

# Regulatory Analysis Form

(Completed by Promulgating Agency)



# IRRC

Independent Regulatory Review Commission

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## SECTION I: PROFILE

(1) Agency:

Environmental Protection

(2) Agency Number:

Identification Number: #7-465

IRRC Number:

2875

(3) Short Title:

Mercury Emissions-Repeal of 25 *Pa. Code* Chapter 123, §§ 123.201–123.215

(4) PA Code Cite:

25 *Pa. Code* Chapter 123, §§ 123.201–123.215

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Michele Tate, 783-8727

Secondary Contact: Randal (Duke) Adams, 783-8727

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

Environmental Quality Board,  
P.O. Box 8477  
Harrisburg, PA 17105-8477  
[regcomments@state.pa.us](mailto:regcomments@state.pa.us)

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

☐ Proposed Regulation

☐ Final Regulation

X Final Omitted Regulation

☐ Emergency Certification Regulation;

☐ Certification by the Governor

☐ Certification by the Attorney General

## Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This final-omitted rulemaking will repeal all changes to 25 *Pa. Code* Chapter 123 (relating to standards for contaminants) made by the final-form rulemaking of February 17, 2007 (37 *Pa.B.* 883), entitled standards for contaminants; mercury. The Federal Clean Air Mercury Rule (CAMR) published on May 18, 2005, established standards of performance for mercury for new and existing coal-fired electric generating units (EGUs), as defined in Section 111 of the CAA. See 70 FR 28606. In May 2005, petitions for review challenging this and other related final US Environmental Protection Agency (EPA) actions were filed with the U.S. Court of Appeals for the D.C. Circuit. On February 8, 2008, in *New Jersey v. Environmental Protection Agency*, 517 F.3d 574, 380, (D.C. Cir. 2008), the D.C. Circuit Court vacated CAMR. Pennsylvania had chosen to implement the provisions of the Federal CAMR through the Pennsylvania Mercury Rule (37 *Pa.B.* 883, February 17, 2007). On September 15, 2008, after the *vacatur* of CAMR, several utilities challenged the validity of the Pennsylvania Mercury Rule promulgated at §§ 123.201-123.215. On December 23, 2009, the Pennsylvania Supreme Court upheld a lower court's decision enjoining the Department from implementing and enforcing the Pennsylvania Mercury Rule. As a result, the Pennsylvania Mercury Rule is invalid and unenforceable.

(9) Include a schedule for review of the regulation including:

- |   |                  |
|---|------------------|
| A. The date by which the agency must receive public comments:                               | <u>NA</u>        |
| B. The date or dates on which public meetings or hearings will be held:                     | <u>NA</u>        |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>Fall 2010</u> |
| D. The expected effective date of the final-form regulation:                                | <u>Fall 2010</u> |
| E. The date by which compliance with the final-form regulation will be required:            | <u>NA</u>        |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u>NA</u>        |

(10) Provide the schedule for continual review of the regulation.

NA

## SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

Statutory authority for this action comes from section 5(a)(1) of the Pennsylvania Air Pollution Control Act (35 P.S. § 4005(a)(1)), which grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth. The statutory authority for the use of the “final-omitted” rulemaking process is Section 204 of the Commonwealth Documents Law, 45 P.S. § 1204.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The final-omitted regulation complies with the Pennsylvania Supreme Court decision in *PPL Generation, LLC v. Commonwealth of Pennsylvania, Department of Environmental Protection*, 986 A.2d 48. On December 23, 2009, the Pennsylvania Supreme Court upheld a lower court’s decision enjoining the Department from implementing and enforcing the Pennsylvania Mercury Rule. As a result, the Pennsylvania Mercury Rule is invalid and unenforceable.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulation is needed to ensure 25 Pa. Code Chapter 123 is consistent with the Pennsylvania Supreme Court decision in *PPL Generation, LLC v. Commonwealth of Pennsylvania, Department of Environmental Protection*, 986 A.2d 48. The final-form rulemaking will benefit the owners and operators of the 36 coal-fired power plants with 78 electric generating units (EGUs) in Pennsylvania by removing invalid provisions from regulations.

(14) If scientific data, studies or references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

NA

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

No one will be adversely affected by the regulation since the rulemaking merely complies with the Pennsylvania Supreme Court decision.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

NA

## Regulatory Analysis Form

### **SECTION III: COST AND IMPACT ANALYSIS**

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There will be no costs or savings.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Local governments will not be affected.

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

State government will not be affected.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year 09/10	FY +1 Year 10/11	FY +2 Year 11/12	FY +3 Year 12/13	FY +4 Year 13/14	FY +5 Year 14/15
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Savings</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>COSTS:</b>						
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Revenue Losses</b>	0.00	0.00	0.00	0.00	0.00	0.00

## Regulatory Analysis Form

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3 2007-2008	FY-2 2008-2009	FY-1 2009-2010	Current FY 2010-2011
Environmental Program Management (161-10382)	\$39,685,000	\$37,664,000	\$31,100,000	\$29,357,000
Clean Air Fund Major Emission Facilities (215-20077)	\$18,353,000	\$22,660,000	\$21,877,000	\$24,732,000
Clean Air Fund Mobile and Area Facilities (233-20084)	\$5,855,000	\$7,949,000	\$6,121,000	\$6,382,000

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

NA

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

At its April 29, 2010, meeting, the Air Quality Technical Advisory Committee (AQTAC) recommended that the Department present the final-omitted rulemaking to the Environmental Quality Board. AQTAC membership includes representatives of companies and organizations that were involved in development of the Pennsylvania Mercury Rule.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternatives are available.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

The final-omitted regulation repealing the Pennsylvania Mercury Rule is not more stringent than current Federal standards. The rulemaking will ensure that there is no inconsistency in Pennsylvania regulations when, as required in a consent decree, the EPA proposes technology-based standards to control emissions of mercury and other air toxics from fossil fuel-fired EGUs by March 2011 (*American Nurses Ass'n v. Jackson*, D.D.C., No. 08-02198, consent decree entered 4/15/10) as a replacement for CAMR. A final Federal rule must be issued by November 16, 2011. The requirements under this final Federal rule will be adopted in their entirety and incorporated by reference in 25 Pa. Code Chapter 122 (relating to National standards of performance for new stationary sources). Fossil-fuel-fired EGUs operating in this Commonwealth will be subject to those standards.

## Regulatory Analysis Form

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Because it merely repeals invalid provisions, the final-omitted regulation does not affect Pennsylvania's ability to compete with other states.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No additional paperwork is required as a result of the final-omitted rulemaking.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

There are no special provisions.

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
BUREAU**

**(Pursuant to Commonwealth Documents Law)**

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**2010 SEP 17 P 3 00**

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.  
Attorney General

By: \_\_\_\_\_  
(Deputy Attorney General)

DATE OF APPROVAL \_\_\_\_\_

☒ Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be true and  
correct copy of a document issued, prescribed or  
promulgated by:

**DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-465

DATE OF ADOPTION August 30, 2010

BY John Hanger

TITLE **JOHN HANGER  
CHAIRPERSON**

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality  
Executive or Independent Agencies

BY

Andrew C. Clark  
DATE OF APPROVAL **SEP 14 2010**

(Deputy General Counsel)  
(Chief Counsel - Independent Agency)  
(Strike inapplicable title)

☒ Check if applicable. No Attorney General Approval  
or objection within 30 days after submission.

**NOTICE OF FINAL RULEMAKING**  
*(with Notice of Proposed Rulemaking Omitted)*

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

**Mercury Emissions: Repeal**

**25 Pa. Code, Chapter 123**





**Notice of Final-Omitted Rulemaking**  
**Department of Environmental Protection**  
**Environmental Quality Board**  
**(25 Pa. Code Chapter 123)**  
**(Standards for Contaminants - Repeal)**

**Order**

The Environmental Quality Board (Board) amends Chapter 123 (relating to standards for contaminants) to read as set forth in Annex A. The purpose of this final rulemaking is to repeal the “state-specific” requirements to reduce mercury emissions from coal-fired electric generating units (EGUs) with a nameplate rated capacity of more than 25 megawatts that produce electricity for sale as set forth under §§ 123.201–123.215 (relating to standards for contaminants mercury emissions) (Pennsylvania Mercury Rule).

These amendments will repeal §§ 123.201-123.215, which were approved as final rulemaking by the Board on October 16, 2006, and adopted as final on February 16, 2007, effective February 17, 2007 (37 Pa.B. 883).

Notice of proposed rulemaking is omitted under section 204(3) of the act of July 31, 1968, P.L. 769, No. 240 (45 P.S. § 1204(3)). Paragraph (3) provides that an agency may omit the notice of proposed rulemaking if the agency for good cause finds that notice of proposed rulemaking procedure is in the circumstances impracticable, unnecessary, or contrary to the public interest. Omission of notice of proposed rulemaking for the repeal of the Pennsylvania Mercury Rule is appropriate because the notice of proposed rulemaking procedure specified in sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) is, in this instance, impracticable, unnecessary and contrary to the public interest. As more fully explained below, on December 23, 2009, the Pennsylvania Supreme Court upheld an order which declared §§ 123.201-123.215, the Pennsylvania Mercury Rule, invalid. *See* 986 A.2d 48.

These amendments were adopted by order of the Board at its meeting of August 30, 2010.

**A. Effective Date**

These amendments are effective upon publication in the *Pennsylvania Bulletin*.

**B. Contact Persons and Information**

For further information, contact Krishnan Ramamurthy, Chief, Division of Permits, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 783-9476; or Robert "Bo" Reiley, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

This rulemaking is available electronically through the Department of Environmental Protection's (Department) web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (Keyword: Public Participation).

