

(3) (I) A DECISION BY THE DEPARTMENT TO REDUCE OR WAIVE ANY PENALTY UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL BE SUBJECT TO JUDICIAL REVIEW BY ANY PERSON WHO MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER FEDERAL CONSTITUTIONAL LAW.

(II) ANY ACTION TO REDUCE OR WAIVE ANY PENALTY UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL REMAIN IN EFFECT UNTIL JUDICIAL REVIEW IS FINAL.

~~(4) (J) (1) IF THE U.S. ENVIRONMENTAL PROTECTION AGENCY ALLOCATES EMISSION ALLOWANCES FOR MERCURY, SULFUR DIOXIDE, OR OXIDES OF NITROGEN TO THE STATE, THE ALLOWANCES SHALL BE TREATED AS FOLLOWS: AS PROVIDED IN THIS SUBSECTION.~~

~~(1) (2) A MERCURY ALLOWANCE MAY NOT BE ALLOCATED TO ANY PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS AN AFFECTED FACILITY OR OTHER SOURCE OF MERCURY EMISSIONS INTO THE ATMOSPHERE OR MERCURY DISCHARGES INTO THE WATERS OF THE STATE.~~

~~(2) (3) (1) THE DEPARTMENT SHALL HOLD ALL MERCURY ALLOWANCES ALLOCATED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY TO THE STATE.~~

~~(II) AT THE END OF EACH CALENDAR YEAR, THE DEPARTMENT SHALL INSTRUCT THE U.S. ENVIRONMENTAL PROTECTION AGENCY TO RETIRE PERMANENTLY THE ALLOWANCES.~~

~~(3) (4) THE DEPARTMENT SHALL ENSURE THAT ANY EMISSION ALLOWANCES FOR SULFUR DIOXIDE OR OXIDES OF NITROGEN ALLOCATED BY THE DEPARTMENT FOR AN AFFECTED FACILITY TO ANY PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS AN AFFECTED FACILITY FOR EMISSIONS ABOVE THE EMISSIONS LIMITATIONS ESTABLISHED UNDER SUBSECTIONS (A) THROUGH (D) OF THIS SECTION MAY NOT BE MADE AVAILABLE FOR RESALE OR EXCHANGE.~~

(2) THE DEPARTMENT:

(I) MAY NOT ALLOW THE APPLICATION OF ALLOWANCES TO THE COMPLIANCE OF ANY AFFECTED FACILITY WITH THE EMISSIONS LIMITATIONS ESTABLISHED UNDER SUBSECTIONS (A) THROUGH (D) OF THIS SECTION; BUT

(II) MAY ALLOW THE ALLOWANCES TO BE SOLD OR TRADED TO FACILITIES OUTSIDE THE STATE IN ACCORDANCE WITH ALLOWANCE TRADING PROGRAMS OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY.

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(A) BEGINNING DECEMBER 1, 2007, AND EACH YEAR THEREAFTER, A PERSON ~~WHO~~ THAT OWNS, LEASES, OPERATES, OR CONTROLS AN AFFECTED FACILITY SHALL SUBMIT TO THE DEPARTMENT, THE DEPARTMENT OF NATURAL RESOURCES, AND THE PUBLIC SERVICE COMMISSION, A REPORT THAT INCLUDES: