law.

C. Liability shall be assigned as follows.

1. Each Hg Budget facility and each Hg Budget unit shall meet the requirements of the Virginia Mercury (Hg) Control Program.

2. Any provision of the Mercury (Hg) Compliance Program for Nonattainment Areas that applies to a Hg Budget facility shall also apply to the owners and operators of such facility and of the Hg Budget units at the facility.

3. Any provision of the Mercury (Hg) Compliance Program for Nonattainment Areas that applies to a Hg Budget unit shall also apply to the owners and operators of such unit.

D. No provision of the Mercury (Hg) Compliance Program for Nonattainment Areas shall be construed as exempting or excluding the owners and operators from compliance with any other provision of the applicable, approved implementation plan, a federally enforceable permit, the Virginia Air Pollution Control Law or the Clean Air Act.

**Article 2.**

**Virginia State-only Hg Allowance Allocations and Compliance Obligations for Hg Budget Units Subject to the Virginia Mercury (Hg) Control Program.**

9 VAC 5-140-6100. Applicability.

The provisions of this article apply to Hg Budget units subject to 9 VAC 5-140-4040 (Applicability) of Article 1 of Part V of this chapter.

9 VAC 5-140-6110. Definitions.

Unless otherwise required by context, all terms used in this part and not defined here shall have the meaning given them in 9 VAC 5-140-6020 (Definitions), 9 VAC 5-140-4020 (Definitions), 9 VAC 5 Chapter 10 (9 VAC 5-10), or commonly ascribed to them by recognized authorities, in that order of priority.

9 VAC 5-140-6120. Timing requirements for Virginia Hg nonattainment area allowance allocations.

By the dates specified in 9 VAC 5-140-4110 (Timing requirements for Virginia state-only Hg allowance allocations) of Article 2, 9 VAC 5-140-4210 (Timing requirements for Virginia state-only Hg allowance allocations) of Article 3, or 9 VAC 5-140-4310 (Timing requirements for Virginia state-only Hg allowance allocations) of Article 4 of Part V of this chapter, the permitting authority will notify the owners of the Hg Budget units subject to 9 VAC 5-140-6100 of the amount of Virginia Hg nonattainment area allowances allocated under 9 VAC 5-140-6130.

9 VAC 5-140-6130. Virginia Hg nonattainment area allowance allocations.

The permitting authority will allocate Virginia Hg nonattainment area allowances to each Hg Budget unit in an amount equal to the amount of Virginia state-only Hg allowances allocated under 9 VAC 5-140-4120 (Virginia state-only Hg allowance allocations) of Article 2, 9 VAC 5-140-4220 (Virginia state-only Hg allowance allocations) of Article 3, or 9 VAC 5-140-4320 (Virginia state-only Hg allowance allocations) of Article 4 of Part V of this chapter.

9 VAC 5-140-6140. Establishment of Hg annual nonattainment area emissions cap.

A. For each control period, the Hg annual nonattainment area emissions cap for each Hg Budget unit shall be equal to the number of Virginia Hg nonattainment area allowances (expressed in ounces) allocated for the Hg Budget unit for the control period in accordance with 9 VAC 5-140-6130.

B. Compliance with the Hg annual nonattainment area emissions cap in subsection A of this section shall be based on a comparison of (i) the total Hg emissions (expressed in ounces) from each Hg Budget unit during the control period, as determined in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of Part VI of this chapter, and (ii) the Hg annual nonattainment area emissions cap for the control period set forth in subsection A of this section.

C. The owner or operator of an Hg Budget unit subject to this section shall be in violation of 9 VAC 5-140-6040 A if the owner or operator fails to submit by April 1 of each year for the preceding control period (i) documentation to verify compliance with the Hg annual nonattainment area emissions cap set forth in subsection A of this section or (ii) an Hg emissions compliance demonstration in accordance with 9 VAC 5-140-6150.

9 VAC 5-140-6150. Hg emissions compliance demonstration.

A. Compliance with the Hg annual nonattainment area emissions cap set forth in 9 VAC 5-140-6140 A

may also be achieved through an Hg emissions compliance demonstration meeting the requirements of this section.

B. The Hg emissions compliance demonstration submitted pursuant to this section may include one or more Hg Budget units in a single power generation system.

C. Hg emissions compliance demonstrations shall be submitted to the permitting authority by April 1 of each year for the preceding control period.

D. A complete Hg emissions compliance demonstration shall include the following elements in a format acceptable to the permitting authority:

1. Identification of each Hg Budget unit in the Hg emissions compliance demonstration.
2. The number of Virginia Hg nonattainment area allowances (expressed in ounces) allocated for each Hg Budget unit for the preceding control period.
3. The total Hg emissions (expressed in ounces) from each Hg Budget unit during the preceding control period.
4. The calculation for the equation in subsection E of this section.

E. Compliance with this section shall be demonstrated with the following equation:

$$\sum_{i=1}^n (AME_i) \leq \sum_{i=1}^n (X)$$

where:

n is the number of Hg Budget units in the Hg emissions compliance demonstration (n may equal 1).

$\Sigma$  is the sum of all i Hg Budget units.

i is an Hg Budget unit identified in subsection B of this section.

AME (Actual Mercury Emissions) are the total Hg emissions (expressed in ounces) from each Hg Budget unit during the preceding control period, as determined in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of Part VI of this chapter.

X is the number of Virginia Hg nonattainment area allowances (expressed in ounces) allocated for the Hg Budget unit for the preceding control period in accordance with 9 VAC 5-140-6130.

F. The emissions measurements recorded and reported in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of Part VI of this chapter shall be used to determine compliance by each Hg Budget unit with the Hg annual nonattainment area emissions cap set forth in 9 VAC 5-140-6140 A.

9 VAC 5-140-6160. Hg emissions compliance credits for CAMR Hg allowances.

A. The owner may include in the Hg emissions compliance demonstration under 9 VAC 5-140-6150 CAMR Hg allowances that meet the following requirements:

1. The allowances are surrendered to the Commonwealth and converted into Virginia Hg nonattainment area allowances in accordance with subsection B of this section;
2. The allowances are allocated to a Hg Budget unit under the control of the same owner or operator or under common control by the same parent corporation and is located outside of Virginia and within

200km of Virginia's border; and

3. The allowances used are generated and capable of being lawfully traded under the Hg Budget Trading Program.

B. In order to convert a CAMR Hg allowance into a Virginia Hg nonattainment area allowance, the Hg designated representative shall transfer the allowance to a general account owned by the Commonwealth in accordance with Article 7 (9 VAC 5-140-5600 et seq.) of Part VI of this chapter. For purpose of this conversion one CAMR Hg allowance shall be equal to one Virginia Hg nonattainment area allowance.

C. In order to receive Hg emissions compliance credits for CAMR Hg allowances, a complete Hg emissions compliance demonstration under 9 VAC 5-140-6150 shall include the following elements in a format acceptable to the permitting authority:

1. Identification of the Hg Budget units to which the CAMR Hg allowances were allocated under the Hg Budget Trading Program and evidence that the Hg Budget units are under the control of the same owner or operator or under common control by the same parent corporation.

2. Evidence that the Hg Budget units identified in subdivision 1 of this subsection are located within 200km of Virginia's border.

3. The number and identification by serial number of the CAMR Hg allowances (expressed in ounces) allocated for each Hg Budget unit identified in subdivision 1 of this subsection for the control period covered by the compliance demonstration.

9 VAC 5-140-6170. Hg emissions compliance credits for state-only Hg allowances.

A. The owner may include in the Hg emissions compliance demonstration under 9 VAC 5-140-6150 state-only Hg allowances that meet the following requirements:

1. The allowances are permanently retired and converted into Virginia Hg nonattainment area allowances in accordance with subsection B of this section;

2. The allowances are allocated to a Hg Budget unit under the control of the same owner or operator or under common control by the same parent corporation and is located outside of Virginia and within 200km of Virginia's border; and

3. The allowances are allocated by a state for compliance use by a Hg budget unit in a trading program administered by the promulgating state and not capable of being lawfully traded under the Hg Budget Trading Program.

B. In order to convert a state-only Hg allowance into a Virginia Hg nonattainment area allowance, the owner shall provide evidence to the satisfaction of the permitting authority that the state-only Hg allowance has been permanently retired. For purpose of this conversion one state-only Hg allowance shall be equal to one Virginia Hg nonattainment area allowance.

C. In order to receive Hg emissions compliance credits for state-only Hg allowances, a complete Hg emissions compliance demonstration under 9 VAC 5-140-6150 shall include the following elements in a format acceptable to the permitting authority:

1. Identification of the Hg Budget units to which the state-only Hg allowances were allocated under the Hg Budget Trading Program and evidence that the Hg Budget units are under the control of the same owner or operator or under common control by the same parent corporation.

2. Evidence that the Hg Budget units identified in subdivision 1 of this subsection are located within 200km of Virginia's border.

3. The number and identification by serial number (if any) of the state-only Hg allowances (expressed in ounces) allocated for each Hg Budget unit identified in subdivision 1 of this subsection for the control period covered by the compliance demonstration.

4. Copy of the law or regulation or both governing the operation of the trading program administered by the promulgating state.

**Article 3.**

**Virginia State-only Hg Allowance Allocations and Compliance Obligations for Hg Budget Units Subject to the Hg Budget Trading Program for Coal Fired Electric Steam Generating Units.**

9 VAC 5-140-6200. Applicability.

The provisions of this article apply to Hg Budget units subject to 9 VAC 5-140-5040 (Applicability) of Article 1 of Part VI of this chapter.

9 VAC 5-140-6210. Definitions.

Unless otherwise required by context, all terms used in this part and not defined here shall have the meaning given them in 9 VAC 5-140-6020 (Definitions), 9 VAC 5-140-5020 (Definitions), 9 VAC 5 Chapter 10 (9 VAC 5-10), or commonly ascribed to them by recognized authorities, in that order of priority.

9 VAC 5-140-6220. Timing requirements for Virginia Hg nonattainment area allowance allocations.

By the dates specified in 9 VAC 5-140-5410 (Timing requirements for Hg allowance allocations) of Article 5 of Part VI of this chapter, the permitting authority will notify the owners of the Hg Budget units subject to 9 VAC 5-140-6200 of the amount of Virginia Hg nonattainment area allowances allocated under 9 VAC 5-140-6230.

9 VAC 5-140-6230. Virginia Hg nonattainment area allowance allocations.

The permitting authority will allocate Virginia Hg nonattainment area allowances to each Hg Budget unit in an amount equal to the amount of Hg allowances allocated under 9 VAC 5-140-5420 (Hg allowance allocations) of Article 5 of Part VI of this chapter.

9 VAC 5-140-6240. Establishment of Hg annual nonattainment area emissions cap.

A. For each control period, the Hg annual nonattainment area emissions cap for each Hg Budget unit shall be equal to the number of Virginia Hg nonattainment area allowances (expressed in ounces) allocated for the Hg Budget unit for the control period in accordance with 9 VAC 5-140-6230.

B. Compliance with the Hg annual nonattainment area emissions cap in subsection A of this section shall be based on a comparison of (i) the total Hg emissions (expressed in ounces) from each Hg Budget unit during the control period, as determined in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of Part VI of this chapter, and (ii) the Hg annual nonattainment area emissions cap for the control period set forth in subsection A of this section.

C. The owner or operator of an Hg Budget unit subject to this section shall be in violation of 9 VAC 5-140-6040 A if the owner or operator fails to submit by April 1 of each year for the preceding control period (i) documentation to verify compliance with the Hg annual nonattainment area emissions cap set forth in subsection A of this section or (ii) an Hg emissions compliance demonstration in accordance with 9 VAC 5-140-6250.

9 VAC 5-140-6250. Hg emissions compliance demonstration.

A. Compliance with the Hg annual nonattainment area emissions cap set forth in 9 VAC 5-140-6240 A may also be achieved through an Hg emissions compliance demonstration meeting the requirements of this section.

B. The Hg emissions compliance demonstration submitted pursuant to this section may include one or more Hg Budget units in a single power generation system.

C. Hg emissions compliance demonstrations shall be submitted to the permitting authority by April 1 of each year for the preceding control period.

D. A complete Hg emissions compliance demonstration shall include the following elements in a format acceptable to the permitting authority:

1. Identification of each Hg Budget unit in the Hg emissions compliance demonstration.
2. The number of Virginia Hg nonattainment area allowances (expressed in ounces) allocated for each Hg Budget unit for the preceding control period.
3. The total Hg emissions (expressed in ounces) from each Hg Budget unit during the preceding control period.
4. The calculation for the equation in subsection E of this section.

E. Compliance with this section shall be demonstrated with the following equation:

$$\sum_{i=1}^n (AME_i) \leq \sum_{i=1}^n (X)$$

where:

n is the number of Hg Budget units in the Hg emissions compliance demonstration (n may equal 1).

$\Sigma$  is the sum of all i Hg Budget units.

i is an Hg Budget unit identified in subsection B of this section.

AME (Actual Mercury Emissions) are the total Hg emissions (expressed in ounces) from each Hg Budget unit during the preceding control period, as determined in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of Part VI of this chapter.

X is the number of Virginia Hg nonattainment area allowances (expressed in ounces) allocated for the Hg Budget unit for the preceding control period in accordance with 9 VAC 5-140-6230.

F. The emissions measurements recorded and reported in accordance with Article 8 (9 VAC 5-140-5700 et seq.) of Part VI of this chapter shall be used to determine compliance by each Hg Budget unit with the Hg annual nonattainment area emissions cap set forth in 9 VAC 5-140-6240 A.

9 VAC 5-140-6260. Hg emissions compliance credits for CAMR Hg allowances.

A. The owner may include in the Hg emissions compliance demonstration under 9 VAC 5-140-6250 CAMR Hg allowances that meet the following requirements:

1. The allowances are surrendered to the Commonwealth and converted into Virginia Hg nonattainment area allowances in accordance with subsection B of this section;
2. The allowances are allocated to a Hg Budget unit under the control of the same owner or operator or under common control by the same parent corporation and is located outside of Virginia and within 200 km of Virginia's border; and



3. The allowances used are generated and capable of being lawfully traded under the Hg Budget Trading Program.

B. In order to convert a CAMR Hg allowance into a Virginia Hg nonattainment area allowance, the Hg designated representative shall transfer the allowance to a general account owned by the Commonwealth in accordance with Article 7 (9 VAC 5-140-5600 et seq.) of Part VI of this chapter. For purpose of this conversion one CAMR Hg allowance shall be equal to one Virginia Hg nonattainment area allowance.

C. In order to receive Hg emissions compliance credits for CAMR Hg allowances, a complete Hg emissions compliance demonstration under 9 VAC 5-140-6250 shall include the following elements in a format acceptable to the permitting authority:

1. Identification of the Hg Budget units to which the CAMR Hg allowances were allocated under the Hg Budget Trading Program and evidence that the Hg Budget units are under the control of the same owner or operator or under common control by the same parent corporation.

2. Evidence that the Hg Budget units identified in subdivision 1 of this subsection are located within 200 km of Virginia's border.

3. The number and identification by serial number of the CAMR Hg allowances (expressed in ounces) allocated for each Hg Budget unit identified in subdivision 1 of this subsection for the control period covered by the compliance demonstration.

9 VAC 5-140-6270. Hg emissions compliance credits for state-only Hg allowances.

A. The owner may include in the Hg emissions compliance demonstration under 9 VAC 5-140-6250 state-only Hg allowances that meet the following requirements:

1. The allowances are permanently retired and converted into Virginia Hg nonattainment area allowances in accordance with subsection B of this section;

2. The allowances are allocated to a Hg Budget unit under the control of the same owner or operator or under common control by the same parent corporation and is located outside of Virginia and within 200 km of Virginia's border; and

3. The allowances are allocated by a state for compliance use by a Hg budget unit in a trading program administered by the promulgating state and not capable of being lawfully traded under the Hg Budget Trading Program.

B. In order to convert a state-only Hg allowance into a Virginia Hg nonattainment area allowance, the owner shall provide evidence to the satisfaction of the permitting authority that the state-only Hg allowance has been permanently retired. For purpose of this conversion one state-only Hg allowance shall be equal to one Virginia Hg nonattainment area allowance.

C. In order to receive Hg emissions compliance credits for state-only Hg allowances, a complete Hg emissions compliance demonstration under 9 VAC 5-140-6250 shall include the following elements in a format acceptable to the permitting authority:

1. Identification of the Hg Budget units to which the state-only Hg allowances were allocated under the Hg Budget Trading Program and evidence that the Hg Budget units are under the control of the same owner or operator or under common control by the same parent corporation.

2. Evidence that the Hg Budget units identified in subdivision 1 of this subsection are located within 200 km of Virginia's border.

3. The number and identification by serial number (if any) of the state-only Hg allowances (expressed in ounces) allocated for each Hg Budget unit identified in subdivision 1 of this subsection for the

control period covered by the compliance demonstration.

4. Copy of the law or regulation or both governing the operation of the trading program administered by the promulgating state.