### **C. Statutory Authority**

The final-omitted rulemaking is being made under the authority of section 5 of the Air Pollution Control Act (APCA) (35 P.S. §4005). Section 5(a) of the APCA grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth.

### **D. Background of the Amendments**

Under Section 112(n)(1)(A) of the Federal Clean Air Act (CAA), Congress directed the US Environmental Protection Agency (EPA) to perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions of hazardous air pollutants (HAPs) by EGUs (42 U.S.C.A. § 7412(n)(1)(A)). Under this same subparagraph, the EPA is further directed to regulate these units, if the agency finds such regulation is appropriate and necessary after considering the results of the study.

On February 28, 1998, the EPA fulfilled its statutory obligation, under section 112(n)(1)(A) of the CAA, when it released its "Study of Hazardous Air Pollutant Emissions from Electric Steam Generating Units – Final Report to Congress."

On December 20, 2000, the EPA concluded, based upon the findings of its 1998 report and on information subsequently obtained, that in accordance with section 112(n)(1)(A) of the CAA, the regulation of mercury emissions from electric utilities was "appropriate and necessary." See 65 FR 79825. As a result of these findings, the agency added these units to the list of source categories to be regulated under section 112(c) (42 U.S.C.A. § 7412(c)). The EPA was then required to establish emission standards for this source category under Section 112(d) of the CAA (42 U.S.C.A. § 7412(d)).

On August 9, 2004, Citizens for Pennsylvania's Future, PennEnvironment, Pennsylvania Federation of Sportsmen's Clubs, Pennsylvania NOW, Pennsylvania State Building and Construction Trades Council, Pennsylvania Trout, Planned Parenthood Pennsylvania Advocates, Sierra Club Pennsylvania Chapter, Women's Law Project and WomenVote PA filed a petition for rulemaking, under 25 *Pa. Code* Chapter 23 (relating to Environmental Quality Board Policy for processing petitions--statement of policy), requesting that the Board adopt regulations to reduce mercury emissions from EGUs located in this Commonwealth.

On March 29, 2005, the EPA published a final rule entitled "Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units From the Section 112(c) List." See 70 FR 15994. As a result of this conclusion, the EPA removed coal- and oil-fired EGUs from the section 112(c) list.

On March 15, 2005, the EPA finalized the Clean Air Mercury Rule (CAMR). The final rulemaking published on May 18, 2005, established standards of performance for mercury for new and existing coal-fired EGUs, as defined in section 111 of the CAA (42 U.S.C.A. § 7411). See 70 FR 28606. The CAMR establishes a “cap-and-trade” program by which mercury emissions from new and existing coal-fired EGUs are capped at specified, Nationwide levels.

In response to CAMR and associated EPA actions, on May 18, 2005, petitions for review challenging these final agency actions were filed with the U.S. Court of Appeals for the D.C. Circuit. In addition to Pennsylvania, State challengers included California, Connecticut, Delaware, Illinois, Maine, Massachusetts, New Hampshire, New Mexico, New Jersey, New York, Rhode Island, Vermont and Wisconsin. The petitions for review asserted that the Delisting Rule did not follow the procedures set forth in section 112(c)(9) of the CAA for removing a pollution source from section 112 (namely, oil- and coal-fired EGUs).

Sections 111(c) and (d) of the CAA require each state to develop and submit to the EPA Administrator a procedure for implementing and enforcing the new source performance standards for new sources and emission guidelines for existing sources.

On June 24, 2006, the proposed Pennsylvania Mercury Rule was published in the *Pennsylvania Bulletin* for a 60-day comment period. See 36 *Pa.B.* 3185. The final Pennsylvania Mercury Rule was approved by the Board on October 16, 2006, and adopted as final on February 16, 2007, effective February 17, 2007. See 37 *Pa.B.* 883. Pennsylvania chose to implement the provisions of CAMR through the Pennsylvania Mercury Rule, codified at §§ 123.201-123.215.

On February 8, 2008, in *New Jersey v. Environmental Protection Agency*, 517 F.3d 574, 380, (D.C. Cir. 2008), the D.C. Circuit Court agreed with this Commonwealth’s position, finding that the plain language of section 112 required that the EPA satisfy the requirements of section 112(c)(9) prior to removing a pollution source from section 112. The D.C. Circuit Court further observed that the EPA conceded that it had never made the findings that section 112(c)(9) would require in order to delist oil- and coal-fired EGUs. Thus, the D.C. Circuit Court determined that the Delisting Rule was unlawful and vacated it, the effect of which was that EGUs remain listed under section 112. The D.C. Circuit Court also found that once the Delisting Rule was declared invalid, CAMR no longer had a legal basis, and the Court vacated CAMR as well.

On September 15, 2008, PPL Generation, LLC, PPL Montour, LLC, and PPL Brunner Island, LLC, filed a Petition for Review in the Commonwealth Court’s original jurisdiction, challenging the validity of the Pennsylvania Mercury Rule promulgated at §§ 123.201-123.215.

On January 30, 2009, the Commonwealth Court issued an order that invalidated the Pennsylvania Mercury Rule. The Commonwealth Court reasoned that because the D.C. Circuit Court had found that the Delisting Rule and CAMR were void *ab initio* (from the beginning, rather than from when the D.C. Circuit Court had declared it void), the EGUs must be deemed to have been always listed.

On February 6, 2009, the Acting U.S. Solicitor General filed a motion on behalf of the EPA to dismiss a petition for certiorari pending before the U.S. Supreme Court, which appealed

the D.C. Circuit Court decision in *New Jersey*. That motion to dismiss stated that after the certiorari petition was filed, the EPA decided to act in conformity with the D.C. Circuit Court's decision in *New Jersey* and to develop standards regulating power plant mercury emissions under section 112 of the CAA.

On appeal by the Commonwealth, on December 23, 2009, the Pennsylvania Supreme Court affirmed the Commonwealth Court order. The Pennsylvania Supreme Court noted that once the Delisting Rule was found to have no validity, the authorization and legal predicate for the Pennsylvania Mercury Rule ceased to exist.

On April 15, 2010, the U.S. District Court for the District of Columbia approved a consent decree that requires the EPA to propose technology-based standards to control emissions of mercury and other air toxics from fossil fuel-fired EGUs by March 2011 (*American Nurses Ass'n v. Jackson*, D.D.C., No. 08-02198, *consent decree entered 4/15/10*). A final rule must be issued by November 16, 2011. This final rule will take the place of CAMR, which was vacated by the D.C. Circuit Court of Appeals. Additionally, the requirements under this final rule will be adopted in their entirety and incorporated by reference in 25 *Pa. Code* Chapter 122 (relating to National standards of performance for new stationary sources). Therefore, at a minimum, fossil-fuel-fired EGUs operating in this Commonwealth will be subject to those standards.

#### **E. Benefits, Costs and Compliance**

##### **Benefits**

This rulemaking merely complies with the Pennsylvania Supreme Court decision in *PPL Generation, LLC v. Commonwealth of Pennsylvania, Department of Environmental Protection*, 986 A.2d 48

##### **Compliance Costs**

This rulemaking will not require additional costs for compliance.

##### **Compliance Assistance Plan**

This rulemaking will not require a compliance assistance plan.

##### **Paperwork Requirements**

No additional paperwork will be required as a result of this rulemaking.

#### **F. Regulatory Review**

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on September 17, 2010, the Department submitted a copy of this final-omitted rulemaking with notice of proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees

(Committees). On the same date, the Department also submitted this rulemaking to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101-732-506). In addition to the final rulemaking, IRRC and the Committees were provided with a copy of a detailed regulatory analysis form prepared by the Department.

Under section 5.1(j.2) of the Regulatory Review Act, on \_\_\_\_\_, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_, and approved the final-omitted rulemaking.

#### **G. Findings of the Board**

The Board finds that:

- (1) The amendments as set forth in Annex A are appropriate to repeal the Pennsylvania Mercury Rule.
- (2) Use of the omission of notice of proposed rulemaking procedure is appropriate because the notice of proposed rulemaking procedure specified in sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§1201 and 1202) is, in this instance, impracticable, unnecessary and contrary to the public interest. The Pennsylvania regulations have been vacated by a state court order, necessitating prompt repeal.
- (3) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this order and in the public interest.

#### **H. Order of the Board**

The Board, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department of Environmental Protection, 25 *Pennsylvania Code*, Chapter 123, are amended by reserving and deleting §§ 123.201-123.215 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.
- (b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (c) The Chairperson of the Board shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.
- (d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.
- (e) This order shall take effect immediately.

