

COMPLIANCE UNTIL THE SUPPLY OF POLLUTION CONTROL EQUIPMENT BECOMES AVAILABLE SO AS TO REASONABLY LOWER THE COST OF THE POLLUTION CONTROL EQUIPMENT.

(III) IN DETERMINING WHETHER TO REDUCE OR WAIVE ANY PENALTY UNDER THIS PARAGRAPH, THE DEPARTMENT SHALL CONSULT WITH THE PUBLIC SERVICE COMMISSION AS TO THE AVAILABILITY AND COST OF THE POLLUTION CONTROL EQUIPMENT.

(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.

(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 PROVIDED IN THIS SUBSECTION.

(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.

2-1003.

(A) BEGINNING DECEMBER 1, 2007, AND EACH YEAR THEREAFTER, A PERSON 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:

(1) EMISSIONS PERFORMANCE RESULTS RELATED TO COMPLIANCE WITH THE EMISSIONS REQUIREMENTS UNDER § 2-1002 OF THIS SUBTITLE;

(2) THE NUMBER OF POUNDS OF OXIDES OF NITROGEN, SULFUR DIOXIDE, MERCURY, AND CARBON DIOXIDE EMITTED DURING THE PREVIOUS CALENDAR YEAR FROM THE AFFECTED FACILITY;

(3) A CURRENT COMPLIANCE PLAN; AND

(4) ANY OTHER INFORMATION REQUESTED BY THE DEPARTMENT.

(B) THE DEPARTMENT SHALL REVIEW THE INFORMATION SUBMITTED UNDER THIS SECTION TO DETERMINE WHETHER THE ACTUAL AND PROPOSED