G06-REG-BD

**SUBJECT:** Public Participation on Proposals to Develop State Rules to Control Mercury.

**SPEAKER:** Mary E. Major  
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Environmental Program Manager, Office of Air Regulatory Development  
Department of Environmental Quality

The State Air Pollution Control Board (Board) has tasked the Department of Environmental Quality (DEQ) to draft regulatory proposals to meet the requirements that address mercury emissions from electric generating units as set forth in the 2006 Acts of Assembly (Chapters 867 and 920).

On October 19, 2006, the DEQ issued a public notice to accept written comments to assist in the development of the Hg regulatory proposals via an informal public comment period that closed on November 20, 2006.

- Responses to the public comments received in pursuant to the public notice of October 19, 2006.
- Summary of the public comments received in pursuant to the public notice of October 19, 2006.
- Copies of the public comments received in pursuant to the public notice of October 19, 2006. (provided to Board, but not included here)

**Responses to Comments on Proposal  
To Develop State Rules to Control Mercury**

**Public Health Issues**

	COMMENT	RESPONSE
1.	Mercury (Hg) harmful to all, especially pregnant women and unborn children.	<p>Most human exposure to Hg is through the eating of fish and shellfish and the subsequent ingestion of methylmercury (MeHg). High dose mercury poisonings are rare, and chronic low-dose exposure to MeHg is widespread; however, the exposures are not uniform across the population since fish are consumed disproportionately in the families of sports anglers, certain ethnic groups and subsistence fishers (STAPPA-ALAPCO Regulation Mercury from Power Plants: A Model Rule for States and Localities, November 2005). Fish consumption advisories are posted throughout Virginia waterways when the levels of mercury found in fish tissue exceed government public health standards.</p> <p>EPA has set a daily consumption standard of 0.1 micrograms of MeHg per kilogram of body weight per day. The US Food and Drug Administration has also recommended that expectant and nursing mothers and young children avoid swordfish, tilefish, shark and king mackerel and limit the consumption of fish that are lower in Hg, such as shrimp, salmon and canned tuna, to two average-sided meals or to 12 ounces a week.</p>
2.	Concern by general public about significant public health threats from Hg.	See response to comment # 1.

3.	Concern about Hg in fish.	EPA states that “the current state of knowledge of the science indicates that there is likely a lag in the time between the reduction in Hg deposition to a water body and the change in MeHg concentrations in fish tissue. Based on a review of available literature and a series of case studies conducted by EPA, the lag period for changes in fish tissue (and hence changes in avoided IQ decrements can range from less than 5 years to more than 50 years, with an average time span of 1 to 3 decades (10 to 30 years)” (FR 70 28641, May 18, 2005). See also response to comment # 1.
4.	Concern about increase in childhood autism and developmental disabilities linked to Hg.	<p>See also response to comment # 1. In addition to the concern about the ingestion of Hg contaminated fish there has also been concern about the vaccination schedule recommended for newborns and young children. Other sources of Hg, such as vaccinations, have been identified as possible contributors to this problem. In 1999 American Academy of Pediatrics (AAP) issued with the US Public Health Service (USPHS) a joint statement alerting clinicians and the public of concern about thimerosal, a mercury-containing preservative used in some vaccines. The statement said in part:</p> <p>“As part of an ongoing review of biologic products in response to the Food and Drug Administration (FDA) Modernization Act of 1997, the FDA has determined that infants who receive thimerosal-containing vaccines at several visits may be exposed to more mercury than recommended by federal guidelines for total mercury exposure” (American Academy of Pediatrics: Thimerosal in Vaccines—An Interim Report to Clinicians Committee on Infectious Diseases and Committee on Environmental Health, PEDIATRICS Vol. 104 No. 3 September 1999, pp. 570-574).</p> <p>It should be noted that thimerosal has been used as an additive to biologics and vaccines since the 1930s because it is very effective for killing bacteria used in several vaccines and for preventing bacterial contamination, particularly in opened multidose containers.</p>

**Air Quality Issues**

	COMMENT	RESPONSE
5.	Tighten Hg controls to prevent “hot spots.”	EPA estimates that a little over 40% of the nationwide Hg emissions come from electric generating units (EGUs) and developed the Clean Air Mercury Rule (CAMR) to reduce these emissions. In 2000, 3,333 pounds of Hg were reported to the Toxic Release Inventory (TRI). The Virginia budget (amount of Hg permitted) under Phase 1 of the CAMR is 1,184 pounds between the years 2010 through 2014; Phase 2 of the program, 2015 and thereafter, the amount reduces to 468 pounds.