JOHN HANGER  
Chairman  
Environmental Quality Board

## ANNEX A

### TITLE 25. ENVIRONMENTAL PROTECTION

#### PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

##### SUBPART C. PROTECTION OF NATURAL RESOURCES

##### ARTICLE III. AIR RESOURCES

##### CHAPTER 123. STANDARDS FOR CONTAMINANTS

##### STANDARDS FOR CONTAMINANTS MERCURY EMISSIONS

- 123.201. ~~[Purpose.] [Reserved].~~
- 123.202. ~~[Definitions.] [Reserved].~~
- 123.203. ~~[Applicability.] [Reserved].~~
- 123.204. ~~[Exeeptions.] [Reserved].~~
- 123.205. ~~[Emission standards for coal-fired EGUs.] [Reserved].~~
- 123.206. ~~[Compliance requirements for the emission standards for coal-fired EGUs.] [Reserved].~~
- 123.207. ~~[Annual emission limitations for coal-fired EGUs.] [Reserved].~~
- 123.208. ~~[Annual emission limitation supplement pool.] [Reserved].~~
- 123.209. ~~[Petition process.] [Reserved].~~
- 123.210. ~~[General monitoring and reporting requirements.] [Reserved].~~
- 123.211. ~~[Initial certification and recertification procedures for emissions monitoring.] [Reserved].~~
- 123.212. ~~[Out-of-control periods for emissions monitors.] [Reserved].~~
- 123.213. ~~[Monitoring of gross electrical output.] [Reserved].~~
- 123.214. ~~[Coal sampling and analysis for input mercury levels.] [Reserved].~~
- 123.215. ~~[Recordkeeping and reporting.] [Reserved].~~

§ 123.201. ~~[Purpose.] [Reserved].~~

~~[ Sections 123.202—123.215 establish mercury emission standards, annual emission limitations as part of a Statewide mercury allowance program with annual nontradable mercury allowances and other requirements for the purpose of reducing mercury emissions from coal-fired EGUs or cogeneration units.]~~

§ 123.202. ~~[Definitions.] [Reserved].~~

~~[(a) In addition to the words and terms in subsection (b), the definitions promulgated in 40 CFR Part 60, Subpart Da (relating to standards of performance for electric utility steam generating units for which construction is commenced after September 18, 1978) and 40 CFR Part 60, Subpart HHHH (relating to emission~~

~~guidelines and compliance times for coal-fired electric steam generating units) are adopted in their entirety and incorporated by reference in this subsection.~~

~~(b) The following words and terms, when used in this section and §§ 123.201 and 123.203—123.215, have the following meanings, unless the context clearly indicates otherwise:~~

~~—Act—The Air Pollution Control Act (35 P. S. §§ 4001—4015).~~

~~—Administrator—The Administrator of the EPA or the Administrator's authorized representative.~~

~~—Btu—British thermal unit—The amount of thermal energy necessary to raise the temperature of 1 pound of pure liquid water by 1° F. at the temperature at which water has its greatest density (39° F.).~~

~~—Bottoming-cycle cogeneration unit—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.~~

~~—CFB—Circulating fluidized bed unit—Combustion of fuel in a bed or series of beds in which these materials are forced upward by the flow of combustion air and the gaseous products of combustion.~~

~~—CO<sub>2</sub>—Carbon dioxide.~~

~~—CS-ESP—Cold-side electrostatic precipitator—A particulate control device installed downstream of a boiler air preheater that does the following:~~

~~—(i) Charges particles with an electric field and causes them to migrate from the gas to a collection surface.~~

~~—(ii) Treats flue gas after heat extraction from the gas has been completed.~~

~~—(iii) Operates within a temperature range of no greater than 400° F.~~

~~—Clean Air Act—The Clean Air Act (42 U.S.C.A. §§ 7401—7642) and the rules and regulations promulgated thereunder.~~

~~—Coal—~~

~~—(i) Solid fuels classified as anthracite, bituminous, subbituminous or lignite by the ASTM International Standard D 388—77, 90, 91, 95, 98A or 99, Specification for Classification of Coals by Rank.~~



~~—(ii) The term includes synthetic fuels derived from coal and coal refuse for the purpose of creating useful heat, including solvent refined coal, gasified coal, coal-oil mixtures and coal-water mixtures.~~

~~—Coal refuse—Waste products of coal mining, physical coal cleaning and coal preparation operations (for example—culm, gob, and the like) containing coal, matrix material, clay and other organic and inorganic material.~~

~~—Cogeneration unit—A stationary, coal-fired boiler or stationary, coal-fired combustion turbine which:~~

~~—(i) Has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating or cooling purposes through the sequential use of energy.~~

~~—(ii) Produces, for a topping-cycle cogeneration unit, during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the 12-month period in which the unit first produces electricity:~~

~~—(A) Useful thermal energy not less than 5% of total energy output.~~

~~—(B) Useful power that when added to one-half of useful thermal energy produced:~~

~~—(I) Is not less than 42.5% of total energy input, if useful thermal energy produced is 15% or more of total energy output.~~

~~—(II) Is not less than 45% of total energy input, if useful thermal energy produced is less than 15% of total energy output.~~

~~—(iii) Produces, for a bottoming-cycle cogeneration unit, during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the 12-month period in which the unit first produces electricity, useful power not less than 45% of total energy input.~~

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

~~—Control period—The period beginning January 1 of a calendar year and ending on December 31 of the same year, inclusive.~~

~~—EGU—Electric generating unit—~~

~~—(i) Except as provided in subparagraphs (iv) and (v), a stationary, coal or coal refuse-fired boiler or stationary, coal-fired combustion turbine in this Commonwealth that serves or has served 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.

~~— (ii) A stationary boiler or stationary combustion turbine in this Commonwealth that is not an EGU under subparagraph (i) that 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 shall become an electric generating unit as provided in subparagraph (i) on the first date on which it both combusts coal or coal-derived fuel and serves the generator.~~

~~— (iii) A unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (iv) for at least 1 calendar year, but subsequently no longer meets the requirements shall become an EGU starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of subparagraph (iv)(B).~~

~~— (iv) A unit that is an EGU under subparagraphs (i) or (ii) and meets both of the following requirements will not be an EGU if it:~~

~~— (A) Qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit.~~

~~— (B) Has not served at any time, since the later of November 15, 1990, or the startup 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 MWhs, whichever is greater, to any utility power distribution system for sale.~~

~~— (v) A "solid waste incineration unit" as defined in section 129(g)(1) of the Clean Air Act (42 U.S.C.A. § 7554(g)(1)) that combusts "municipal waste" as defined in section 129(g)(5) of the Clean Air Act will not be an EGU if it is subject to one of the following rules:~~

~~— (A) An EPA-approved state plan for implementing the requirements of 40 CFR Part 60, Subpart Cb (relating to emissions guidelines and compliance times for large municipal waste combustors that are constructed on or before September 20, 1994).~~

~~— (B) 40 CFR Part 60, Subpart Eb (relating to standards of performance for large municipal waste combustors for which construction is commenced after September 20, 1994 or for which modification or reconstruction is commenced after June 19, 1996).~~

~~—(C) 40 CFR Part 60, Subpart AAAA (relating to standards of performance for small municipal waste combustors for which construction is commenced after August 30, 1999 or for which modification or reconstruction is commenced after June 6, 2001).~~

~~—(D) An EPA approved state plan for implementing 40 CFR Part 60, Subpart BBBB (relating to emission guidelines and compliance times for small municipal waste combustion units constructed on or before August 30, 1999).~~

~~—(E) 40 CFR Part 62, Subpart FFF (relating to Federal plan requirements for large municipal waste combustors constructed on or before September 20, 1994).~~

~~—(F) 40 CFR Part 62, Subpart JJJ (relating to Federal plan requirements for small municipal waste combustion units constructed on or before August 30, 1999).~~

~~—Existing EGU—An EGU which commenced construction, modification or reconstruction on or before January 30, 2004, or which has three complete control periods of heat input data as of December 31 of the preceding control period.~~

~~—FF-Fabric filter—An add-on air pollution control system that removes particulate matter (PM) and emissions of nonvaporous metals by passing flue gas through filter bags.~~

~~—Facility—All units located on one or more contiguous or adjacent properties and which are owned or operated by the same person under common control.~~

~~—GWh—Gigawatt-hour—One billion watt-hours.~~

~~—Heat input—For a specified period of time, the product, expressed as million “Btus” per unit time (MMBtu/time), of the gross calorific value of the fuel (in “Btus” per pound fuel (Btu/LB fuel) divided by 1,000,000 Btu/MMBtu) multiplied by the fuel feed rate into a combustion device (in pounds of fuel per unit time (LB fuel/time)), as measured, recorded and reported to the Department by the owner or operator of an EGU and determined in accordance with 40 CFR 60.4170–60.4176 and excluding the heat derived from preheated combustion air, reticulated flue gases or exhaust from other sources.~~

~~—IGCC—Integrated gasification combined cycle unit—An electric utility steam generating unit that burns a synthetic gas derived from coal in a combined-cycle gas turbine. No coal is directly burned in the unit during operation.~~

~~—MMBtu—One million British thermal units.~~

~~—MW—Megawatt—A unit for measuring power equal to one million watts.~~

~~—MWe—Megawatt electric—One million watts of electric capacity.~~

~~—MWh—Megawatt-hour—One million watt-hours.~~

~~—Nameplate capacity—The maximum electrical generating output (in MWe) that the generator is capable of producing on a steady-state basis during continuous operation (when not restricted by seasonal or other deratings):~~

~~—(i) As specified by the manufacturer, starting from the initial installation of the generator.~~

~~—(ii) As specified by the person conducting the physical change, starting from the completion of a subsequent physical change in the generator resulting in an increase in the maximum electrical generating output in MWe.~~

~~—New EGU—An EGU which commenced construction, modification or reconstruction, as defined under 40 CFR Part 60 (relating to standards of performance for new stationary sources), on or after January 30, 2004, and has less than three complete control periods of heat input data as of December 31 of the preceding control period.~~

~~—O<sub>2</sub>—Oxygen.~~

~~—Operator—~~

~~—(i) A person who operates, controls or supervises an EGU or a facility that includes an EGU.~~

~~—(ii) The term also includes a holding company, utility system or plant manager of an EGU or facility.~~

~~—Owner—~~

~~—(i) A holder of any portion of the legal or equitable title in an EGU or a facility in this Commonwealth that includes an EGU.~~

~~—(ii) The term also includes a holder of a leasehold interest in an EGU or a facility in this Commonwealth that includes an EGU.~~

~~—PCF—Pulverized coal-fired unit—~~

~~—(i) A steam generating unit in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the steam generating unit where it is fired in suspension.~~

~~—(ii) The term includes both conventional pulverized coal-fired and micropulverized coal-fired steam generating units.~~

~~—Phase 1—The period from January 1, 2010, through December 31, 2014.~~

~~—Phase 2—The period beginning January 1, 2015, and each subsequent year thereafter.~~

~~—Rolling 12-month basis—A determination made on a monthly basis from the relevant data for a particular calendar month and the preceding 11 calendar months (total of 12 months of data).~~

~~—SCR—Selective catalytic reduction—A process where a gaseous or liquid reductant (most commonly ammonia or urea) is added to the flue gas stream in the presence of a catalyst. The reductant reacts with nitrogen oxides in the flue gas to form molecular nitrogen.~~

~~—SO<sub>2</sub>—Sulfur dioxide.~~

~~—Space velocity—The exhaust gas volume per hour of the SCR corrected to standard temperature and pressure divided by the volume of the catalyst.~~

~~—Standby unit—A unit that is out of operation but under a Department-approved maintenance plan as provided under § 127.11a (relating to reactivation of sources), which will enable the source to be reactivated in accordance with the terms of the permit issued to the source.~~

~~—System—The total number of EGUs under common ownership or operator control in this Commonwealth, which an owner or operator identifies to the Department as participating in an emissions compliance demonstration for the purpose of complying with § 123.207 (relating to annual emission limitations for coal-fired EGUs).~~

~~—System-wide compliance demonstration—Demonstrating compliance with the annual emission limitation by ensuring that the aggregate of actual mass emissions is less than the aggregate of allowable mass emissions for all EGUs in the system which are included in the demonstration.~~

~~—Topping-cycle cogeneration unit—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.~~

~~—WFGD—Wet flue gas desulfurization unit—An SO<sub>2</sub> control system located downstream of the steam generating unit that removes SO<sub>2</sub> from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline slurry or solution including lime and limestone.~~

~~—Watt-hour—A unit of energy equivalent to 1 watt of power expended for 1 hour of time.]~~

§ 123.203. [Applicability.] [Reserved].

~~[The requirements of this section and §§ 123.201, 123.202 and 123.204—123.215 apply to owners and operators of an EGU located in this Commonwealth and, except as otherwise noted, supersede those requirements adopted in their entirety and incorporated by reference in § 122.3 (relating to adoption of standards).]~~

§ 123.204. [Execeptions.] [Reserved].

~~[Consistent with § 123.207(b)(1) (relating to annual emission limitations for coal-fired EGUs), the owner or operator of an EGU that enters into an enforceable agreement with the Department not later than December 31, 2007, for the shutdown and replacement of the unit with IGCC technology no later than December 31, 2012, shall be exempted from compliance with the Phase 1 emission standards specified in § 123.205 (relating to emission standards for coal-fired EGUs).]~~

§ 123.205. [Emission standards for coal-fired EGUs.] [Reserved].

~~[(a) *New EGUs.* In addition to the mercury emission limitation requirements in § 123.207 (relating to annual emission limitations for coal-fired EGUs), the owner or operator of a new EGU subject to § 123.203 (relating to applicability) shall comply at the commencement of operation on a rolling 12-month basis with one of the following standards:~~

~~—(1) *PCF EGU.* The owner or operator of a PCF EGU shall comply with either of the following:~~

~~—(i) A mercury emission standard of 0.011 pound of mercury per GWh.~~

~~—(ii) A minimum 90% control of total mercury as measured from the mercury content in the coal, either as fired or as approved in writing by the Department.~~

~~—(2) *CFB EGU.* The owner or operator of a CFB EGU shall comply with the following applicable provisions:~~

~~—(i) CFB EGUs burning 100% coal refuse as the only solid fossil fuel shall comply with either of the following:~~

~~—(A) A mercury emission standard of 0.0096 pound of mercury per GWh.~~

~~—(B) A minimum 95% control of total mercury as measured from the mercury content in the coal refuse, either as fired or as approved in writing by the Department.~~

~~—(ii) CFB EGUs burning 100% coal as the only solid fossil fuel shall comply with either of the following:~~

~~—(A) A mercury emission standard of 0.011 pound of mercury per GWh.~~

~~—(B) A minimum 90% control of total mercury as measured from the mercury content in the coal, either as fired or as approved in writing by the Department.~~

~~—(iii) CFB EGUs burning multiple fuels shall comply with a prorated emission standard based on the percentage of heat input from the coal and the percentage of heat input from the coal refuse.~~

~~—(3) IGCC EGU. The owner or operator of an IGCC EGU shall comply with one of the following:~~

~~—(i) A mercury emission standard of 0.0048 pound of mercury per GWh.~~

~~—(ii) A minimum 95% control of total mercury as measured from the mercury content in the coal, either as processed or as approved in writing by the Department.~~

~~—(b) Other requirements for new EGUs. In addition to the emission requirements of subsection (a), the applicable requirements for a new EGU include:~~

~~—(1) Best available technology requirement. The emission standards in this subsection will serve as a baseline for review and approval of case-by-case best available technology determinations for a new EGU in accordance with Chapter 127 (relating to construction, modification, reactivation and operation of sources).~~

~~—(2) Standards of performance for new stationary sources requirements. In addition to the requirements of this section and §§ 123.201—123.204 and 123.206—123.215, the owner or operator of a new EGU shall also comply with the standards of performance for new stationary sources promulgated in 40 CFR Part 60, Subpart Da (relating to standards of performance for electric utility steam generating units for which construction is commenced after September 18, 1978) and adopted in their entirety and incorporated by reference in Chapter 122 (relating to National standards of performance for new stationary sources).~~

~~—(c) Existing EGUs. In addition to the mercury emission limitation requirements of § 123.207, the owner or operator of an existing EGU subject to the emission standards for EGUs specified in this section shall comply on a rolling 12-month basis with one of the following standards:~~

~~—(1) Phase 1. Effective from January 1, 2010, through December 31, 2014:~~

~~—(i) PCF EGU. The owner or operator of a PCF shall comply with one of the following:~~

- ~~— (A) A mercury emission standard of 0.024 pound of mercury per GWh.~~
- ~~— (B) A minimum 80% control of total mercury as measured from the mercury content in the coal, either as fired or as approved in writing by the Department.~~
- ~~— (ii) CFB EGU. The owner or operator of a CFB burning coal refuse shall comply with one of the following:~~
  - ~~— (A) A mercury emission standard of 0.0096 pound of mercury per GWh.~~
  - ~~— (B) A minimum 95% control of total mercury as measured from the mercury content in the coal refuse, either as fired or as approved in writing by the Department.~~
- ~~— (2) Phase 2. Effective beginning January 1, 2015, and each subsequent year:~~
  - ~~— (i) PCF EGU. The owner or operator of a PCF shall comply with one of the following:~~
    - ~~— (A) A mercury emission standard of 0.012 pound of mercury per GWh.~~
    - ~~— (B) A minimum 90% control of total mercury as measured from the mercury content in the coal, either as fired or as approved in writing by the Department.~~
  - ~~— (ii) CFB EGU. The owner or operator of a CFB burning coal refuse shall comply with one of the following:~~
    - ~~— (A) A mercury emission standard of 0.0096 pound of mercury per GWh.~~
    - ~~— (B) A minimum 95% control of total mercury as measured from the mercury content in the coal refuse, either as fired or as approved in writing by the Department.~~
- ~~— (d) Credit for fuel pretreatment. The owner or operator of an EGU may request, in writing, credit for the mercury removal efficiency resulting from the pretreatment of coal or coal refuse towards the minimum percent control efficiency of total mercury requirements specified in this section. The credit shall be approved, in writing, by the Department consistent with the process outlined in 40 CFR 60.50da (relating to compliance determination procedures and methods).]~~

§ 123.206. [Compliance requirements for the emission standards for coal-fired EGUs.] [Reserved].

~~[(a) The owner or operator of one or more EGUs subject to the emission standards of § 123.205 (relating to emission standards for coal-fired EGUs) shall demonstrate compliance with the standards using one of the following methods:~~



~~—(1) Compliance on a unit-by-unit basis.~~

~~—(2) Facility-wide emissions averaging.~~

~~(b) The Department may approve in a plan approval or operating permit, or both, an alternate mercury emission standard or compliance schedule, or both, if the owner or operator of an EGU subject to the emission standards of § 123.205 demonstrates in writing to the Department's satisfaction that the mercury reduction requirements are economically or technologically infeasible. The Department's written approval of an alternate mercury emission standard or compliance schedule does not relieve the owner or operator of the EGU from complying with the other requirements of §§ 123.201—123.205 and 123.207—123.215. The owner or operator shall:~~

~~—(1) Submit a plan approval application or operating permit application requesting an alternate emission standard or compliance schedule, or both, to the Department for approval no later than 120 days before the applicable compliance deadline.~~

~~—(2) Include the following in the application:~~

~~—(i) A brief description, including make, model and location of each EGU.~~

~~—(ii) A list of all air pollution control technologies and measures that have been installed on each EGU and are operating to control emissions of air contaminants including mercury.~~

~~—(iii) The dates of installation and commencement of operation for each of the technologies and measures required under subparagraph (ii).~~

~~—(iv) An explanation of how the technology or measure was installed and if it is being operated according to the manufacturer's instructions for each of the technologies and measures required under subparagraph (ii).~~

~~—(v) The results of each mercury stack test and other emissions measurements for the EGU following installation and commencement of operation of the air pollution control technologies and measures listed in accordance with subparagraph (ii).~~

~~—(vi) A list of other air pollution control technologies or measures that the owner or operator proposes to install and operate on each EGU to control emissions of air contaminants including mercury.~~

~~—(vii) A summary of how the owner or operator of the EGU intends to operate and maintain the unit during the term of the approved plan approval or operating permit, or both, including the associated air pollution control equipment and measures that are designed to maintain compliance with all other applicable plan~~

approval or operating permit requirements and that are designed and operated to minimize the emissions of mercury to the extent practicable.