		<p>The Virginia General Assembly adopted new legislation which specifically requires the adoption of “the EPA model Clean Air Mercury Rule (CAMR) promulgated by the EPA” as well as “a state-specific rule” which mandates reductions for some EGUs sooner than the EPA rule and prohibits the use of purchased allowances to demonstrate compliance. The legislation also mandates “a detailed assessment of mercury deposition in Virginia in order to determine whether particular circumstances exist that justify, from a health and cost and benefit perspective, requiring additional steps to be taken to control mercury emissions within Virginia” (Chapters 867 and 920, 2006 Acts of the Assembly).</p> <p>It should be noted that, during the regulatory ad hoc process, there was discussion concerning “hot spots,” but no consensus was achieved on how to define “hot spots,” much less determine strategies to address them. Nonetheless, the General Assembly has mandated that coal- burning EGUs are subject to the CAMR provisions. By prohibiting the use of purchased allowances to meet their compliance requirements under the state-specific rule, sources will need to make actual reductions to meet the budget caps mandated by regulation.</p>
6.	Air will improve significantly under proposal. Bulk of Hg emission reductions will occur by 2015, 58% reduction in inlet Hg by 2010, 75% reduction by 2015 and 83% reduction by 2018.	The new legislation requires that owners of EGUs that emitted more than 900 pounds of Hg in 1999 meet the Phase 2 limits for coal-fired units prior to the 2018 deadline under CAMR. These units must achieve the Phase 2 limits by 2015.

**General Legal/Regulatory Issues**

	COMMENT	RESPONSE
7.	Complete Hg study sooner so that it can be reviewed by the 2008 General Assembly.	The Department of Environmental Quality (DEQ) is working as diligently as possible to develop a thorough and well documented analysis for presentation to the General Assembly in the timely manner. The study will be made available as soon as practicable, earlier if at all possible, but definitely no later than prescribed by law.
8.	Steubenville modeling study does not provide technical justification for Hg reductions beyond those imposed by the new legislation.	DEQ has not had adequate time to analyze the referenced study, but can provide analysis at a later date. The assessment required by the 2006 legislation is intended to address the issue of whether or not additional controls are appropriate.
9.	Recent Board action disregards letter and intent of legislation.	The Administrative Process Act has in place certain procedures and safeguards to ensure that all regulations adopted in the Commonwealth are legally adopted prior to be coming effective. Regulations must be reviewed by the Office of the Attorney General and found to be in compliance with Code of Virginia before being published in the Virginia Register.
10.	Board is subject to existing legislation;	See response to comment # 9.

	no entity should attempt to draft regulations that do not reflect statutory intent.	
11.	Proposed regulations are not sufficient to protect human health and the environment.	The regulations are in compliance with the provisions of the new legislation (Chapters 867 and 920, 2006 Acts of the Assembly). The new legislation requires that a study be conducted to determine if any additional measures are necessary to protect health.
12.	Regulate other industrial sources.	Provisions of the new legislation do address control of some non-EGU sources. § 10.1-1328 E specifically states that the Board shall adopt regulations that meet but do not exceed the requirements and implementation timetables for (i) coke oven batteries and (ii) facilities subject to review under § 112(k) of the Clean Air Act and that receive scrap metal. The law mandates that a study be conducted to determine if additional steps need to be taken to control mercury.
13.	Adopt more stringent requirements (95% removal) NACCA [STAPPA-ALAPCO] version of the HG rule.	The General Assembly adopted new legislation which specifically requires the adoption of “the EPA model Clean Air Mercury Rule (CAMR) promulgated by the EPA” (§ 10.1-1328 C) as well as a “state-specific rule” (§ 10.1-1328 D) which mandates reductions for some EGUs sooner than the EPA rule and prohibits the use of purchased allowances to demonstrate compliance. The adoption of the NACCA model would not meet the mandates set forth in the Code of Virginia.
14.	Regulations must include meaningful enforcement penalties.	Few of the Board’s regulations address specific enforcement matters; but such matters are governed by statute and by policies and procedures that permit the flexibility to deal with the complicated issues associated with enforcement of environmental regulations. There is no need to redefine this process for this regulation.
15.	Proposed regulations more stringent than federal CAMR and more than adequate to protect public health regarding Hg.	See response to comment # 13.
16.	Disregarding ad hoc recommendations have “chilling” effect on future regulatory process.	DEQ strives for consensus when developing regulations and all members of any regulatory ad hoc group are informed that the Board is not bound by any recommendation that the group puts forth; however, the Board does take the ad hoc recommendations under advisement and often incorporates them, when consensus has been achieved, into the proposed rules. It should be noted that the ad hoc group for CAMR did not reach consensus on any issues.
17.	Unadvisable to disregard recommendation of professional DEQ staff.	Section 10.1-1308 provides the authority for the Board, “after having studied air pollution in the various areas of the Commonwealth, its causes, prevention, control and abatement, shall have the power to promulgate regulations, including emergency regulations, abating, controlling and prohibiting air pollution ...” The State Air Pollution Control Board has the responsibility for the content of air quality regulations, and is no more bound to