~~— (viii) A proposed schedule that lists the increments of progress and the date for final compliance if an alternate compliance schedule is requested.~~

~~— (ix) An emission reduction proposal and information on the technological feasibility of meeting the requirements of this section and § 123.205 if an alternate emission standard is requested.~~

~~— (x) Other information which the Department requests that is necessary for the approval of the application.~~

~~(c) The Department's written approval of an alternate emission standard or compliance schedule will be based on the information provided in the application submitted by the owner or operator of the EGU in accordance with subsection (b).~~

~~(d) For an EGU complying with the energy output-based mercury emission standards of § 123.205 (expressed in pounds of mercury per GWh), the actual mercury emission rate of the EGU for each 12-month rolling period, monitored in accordance with §§ 123.210—123.215 and calculated as follows, may not exceed the applicable emission standard:~~

$$\text{ER} = \sum_{i=1}^{12} E_i \div \sum_{i=1}^{12} O_i$$

~~Where:~~

~~ER = Actual mercury emissions rate of the EGU for the particular 12-month rolling period, expressed in pounds per GWh.~~

~~E<sub>i</sub> = Actual mercury emissions of the EGU, in pounds, in an individual month in the 12-month rolling period, as determined in accordance with the monitoring provisions.~~

~~O<sub>i</sub> = Gross electrical output of the EGU, in GWhs, in an individual month in the 12-month rolling period.~~

~~(e) For an EGU complying with the percent control requirements of § 123.205, the actual control efficiency for mercury emissions achieved by the EGU for each 12-month rolling period, monitored in accordance with §§ 123.210—123.215 and calculated as follows, shall meet or exceed the applicable efficiency requirement:~~

$$\text{CE} = 100 * \{1 - (\sum_{i=1}^{12} E_i \div \sum_{i=1}^{12} H_i)\}$$

~~Where:~~

~~CE = Actual control efficiency for mercury emissions of the EGU for the particular 12-month rolling period, expressed as a percent.~~

~~E<sub>i</sub> = Actual mercury emissions of the EGU, in pounds, in an individual month in the 12-month rolling period, as determined in accordance with the monitoring provisions of §§ 123.210—123.215.~~

~~I<sub>i</sub> = Amount of mercury in the fuel fired in the EGU, in pounds, in an individual month in the 12-month rolling period, as determined in accordance with § 123.214 (relating to coal sampling and analysis for input mercury levels).~~

~~(f) The owner or operator of an EGU may demonstrate compliance with § 123.205 by means of facility-wide averaging that demonstrates that the actual mercury emissions from EGUs covered under the emissions averaging demonstration are less than the allowable mercury emissions from all EGUs covered by the demonstration on a rolling 12-month basis.]~~

§ 123.207. [Annual emission limitations for coal-fired EGUs.] [Reserved].

~~[(a) *Statewide mercury nontradable allowance program.* In addition to the mercury emission standard requirements of § 123.205 (relating to emission standards for coal-fired EGUs), the owner or operator of a new or existing affected EGU subject to § 123.203 (relating to applicability) shall comply with the annual emission limitations established through a Statewide mercury nontradable allowance program under this section. The Department will issue to the owner or operator of an affected EGU a plan approval or operating permit (including Title V) that contains the applicable requirements of this section and §§ 123.202—123.206 and 123.208—123.215 before the later of January 1, 2010, or the date on which the affected EGU commences operation.~~

~~(b) *Emission limitation set-asides.* The total ounces of mercury emissions available for emission limitation set-asides as annual nontradable mercury allowances in the Statewide mercury allowance program are:~~

~~—(1) 56,928 ounces (3,558 pounds) of mercury emissions for Phase 1, effective from January 1, 2010, through December 31, 2014.~~

~~—(2) 22,464 ounces (1,404 pounds) of mercury emissions for Phase 2, effective beginning January 1, 2015, and each subsequent year.~~

~~(c) *New affected EGUs.* For each calendar year beginning January 1, 2010, the Department will set aside a total number of annual nontradable mercury allowances for the owners and operators of new affected EGUs in this Commonwealth that do not yet have a baseline heat input determined in accordance with the requirements of an approved plan approval or operating permit.~~

~~—(1) The total number of annual nontradable mercury allowances set aside for the owners and operators of new affected EGUs will be equal to a percentage of the amount of ounces of mercury emissions in the Statewide mercury allowance program established in subsection (a). The percentage of set aside is:~~

~~—(i) 5% of the Phase 1 annual nontradable mercury allowances established in subsection (b)(1) for the years beginning January 1, 2010, through December 31, 2014.~~

~~—(ii) 3% of the Phase 2 annual nontradable mercury allowances established in subsection (b)(2) for the calendar year beginning January 1, 2015, and subsequent years.~~

~~—(2) The annual nontradable mercury allowances set aside for the owners and operators of new affected EGUs shall be placed in the annual emission limitation supplement pool established under § 123.208 (relating to annual emission limitation supplement pool).~~

~~—(3) After a new EGU has commenced operation and completed three control periods, the EGU will become an existing EGU. The new EGU will continue to receive annual nontradable mercury allowances from the new unit set aside until the new EGU is eligible for annual nontradable mercury allowances allocated from the set aside for existing EGUs. The annual nontradable mercury allowances allocated from the set aside for existing EGUs may not exceed the allowable mercury emissions limitation specified in a plan approval or operating permit (including Title V) for the new EGU.~~

~~—(4) When a new EGU is eligible to receive annual nontradable mercury allowances from the set aside for existing EGUs, new maximum allowance levels for all existing EGUs will be established and published in the *Pennsylvania Bulletin* for comment by May 31 of the year that is 2 years prior to the affected control period.~~

~~—(5) If the actual emissions of mercury reported to the Department from the operation of a new EGU during a specific control period are less than the maximum number of annual nontradable mercury allowances specified in the plan approval or operating permit for the EGU, the Department will include the unused portion of the annual nontradable mercury allowances in the set aside for new EGUs.~~

~~—(6) The unused portion of annual nontradable mercury allowances set aside under paragraph (3) may not be added to the maximum number of annual nontradable mercury allowances set aside in subsequent years for the owner or operator of a new EGU. The annual nontradable mercury allowances may not be banked for use in future years.~~

~~(d) Existing affected CFBs. For each calendar year beginning January 1, 2010, the Department will set aside for the owners and operators of existing affected CFBs a~~

~~total number of annual nontradable mercury allowances from the total ounces of mercury emissions available for annual emission limitation set asides in Phase 2 of the Statewide mercury allowance program established in subsection (b)(2).~~

~~(e) *Maximum allowances set aside for CFBs.* The maximum number of annual nontradable mercury allowances set aside for the owner or operator of each existing affected CFB in accordance with subsection (d) shall be determined by multiplying the affected CFB's baseline heat input fraction of the State's total baseline annual heat input for all EGUs by the Department's Phase 2 annual mercury allowance set aside for existing EGUs, as follows:~~

~~—(1) The baseline heat input in MMBtu for each existing affected CFB will be the average of the three highest amounts of annual heat input using the heat input data for the CFB from EPA's acid rain database and the Department's database for the calendar years 2000—2004.~~

~~—(2) The State's annual mercury allowance set aside for existing EGUs for Phase 2 is 21,790 ounces.~~

~~(f) *Existing affected EGUs other than CFBs.* For each calendar year beginning January 1, 2010, the Department will set aside for the owners and operators of existing affected EGUs other than CFBs a total number of annual nontradable mercury allowances from the total ounces of mercury emissions available for annual emission limitation set asides in Phase 1 and Phase 2 of the Statewide mercury allowance program established in subsection (b).~~

~~(g) *Maximum allowances set aside for existing affected EGUs other than CFBs.* The maximum number of annual nontradable mercury allowances set aside for the owner or operator of each existing affected EGU other than CFB in accordance with subsection (f) shall be determined for the existing affected EGU other than CFB by multiplying its baseline heat input fraction of the State's total baseline annual heat input for all EGUs by the Department's annual mercury allowance set aside for existing affected EGUs in each phase, as follows:~~

~~—(1) The baseline heat input in MMBtu for each existing affected EGU other than CFB will be the average of the three highest amounts of annual heat input using the heat input data for the EGU other than CFB from the EPA's acid rain database and the Department's database for calendar years 2000—2004.~~

~~—(2) The State's annual mercury allowance set aside for existing affected EGUs is:~~

~~—(i) 54,080 ounces for Phase 1.~~

~~—(ii) 21,790 ounces for Phase 2.~~

~~(h) *Publication of maximum number of allowances set aside for Phase 1.* By May 31, 2008, the Department will publish for comment in the *Pennsylvania Bulletin* the maximum number of annual nontradable mercury allowances set aside for the owner or operator of each existing affected CFB and EGU other than CFB for Phase 1 of the Statewide mercury allowance program. The nontradable allowances shall only be used to demonstrate compliance with the annual emission limitation requirements.~~

~~(i) *Publication of maximum number of allowances set aside for Phase 2.* By May 31, 2013, the Department will publish for comment in the *Pennsylvania Bulletin* the maximum number of annual nontradable mercury allowances set aside for the owner or operator of each existing affected CFB and EGU other than CFB for Phase 2 of the Statewide mercury allowance program. The nontradable allowances shall only be used to demonstrate compliance with the annual emission limitation requirements.~~