		accept staff recommendations that it is the recommendations of the ad hoc group. In most instances staff regulatory recommendations are developed through a collaborative process which involves input from a diverse group of individuals including, in part, the general public and interested citizens, members of environmental groups, the regulated community, scientists and academicians, technical and policy experts, other state agencies, local governments, national organizations, consultation with representatives of other states, the EPA and other federal agencies. Often, consensus is achieved for many key aspects of a proposed regulatory action. As previously mentioned, no such consensus was achieved for this regulation.
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**State Model Rule (to implement federal CAMR)**

	COMMENT	RESPONSE
18.	Prohibit all Hg trading.	See response to comment # 13.
19.	CAMR is in violation of the federal Clean Air Act.	Federal legal discrepancies are beyond the scope and authority of both the Board and DEQ and will be determined through the federal court system.
20.	State rule based upon flawed federal CAMR.	See response to comment # 19.
21.	Federal CAMR provides states discretion in some areas, § 10.1-1328 C does not permit the Board any discretion regarding adoption of state Hg rule except those expressly granted in state law.	It is staff interpretation that § 10.1-1328 C allows the Board the flexibility to adopt a state CAMR regulation that differs from the federal CAMR as long as the state regulation provides for “ <i>full participation by Virginia electric generating units in the EPA's national mercury trading program</i> ”. However, the state rule must differ from the federal version with regard to the new unit set-aside, as that matter is specifically addressed in the state code.
22.	Board must adopt the federal rule “promulgated” by EPA.	See response to comment number 21.
23.	Part VI, 9 VAC 5-140 presented at Board meeting of Sept. 2006 meets intent of law.	See response to comment number 21.
24.	Only statutory difference permitted between Federal CAMR and VA rule is size of new source set-aside.	See response to comment number 21.
25.	Supports adoption of Part VI, 9 VAC 5-140 presented to Board at Sept. 06 meeting.	Support appreciated.
26.	Regulations presented to Board at Sept. 2006 meeting were faithful to areas of consensus by ad hoc group.	The ad hoc group had no areas of consensus. Many—not all—members agreed to an EERE set-aside.

**Renewable Energy and Energy Efficiency (EERE) Set-Aside**

	COMMENT	RESPONSE
27.	The language in the new legislation which addresses the CAIR new source EERE set-aside could be interpreted to apply to CAMR provisions.	See response to comment # 21. It is staff position that the legislative language provides flexibility for adopting the state version of CAMR with modifications that include the addition of an EERE set-aside.
28.	Support new source set-aside of 5%; 20% of which or 1% of budget for EERE set-aside per ad hoc recommendations.	Many—not all—members of the ad hoc group agreed to an EERE set aside of 1% of the total budget.
29.	EERE set-aside no substitute for public health set-aside.	The EERE set aside was never intended to reduce the overall trading budget as a public health set aside would, but rather, provide allowances for energy efficiency and renewable energy projects to encourage the development of these projects.
30.	Fed CAMR doesn't mention EERE set-aside; by law none allowed in state rule; must adopt the model rule "promulgated by EPA."	See response to comment # 21.
31.	Could support new source set-aside of 5%: 20% of which or 1% of budget for EERE set-aside per ad hoc recommendations provided unused allowances are redistributed to existing sources.	Support for the proposal is appreciated.