~~(j) *Maximum number of allowances awarded.* By March 31 of the year following each reporting year, the Department will notify the owner or operator of each affected EGU, facility or system, in writing, of the actual number of annual nontradable mercury allowances awarded to the owner or operator of the EGU, facility or system for the control period.~~

~~—(1) The actual number of annual nontradable mercury allowances awarded to the owner or operator of the EGU, facility, or system shall be based on the actual emissions reported to the Department in accordance with §§ 123.210—123.215.~~

~~—(2) If the actual emissions of mercury reported to the Department in accordance with §§ 123.210—123.215 are less than the maximum number of annual nontradable mercury allowances set aside in the Statewide mercury allowance program for the owner or operator of an EGU, facility or system in accordance with either subsection (c), (d) or (f), the Department will place the unused portion of annual nontradable mercury allowances in the annual emission limitation supplement pool established under § 123.208.~~

~~—(3) The unused portion of annual nontradable mercury allowances set aside under subsection (c), (d) or (f) may not be added to the maximum number of annual nontradable mercury allowances set aside for the owner or operator of the affected EGU, facility or system for subsequent years. The annual nontradable mercury allowances may not be banked for use in future years.~~

~~—(4) The actual number of annual nontradable mercury allowances awarded to the owner or operator of the EGU, facility or system may not exceed the maximum number of annual nontradable mercury allowances set aside for the owner or operator of the EGU, facility or system in the Statewide mercury allowance program in accordance with subsection (c), (d) or (f) except as provided in § 123.209 (relating to petition process).~~

~~—(5) Each ounce of mercury emitted in excess of the maximum number of annual nontradable mercury allowances set aside for the owner or operator of the affected EGU, facility or system in accordance with subsection (c), (d) or (f) shall constitute a violation of this section and the act, except as provided under § 123.209.~~

~~—(k) Standby units and units permanently shut down. Annual nontradable mercury allowances will not be set aside for the owner or operator of an existing affected EGU that is already shut down or scheduled for shutdown unless the owner or operator of the EGU obtains a plan approval for the construction of a new EGU, or is on standby as of the effective date of each set aside phase under subsection (c), (d) or (f). When a standby unit is ready for normal operation, the owner and operator may petition the Department for a number of annual nontradable mercury allowances as provided under § 123.209. Annual nontradable mercury allowances will be allocated to the owner or operator of the EGU. The annual nontradable mercury allowances allocated from the existing EGU set aside may not exceed the allowable mercury emissions limitation specified in a plan approval or operating permit (including Title V) for the new EGU.~~

~~—(l) Units scheduled for permanent shutdown.~~

~~—(1) The requirements of this section and §§ 123.202—123.206 and 123.208—123.215 do not apply to the owner or operator of an EGU that will be permanently shut down no later than December 31, 2009. The owner or operator of the EGU scheduled for shutdown shall do the following:~~

~~—(i) Within 180 days prior to the shutdown, notify the Administrator and the Department, in writing, that the EGU is scheduled to be permanently shut down. The notice must contain a description of the actions that have been taken to shut down the EGU, the future actions and schedule for completing the shut down of the EGU, and the anticipated date of permanent shutdown of the EGU.~~

~~—(ii) Execute a legally enforceable document prior to shutdown that requires the EGU to be permanently shut down in accordance with this section.~~

~~—(2) Within 30 days after the permanent shutdown of the EGU, the mercury designated representative shall provide written notice to the Administrator and the Department of the actual date of the permanent shutdown of the unit.~~

~~—(3) For 5 years from the date the records are created, the owner and operator of an EGU shall retain records demonstrating that the EGU is permanently shut down. The Administrator or Department may, in writing, extend the recordkeeping time period for cause, at any time before the end of the 5-year period. The owners and operators bear the burden of proof that the unit is permanently shut down. The records shall be retained at the facility where the EGU is located and submitted to the Department upon request.~~

~~(m) Future emission limitations.~~ The Department may revise the percentage of set-aside used to determine the number of ounces of mercury set aside for future annual mercury emission limitations to accommodate the emissions from new EGUs so that the total number of ounces of mercury emissions in the Statewide mercury allowance program is not exceeded. The Department will publish notice of the proposed and final revisions in the *Pennsylvania Bulletin*.

~~(n) Changes in calculation of baseline heat input.~~ The Department may revise the percentage of set-aside used to determine the number of ounces of mercury set aside for future annual mercury emission limitations to accommodate changes in the calculation of baseline heat input in accordance with subsection (e) or (g) so that the total number of ounces of mercury emissions in the Statewide mercury allowance program is not exceeded. The Department will publish notice of the proposed and final revisions in the *Pennsylvania Bulletin*.

~~(o) Maintained by Department.~~ The Statewide mercury allowance program established under subsection (a) and the annual nontradable mercury allowances set aside for emission limitations under subsections (b) — (n) will be maintained by the Department.

~~(p) Demonstration of compliance.~~ The owner or operator of one or more affected mercury allowance program EGUs subject to this section shall demonstrate compliance with the applicable requirements using one of the following methods by March 1 for the preceding control period:

~~— (1) Compliance on a unit-by-unit basis.~~

~~— (2) Compliance on a facility-wide basis.~~

~~— (3) Compliance on a system-wide basis.~~

~~(q) Facility-wide compliance demonstration.~~ The owner or operator of an EGU may demonstrate compliance with this section on a facility-wide basis. The total of the actual mercury emissions from the EGUs included in the demonstration must be less than the total of the allowable mercury emissions from all EGUs included in the demonstration on an annual basis.

~~(r) System-wide compliance demonstration.~~ The owner or operator of two or more EGUs under common ownership or operator control in this Commonwealth may demonstrate compliance with this section as follows:

~~— (1) The total of the actual mercury emissions from the EGUs at the facility and other EGUs at other facilities included in the system-wide demonstration must be less than the total of the allowable mercury emissions from all EGUs included in the demonstration on an annual basis.~~



~~—(2) An owner or operator may not include an EGU, or a portion thereof, in more than one system-wide demonstration submitted for purposes of complying with this section and § § 123.201—123.206 and 123.208—123.215.]~~

**§ 123.208. [Annual emission limitation supplement pool.] [Reserved].**

~~[(a) Effective January 1, 2010, the Department will establish an annual emission limitation supplement pool to monitor annual nontradable mercury allowances that:~~

~~—(1) Have been created as part of the new affected EGU set aside under § 123.207(c) (relating to annual emission limitations for coal-fired EGUs).~~

~~—(2) Are unused annual nontradable mercury allowances set aside as annual emission limitation supplements under § 123.207(j)(2).~~

~~-(b) The annual emission limitation supplement pool of annual nontradable mercury allowances established under subsection (a) will be administered in accordance with § 123.209 (relating to petition process) by the Department.]~~

**§ 123.209. [Petition process.] [Reserved].**

~~[(a) Each calendar year beginning January 1, 2010, the owner or operator of either a new EGU or an existing affected EGU that emits amounts of mercury in excess of the maximum number of annual nontradable mercury allowances set aside in accordance with § 123.207 (relating to annual emission limitations for coal-fired EGUs) or a standby affected EGU that is ready for normal operation may petition the Department, in writing, for supplemental annual nontradable mercury allowances to be set aside for the owner or operator from the annual emission limitation supplement pool established under § 123.208(a) (relating to annual emission limitation supplement pool).~~

~~-(b) The owner or operator shall submit a separate petition for each calendar year for which the owner or operator requests supplemental annual nontradable mercury allowances to be set aside from the annual emission limitation supplement pool.~~

~~-(c) The owner or operator with more than one affected EGU shall submit a separate petition for each EGU for which the owner or operator requests supplemental annual nontradable mercury allowances to be set aside from the annual emission limitation supplement pool.~~

~~-(d) The owner or operator of the existing affected EGU shall submit the petition to the Department by January 31 of the year following the calendar year for which the supplemental annual nontradable mercury allowances are requested to be set aside.~~

~~(e) The owner or operator of the standby-affected EGU shall submit the petition to the Department no later than 120 days before the date of anticipated start-up of the EGU.~~

~~(f) The petition must include the following:~~

~~—(1) A brief description, including make, model and location of each affected EGU.~~

~~—(2) A list of all air pollution control technologies and measures that have been installed on each affected EGU and are operating to control emissions of air contaminants, including mercury.~~

~~—(3) For each of the technologies and measures listed in accordance with paragraph (2), the date of installation and original commencement of operation.~~

~~—(4) For each of the technologies and measures listed in accordance with paragraph (2), an explanation of how the mercury control technology or measure as installed has been optimized for the maximum mercury emission reduction.~~

~~—(5) The results of each mercury stack test and other emissions measurements for the affected EGU following installation and commencement of operation of the air pollution control technologies and measures listed in accordance with paragraph (2).~~

~~—(6) A list of other air pollution control technologies or measures that the owner or operator proposes to install and operate on each affected EGU to control emissions of air contaminants, including mercury.~~

~~—(7) A summary of how the owner or operator of the affected EGU intends to operate and maintain the EGU during the term of the approved plan approval or operating permit, or both, including the associated air pollution control equipment and measures that are designed to maintain compliance with all other applicable plan approval or operating permit requirements and that are designed and operated to minimize the emissions of mercury to the extent practicable.~~

~~(g) Each calendar year beginning January 1, 2010, the Department may allocate supplemental annual nontradable mercury allowances from the annual emission limitation supplement pool established under § 123.208(a) for the owners or operators of new and existing affected EGUs. If a petition is approved by the Department in accordance with the requirements of this section, the allowances will be distributed to the following:~~

~~—(1) Each owner or operator of a standby unit as defined under § 123.202 (relating to definitions) which meets the requirements of this section and §§ 123.205—123.208 and 123.210—123.215.~~

~~—(2) Each owner or operator of an EGU that enters into an enforceable agreement with the Department by December 31, 2007, for the shut down and replacement of the unit with IGCC technology by December 31, 2012.~~

~~—(3) Each owner or operator of a new EGU.~~

~~—(4) Each owner or operator of an existing affected EGU based on the performance of the air pollution control technologies and measures that have been installed and are operating to control mercury emissions.~~

~~—(h) If the petition for supplemental annual nontradable mercury allowances is approved by the Department, the supplemental annual nontradable mercury allowances set aside for the owner or operator of the existing affected EGU will be added to the maximum number of annual nontradable mercury allowances set aside for the owner or operator of the EGU in accordance with § 123.207 only for the calendar year of the request.~~

~~—(i) The Department's approval of supplemental annual nontradable mercury allowances will be based on the information provided in the petition submitted by the owner or operator of an EGU in accordance with subsection (f).~~

~~—(j) The supplemental annual nontradable mercury allowances set aside under subsection (h) may not be added to the maximum number of annual nontradable mercury allowances set aside for the owner or operator of the EGU for subsequent years.]~~

§ 123.210. [General monitoring and reporting requirements.] [Reserved].

~~[(a) The owner or operator of a new EGU subject to the requirements of this section and § § 123.201—123.209 and 123.211—123.215 shall demonstrate compliance with § § 123.205 and 123.207 (relating to emission standards for coal-fired EGUs; and annual emission limitations for coal-fired EGUs) by installing and operating continuous emissions monitoring systems to measure, record and report mercury emissions from each EGU. The monitoring, recordkeeping and reporting requirements provided in this section, § § 123.211—123.215 and 139.101 (relating to general requirements), 40 CFR Part 75, Subpart I (relating to Hg mass emission provisions) and the applicable provisions of the *Continuous Source Monitoring Manual* (DEP 274-0300-001) shall apply. For the purpose of complying with this section, the provisions in 40 CFR 60.4110—60.4114 are adopted in their entirety and incorporated herein by reference.~~

~~—(b) Except as provided in subsection (c), the owner or operator of an existing EGU subject to this section, § § 123.201—123.209 and 123.211—123.215 shall demonstrate compliance with § § 123.205 and 123.207 (relating to emission standards for coal-fired EGUs; and annual emission limitations for coal-fired EGUs) by installing and operating continuous emissions monitoring systems to~~

~~measure, record and report mercury emissions from each EGU. The monitoring, recordkeeping and reporting requirements as provided in this section, §§ 123.211—123.215 and 139.101, 40 CFR Part 75, Subpart I (relating to Hg mass emission provisions) and the applicable provisions of the *Continuous Source Monitoring Manual* (DEP 274-0300-001) shall apply. In addition, for purposes of complying with these requirements, the definitions in § 123.202 (relating to definitions) and in 40 CFR 72.2 (relating to definitions) shall apply. For the purpose of complying with the requirements of this section, the provisions in 40 CFR 60.4110—60.4114 are adopted in their entirety and incorporated herein by reference.~~

~~(c) For an affected EGU that emits 464 ounces (29 lbs.) or less of mercury per year, the owner or operator of the affected EGU shall either:~~

~~—(1) Meet the requirements in subsections (a) and (b) for demonstrating compliance with §§ 123.205 and 123.207 and 40 CFR Part 75, Subpart I.~~

~~—(2) Implement the excepted monitoring methodology for an EGU meeting the requirements in 40 CFR 75.81(b) —(c) (relating to monitoring of Hg mass emissions and heat input at the unit level).~~

~~(d) The owner or operator of an EGU that emits 464 ounces (29 lbs.) or less of mercury per year, may demonstrate compliance with the percent control requirements by averaging the coal mercury content and stack emission data collected during the control period.~~

~~(e) The owner or operator of each EGU shall:~~

~~—(1) Install all monitoring systems required under this section and §§ 123.211—123.215 and the applicable provisions of Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources) for monitoring mercury emissions, including all systems required to monitor mercury 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 (relating to monitoring of Hg mass emissions and heat input at common and multiple stacks).~~

~~—(2) Successfully complete the certification tests required under § 123.211 (relating to initial certification and recertification procedures for emissions monitoring) and meet the other requirements of this section and §§ 123.211—123.215 that are applicable to the monitoring systems required under paragraph (1).~~

~~(f) The owner or operator of each EGU shall comply with the monitoring system certification and other requirements of subsection (e) on or before the later of:~~

~~—(1) January 1, 2009.~~

~~—(2) Ninety EGU operating days or 180 calendar days, whichever occurs first, after the date on which the EGU commences commercial operation.~~

~~—(g) The owner or operator of each EGU shall record, report and quality assure the data from the monitoring systems required under subsection (e)(1) on and after the later of:~~

~~—(1) January 1, 2009.~~

~~—(2) Ninety EGU operating days or 180 calendar days, whichever occurs first, after the date on which the EGU commences commercial operation.~~

~~—(h) The owner or operator of an EGU for which construction of a new stack or flue, installation of add-on mercury emission controls, a flue gas desulfurization system, an SCR system or a compact hybrid particulate collector system is completed after the applicable deadlines of subsections (f) and (g), shall:~~

~~—(1) Comply with the monitoring system certification and other requirements of subsection (e).~~

~~—(2) Record, report and quality assure the data from the monitoring systems required under subsection (e)(1).~~

~~—(3) Comply with this section within 90 EGU 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 mercury emission controls, flue gas desulfurization system, SCR system or compact hybrid particulate collector system.~~

~~—(i) The owner or operator of an EGU that does not meet the applicable monitoring date in subsections (f) — (h) for any monitoring system required under subsection (e)(1) shall, for each monitoring system, determine, record and report maximum potential (or, as appropriate, minimum potential) values for:~~

~~—(1) Mercury concentration.~~

~~—(2) Stack gas flow rate.~~

~~—(3) Stack gas moisture content.~~

~~—(4) Other parameters required to determine mercury mass emissions in accordance with 40 CFR 75.80(g) (relating to general provisions).~~

~~—(j) The owner or operator of an EGU that does not meet the applicable monitoring date in subsections (f) — (h) for a monitoring system required under subsection (e)(1) shall, for each monitoring system, determine, record and report substitute data using the applicable missing data procedures in 40 CFR 75.80(f) instead of the~~

maximum potential (or, as appropriate, minimum potential) values for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation of the monitoring systems required under subsection (e)(1).

~~(k) An owner or operator of an EGU may not use any alternative monitoring system, alternative reference method or any other alternative to any requirement of 40 CFR Part 75 (relating to continuous emission monitoring) unless the alternative system, method or requirement is approved, in writing, by the Administrator in accordance with 40 CFR Part 75, Subpart E (relating to alternative monitoring systems).~~

~~(l) An owner or operator of an affected EGU may not operate the EGU so as to discharge or allow to be discharged mercury emissions to the atmosphere without accounting for all of the emissions in accordance with the applicable provisions of this section, §§ 123.211—123.215 and Chapter 139, Subchapter C.~~

~~(m) An owner or operator of an affected EGU may not disrupt the continuous emission monitoring system or portion of it or other approved emission monitoring method to avoid monitoring and recording mercury mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing or maintenance is performed in accordance with the applicable provisions of this section, §§ 123.211—123.215 and Chapter 139, Subchapter C.~~

~~(n) An owner or operator of an affected EGU may not retire or permanently discontinue use of the continuous emission monitoring system or component of it or other approved monitoring system required under this section and §§ 123.211—123.215, except under either of the following circumstances:~~

~~—(1) The owner or operator is monitoring emissions from the affected EGU with another certified monitoring system that has been approved by the Department, in writing, for use at that EGU and that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system, in accordance with the applicable provisions of this section, §§ 123.211—123.215 and Chapter 139, Subchapter C.~~

~~—(2) The owner or operator submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 123.211(a)(5)(i) and a complete certification application in accordance with § 123.211(a)(5)(ii).~~

~~—(3) The owner or operator of an EGU that is using a continuous emission monitoring system or a sorbent trap system to continuously monitor mercury emissions under § 123.210(e)(1) (relating to general monitoring and reporting~~

requirements) and 40 CFR 75.81(a), may elect to comply with the methodology specified in § 123.210(e)(2) and 40 CFR 75.81(b) — (f).]

§ 123.211. [~~Initial certification and recertification procedures for emissions monitoring.~~] [Reserved].