**Public Health Set Aside**

	COMMENT	RESPONSE
32.	Create a public health set-aside.	See response to comment # 21. However, it is our understanding that the legislature, after committee review where the public health set-aside issue was discussed, specifically rejected an amendment to include a public health set-aside.
33.	Creating public health set-aside premature until study is completed.	See response to comment # 32.
34.	Public health set-aside not consistent with legislative intent.	See response to comment # 32.
35.	Public health set-aside not authorized under the new legislation.	See response to comment # 32.
36.	Public health set-aside not necessary.	See response to comment # 32.

**State Specific rule**

	COMMENT	RESPONSE
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37.	Adopt state specific rule (§ 10.1-1328 D) precisely and narrowly.	Efforts have been made to ensure the proposal presented to the Board for action complies with new legislation. Given the lack of specific regulatory text upon which to comment, these regulations will be subject to a public participation process that will afford the opportunity for interested parties to provide comment. See response to comment # 9.
38.	No preference with regard to whether allowances are used to meet requirements of § 10.1-1328 D, however, compliance flexibility must be preserved.	See response to comment # 37.
39.	If allowance approach is used in § 10.1-1328 D, allocations should be consistent with CAMR except where specifically directed otherwise; i.e., new source set-aside EERE/set-aside.	See response to comment # 37.
40.	§ 10.1-1328 D must address transfer of ownership.	See response to comment # 37.
41.	New building (new units) should be governed according to owner's compliance obligations under § 10.1-1328 D.	See response to comment # 37.
42.	The new legislation addresses major criticisms of federal CAMR through in-state cap, limited intra-company trading, advancement of CAMR phase II cap for Dominion moving forward to 2015 coupled with an overall removal of 83%.	Agreed.

### **Nonattainment Area Rule**

	COMMENT	RESPONSE
43.	Restrict trading in nonattainment areas.	§ 10.1-1328 F of the Code of Virginia provides the authority for the Board to adopt a regulation that will limit but not prohibit trading in nonattainment areas.
44.	Sources are restricted from trading in nonattainment areas even though there are no nonattainment areas for Hg.	Agreed.
45.	Adopt state specific rule for nonattainment areas (10.1-1328 F) precisely and narrowly.	Efforts have been made to ensure the proposal presented to the Board for action complies with new legislation. Given the lack of specific regulatory text upon which to comment, these regulations will be subject to a public participation process that will afford the opportunity for interested parties to provide comment. See response to comment # 9.
46.	Support intent to implement requirements of § 10.1-1328 F as a	See response to comment # 45.

	state-specific rule and not submit to EPA.	
47.	§ 10.1-1328 F should not be incorporated into the state-specific rule related to the requirements of § 10.1-1328 D.	See response to comment # 45.

**Technical Issues**

	COMMENT	RESPONSE
48.	Alternative sources of energy must be developed to replace coal.	Such policy issues are beyond the scope of either the Board or DEQ, however the inclusion of an EERE set aside in the regulation will encourage the implementation of energy renewable and energy efficiency projects that otherwise would not have allowances under the program.
49.	Emissions modeling needs to verify impact of local sources on Hg deposition to streams/environment. Reference results of Steubenville modeling.	DEQ staff has not had adequate time to analyze the referenced study, but can provide analysis at a later date as part of the assessment required by the 2006 legislation.
50.	Develop Hg monitoring devices consistent with National Deposition Network.	<p>The National Atmospheric Deposition Program (NADP) includes monitoring wet mercury deposition as part of the Mercury Deposition Network (MDN) across the United States. The objective of the MDN is to develop a national database of weekly concentrations of total mercury in precipitation and the seasonal and annual flux of total mercury in wet deposition. The data is used to develop information on spatial and seasonal trends in mercury deposited to surface waters, forested watersheds, and other sensitive receptors. The MDN began a transitional network of 13 sites in 1995. Beginning in 1996, MDN became an official network in NADP with 26 sites in operation. Over 85 sites currently are in operation. There are 3 Hg wet deposition monitors in Virginia: Culpeper, Harcum (Gloucester County) and the Shenandoah Park. The cost to operate each site is \$14,000 per year.</p> <p>Recently, a special meeting was held to propose the development of additional monitoring to include the capture of dry mercury emissions (Special NADP-MDN Meeting on the Mercury Trends Network Initiative (MTN), Riverside Ca., May 1, 2006). This network would capture concentrations of ambient air Hg species including reactive gaseous Hg, particulate bound Hg, elemental bound Hg and wet, dry and total atmospheric deposition of Hg. Currently, only one monitor for this enhanced monitoring network is proposed for Virginia; to be located in Shenandoah National Park.</p>