[~~(a) By the applicable deadline specified in § 123.210 (f) — (h) (relating to general monitoring and reporting requirements), the owner or operator of an affected EGU shall comply with the following initial certification and recertification procedures for a continuous monitoring system (continuous emission monitoring system) and an excepted monitoring system (sorbent trap monitoring system) as required under 40 CFR 75.15 (relating to special provisions for measuring Hg mass emissions using the excepted sorbent trap monitoring methodology) and Chapter 139 (relating to sampling and testing):~~

~~—(1) The owner or operator of the EGU shall ensure that each continuous monitoring system required by the applicable provisions of § 123.210 successfully completes all of the initial certification testing required under 40 CFR 75.80(d) (relating to general provisions) and Chapter 139.~~

~~—(2) If the owner or operator of the EGU installs a monitoring system to meet the requirements of this section and § § 123.210 and 123.212 — 123.215 in a location where no monitoring system was previously installed, initial certification testing is required in accordance with the applicable provisions of 40 CFR 75.80(d) and Chapter 139.~~

~~—(3) If the owner or operator of the EGU makes a replacement, modification or change to a certified continuous emission monitoring system or excepted monitoring system (sorbent trap monitoring system) required by § 123.210 that may significantly affect the ability of the system to accurately measure or record mercury mass emissions or heat input rate or to meet the quality assurance and quality control requirements of 40 CFR 75.81 (relating to monitoring of Hg mass emissions and heat input at the unit level) or 40 CFR Part 75, Appendix B (relating to quality assurance and quality control procedures), the monitoring system for the EGU shall be recertified in accordance with 40 CFR 75.20(b) (relating to initial certification and recertification procedures) and Chapter 139.~~

~~—(4) If the owner or operator of the EGU makes a replacement, modification or change to the flue gas handling system or the operation of the EGU that may significantly change the stack gas flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system and each excepted monitoring system (sorbent trap monitoring system) whose accuracy is potentially affected by the change in accordance with 40 CFR 75.20(b) and Chapter 139.~~

~~—(5) This subsection applies to both the initial certification and recertification procedures of a continuous monitoring system required by § 123.210. 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 required under 40 CFR 75.20(b)(5) or Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources) as directed by the Department instead of the following procedures:~~

~~—(i) The owner or operator shall submit to the Department written notice of the dates of certification testing.~~

~~—(ii) The owner or operator shall submit to the Department a certification application for each monitoring system. A complete certification application must include the information specified in Chapter 139, Subchapter C.~~

~~—(iii) If the Department issues a notice of disapproval of a certification application or a notice of disapproval of certification status, the owner or operator shall:~~

~~—(A) Substitute, for each disapproved monitoring system, for each hour of EGU operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii) or 75.21(e) (relating to quality assurance and quality control requirements) and continuing until the applicable date and hour specified under 40 CFR 75.20(a)(5)(i), either the following values or, if approved by the Department in writing, an alternative emission value that is more representative of actual emissions that occurred during the period:~~

~~—(I) For a disapproved mercury pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of mercury and the maximum potential flow rate, as defined in 40 CFR Part 75, Appendix A, Sections 2.1.4.1 and 2.1.7.1 (relating to specifications and test procedures).~~

~~—(II) 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 40 CFR Part 75, Appendix A, Sections 2.1.3.1, 2.1.3.2 and 2.1.5.~~

~~—(III) For a disapproved excepted monitoring system (sorvent trap monitoring system) under 40 CFR 75.15 and disapproved flow monitor, respectively, the maximum potential concentration of mercury and maximum potential flow rate, as defined in 40 CFR Part 75, Appendix A, Sections 2.1.4.1 and 2.1.7.1.~~



~~—(B) Submit a notification of certification retest dates and a new certification application in accordance with subparagraphs (i) and (ii).~~

~~—(C) Repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Department's notice of disapproval, within the time period specified by the Department in the notice of disapproval.~~

~~-(b) The owner or operator shall submit a certification application to the Department within 45 calendar days after completing all initial certification or recertification tests required under this section.]~~

§ 123.212. ~~[Out-of-control periods for emissions monitors.]~~ [Reserved].

~~[(a) If an emissions monitoring system fails to meet the quality assurance and quality control requirements or data validation requirements of Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources), data for the demonstration of compliance with § 123.207 (relating to annual emission limitations for coal-fired EGUs) shall be substituted using the applicable missing data procedures in the *Continuous Source Monitoring Manual* (DEP 274-0300-001). If a mass emissions monitoring system fails to meet a quality assurance or quality control requirement, mass emissions data shall be substituted using the missing data procedures in 40 CFR Part 75, Subpart I (relating to Hg mass emission provisions).~~

~~-(b) If both an audit of a monitoring system and a review of the initial certification or recertification application reveal that a monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 123.210 (relating to general monitoring and reporting requirements) or the applicable provisions of 40 CFR Part 75 (relating to continuous emission monitoring), both at the time of the initial certification or recertification application submission and at the time of the audit, the Department will issue a notice of disapproval of the certification status of the monitoring system.~~

~~—(1) For the purposes of this subsection, an audit must be either a field audit or an audit of information submitted to the Department.~~

~~—(2) By issuing the notice of disapproval, the Department revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system will not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system.~~

~~—(3) The owner or operator shall follow the applicable initial certification or recertification procedures in § 123.210 for each disapproved monitoring system.]~~

§ 123.213. [~~Monitoring of gross electrical output.~~] [Reserved].

~~[The owner or operator of an EGU complying with the requirements of § 123.206(d) (relating to compliance requirements for the emission standards for coal-fired EGUs) using electrical output (O<sub>i</sub>) shall monitor gross O<sub>i</sub> of the associated generators and report in watt-hours per hour.]~~

§ 123.214. [~~Coal sampling and analysis for input mercury levels.~~] [Reserved].

~~[(a) Except as provided in § 123.210(c) (relating to general monitoring and reporting requirements), the owner or operator of an EGU complying with this section and §§ 123.201—123.213 and 123.215 shall:~~

~~—(1) Perform daily sampling of the coal combusted in the EGU for mercury content, in pounds per trillion Btu, as follows:~~

~~—(i) Collect coal samples from the feeders or other representative location in accordance with 40 CFR 63.7521(c) (relating to what fuel analyses and procedures must I use?).~~

~~—(ii) Composite coal samples in accordance with the requirements of 40 CFR 63.7521(d).~~

~~—(2) Analyze each of the composited coal samples for mercury content in accordance with the procedures of ASTM D 6414-01 or the current revision of this method, or other alternative as approved by the Department.~~

~~(b) The owner or operator of an EGU shall use the data collected from the sampling and analysis required under subsection (a) to determine the input mercury content of the coal combusted in the EGU in terms of pounds of mercury per trillion Btu.~~

~~(c) The Department may change the frequency of the sampling and analysis of the coal combusted in the EGU for the input mercury level based on historical data provided by the owner or operator of the EGU. The change in the frequency will be approved by the Department as a minor modification to the Title V operating permit.~~

~~(d) Upon the written request of an EGU owner or operator, the Department may approve, in writing, an alternate coal sampling and analysis program submitted by the owner or operator of the EGU to demonstrate compliance with this section and §§ 123.201—123.213 and 123.215.]~~

**§ 123.215. [~~Recordkeeping and reporting.~~] [Reserved].**

~~[(a) The owner or operator of an affected EGU shall comply with the recordkeeping and reporting requirements in this section and the applicable recordkeeping and reporting requirements of 40 CFR 75.84 (relating to recordkeeping and reporting) and Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources).~~

~~[(b) The owner or operator of an affected EGU complying with this section and §§ 123.201–123.214 through the requirements of § 123.206(d) (relating to compliance requirements for the emission standards for coal-fired EGUs) by using electrical output to determine the allowable emissions of the EGU shall maintain the daily gross electrical output in GWhs in the file required under 40 CFR 75.84(a).~~

~~[(c) The owner or operator of an affected EGU complying with this section and §§ 123.201–123.214 through the requirements of § 123.206(e) by using input mercury levels to determine the allowable emissions of the EGU shall maintain the daily mercury content of coal used in pounds of mercury per trillion Btu and the daily input mercury content in pounds in the file required under 40 CFR 75.84(a).~~

~~[(d) Except as provided in § 123.210(e) (relating to general monitoring and reporting requirements), the owner or operator of an affected EGU shall maintain records as follows:~~

~~—(1) Record the daily outlet mercury or output mercury data using the time period appropriate to the excepted monitoring system (sorbent trap monitoring system).~~

~~—(2) If using an averaging methodology, record all other information collected on a daily basis necessary to calculate the average.~~

~~—(3) Record for each control period the method through which each EGU demonstrated compliance.~~

~~—(4) For an owner or operator who uses the averaging option of § 123.206(a)(2), calculate and record:~~

~~—(i) The monthly actual mercury emissions within 30 days of the end of each month.~~

~~—(ii) The 12-month rolling actual emissions each month.~~

~~—(5) Maintain the following records onsite:~~

~~—(i) The results of quarterly assessments conducted under 40 CFR Part 75, Appendix B, Section 2.2 (relating to quality assurance and quality control procedures).~~

~~—(ii) Daily/weekly system integrity checks under 40 CFR Part 75, Appendix B, Section 2.6.~~

~~—(iii) Quality assurance records as required by the *Continuous Source Monitoring Manual* (DEP 274-0300-001).~~

~~—(6) Make available to the Department upon request the records required under paragraph (5).~~

~~—(e) The owner or operator shall submit quarterly reports to the Department in accordance with the *Continuous Source Monitoring Manual* (DEP 274-0300-001).]~~



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF POLICY

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO  
THE REGULATORY REVIEW ACT

I.D. NUMBER: 7-405

SUBJECT: Mercury Emissions: Repeal

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- ☐ Proposed Regulation
- ☐ Final Regulation
- ☒ Final Regulation with Notice of Proposed Rulemaking Omitted
- ☐ 120-day Emergency Certification of the Attorney General
- ☐ 120-day Emergency Certification of the Governor
- ☐ Delivery of Tolled Regulation
- a. ☐ With Revisions      b. ☐ Without Revisions

RECEIVED  
IRRC  
200 SEP 17 P 3:00

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

9-17-10 D. Neust

Majority Chair, HOUSE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY

9-17-10 M. Watters

Minority Chair, HOUSE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY

9-17-10 B. Casella

Majority Chair, SENATE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY

9-17-10 A. Rybarczyk

Minority Chair, SENATE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY

9-17-10 J. Helmer

INDEPENDENT REGULATORY REVIEW COMMISSION

9-17-10 M. Mummert

ATTORNEY GENERAL (for Final Omitted only)

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LEGISLATIVE REFERENCE BUREAU (for Proposed only)

