

WISCONSIN LEGISLATIVE COUNCIL STAFF

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FORM 2

APR 30 1999

**RULES CLEARINGHOUSE**

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 99-068**

AN ORDER to renumber NR 484.04 (28); to amend NR 428.01 (1), 428.02 (intro.) and 484.04 (13); and to create NR 428.01 (2) Note, 428.02 (1) to (71), subchapters I to IX of chapter NR 428 and 484.04 (28) to (32), relating to a response to U.S. EPA's nitrogen oxides (NOx) emission reduction requirements under its NOx SIP call to reduce ozone transport.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

04-01-99 RECEIVED BY LEGISLATIVE COUNCIL.

04-29-99 REPORT SENT TO AGENCY.

RNS:JES:kjf;jal

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

## 1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES NO 

## 2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES NO 

## 3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES NO 4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached

YES NO 

## 5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES NO 6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES NO 

## 7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

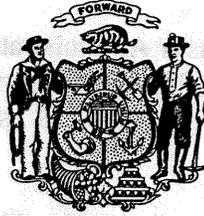
YES NO

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## CLEARINGHOUSE RULE 99-068

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 1. Statutory Authority

Section NR 428.04 (2) states that the department authorizes the administrator to assist the department in implementing the NOx budget trading program by carrying out the functions set forth for the administrator in ch. NR 428. The rule also contains numerous provisions that assign responsibilities to the administrator of the U.S. Environmental Protection Agency. See, for example, the requirement in s. NR 428.25 (1) that the administrator will establish the specified compliance and overdraft accounts.

The authority for the department to make this authorization and assign these responsibilities is not apparent. These provisions seem to reflect a delegation by the department to the administrator that are not explicitly supported by the statutes cited in the analysis accompanying the rule as authorizing the rule or statutes being interpreted by the rule. If the department intends for the rule to set forth how the state regulatory program will mesh with the federal regulatory program for NOx budget trading program, then one alternative would be to place references to portions of the program implemented under federal regulations in notes to the rule.

#### 2. Form, Style and Placement in Administrative Code

a. Since the definition of "acid rain emissions limitation" in s. NR 428.02 (3) references another definition of this term in s. NR 409.02 (2), it is neither necessary nor the preferred

drafting style to also include the text of the definition in addition to the cross-reference in s. NR 428.02 (3). If the department wishes to assist the reader of the rule, it could include the text in a note following the definition.

b. If a chapter of the Wisconsin Administrative Code is divided into subchapters, then the preferred drafting style is to place all provisions in the chapter within subchapters. This style was not followed in the treatment of ch. NR 428 as the rule begins subch. I at s. NR 428.04 rather than s. NR 428.01.

c. In s. NR 428.06 (4), sub. (4) (a) should be sub. (4) (intro.) and subs. 1. and 2. should be pars. (a) and (b).

d. The note accompanying s. NR 428.25 should follow or be included within that section rather than precede it. [See s. 1.09 (1), Manual.]

e. In s. NR 428.40, sub. (1) (intro.) should be par. (a) and pars. (a) and (b) should be pars. (b) and (c). [See the format for sub. (2).]

f. In s. NR 428.46 (6), "will" should be changed to "shall" for consistency with sub. (7).

### **3. Conflict With or Duplication of Existing Rules**

Section NR 428.04 (3) states that requirements of ch. NR 428 supplement, and in some cases modify, the requirements under chs. NR 406 and 407 as these requirements apply to sources subject to the NOx budget program. To assist readers of the rule in understanding how the provisions in ch. NR 428 may modify requirements under chs. NR 406 and 407, the department should consider identifying these modifications as exceptions to the requirements in chs. NR 406 and 407.

### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. The department should review the following vague references and, as appropriate, clarify them:

(1) The "United States department of energy standards" in s. PSC 428.02 (35).

(2) The "department's title V operation permits regulations" and the applicable provisions in these regulations, including "operation permit shield" and "operation permit issuance," in s. NR 428.13 (1) (a).

(3) The "department's regulations promulgated to administer non-title V permits" and the applicable provisions in these regulations, including "permit duration" and "permit revision," in s. NR 428.13 (1) (b).

(4) The “applicable, approved state of Wisconsin implementation plan” in s. NR 428.06 (7).

b. The treatment clause to SECTION 7 refers to “Board Order Am-53-98.” Does this order have a clearinghouse number? If so, it should be cited.

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. NR 428.15 (1), the abbreviation “FID” is not defined.

b. Section NR 428.22 (1) indicates that the NOx allowance allocations for the control periods in 2003, 2004 and 2005 are listed in tables 1 and 2. Table 1 indicates that the electric utility core source NOx base allocations will be 95% of the total allocations for electric utility core sources in 2003 and 2004 and 98% in 2005. Large industrial core sources are similarly allocated for those three years in table 2. The department should review these allocations to ensure that they are consistent with the allocations under s. NR 428.23 (2) (intro.) and (3) (intro.) as these latter two provisions indicate that 95% of the NOx allowances for electric generating units and nonelectric generating units will be allocated to the corresponding existing units in 2005.

c. The period at the end of s. NR 428.36 (2) (intro.) should be a colon.

d. The period at the end of s. NR 428.39 (4) (b) 2. d. should be “; or” to have consistent punctuation with the list of subparagraphs under subd. 2.

43. EPA req 13

ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD  
RENUMBERING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to renumber NR 484.04(28), to amend NR 428.01(1), 428.02 (intro.), 484.04(13), and to create NR 428.01(2) Note, NR 428.02(1) to (71), NR 428 subchapters I to IX and 484.04(28) to (32) in response to U.S. EPA's nitrogen oxides (NO<sub>x</sub>) emission reduction requirements under its NO<sub>x</sub> SIP Call to Reduce Ozone Transport.

AM-15-99

Analysis Prepared by the Department of Natural Resources

Authorizing statutes: ss. 227.11(2)(a) and 285.11(1), Stats.

Statutes interpreted: s. 285.11(6), Stats. The State Implementation Plan developed under that provision is revised.

U.S. EPA required states to adopt new regulations in response to its NO<sub>x</sub> SIP Call to Reduce Ozone Transport. The SIP call established a nitrogen oxides (NO<sub>x</sub>) emissions budget for Wisconsin (and 21 other states) and gave the state some discretion as to how the reductions in NO<sub>x</sub> emissions would be achieved. EPA established the emissions budget by assuming the application of "highly cost-effective" controls on large NO<sub>x</sub> emission sources. The department identified the sources required to reduce their NO<sub>x</sub> emissions and worked extensively with stakeholders (e.g., electric utilities, Wisconsin Paper Council, Wisconsin Manufacturers and Commerce, environmental groups, other state agencies) to develop control programs for these source categories.

4. (1m) (1)

The proposed revisions to the state nitrogen oxides emission control program incorporate the provisions of EPA's model NO<sub>x</sub> emissions trading rule (40 CFR part 96) as well as additional provisions of 40 CFR Parts 72 and 75 into the Wisconsin Administrative Code. Except for the conversion of the federal text into state numbering and writing style (including terminology), federal formatting is followed pursuant to s. 227.14(1m) Stats., and the proposed provisions of the state nitrogen oxides emission reduction program are identical to the corresponding federal rule language. In this way the state version of the nitrogen oxides emission reduction program is neither more stringent nor less stringent than the federal nitrogen oxides emission reduction program.

The most significant feature of the proposed rule is the effect of subchapter V, NO<sub>x</sub> Allowance Allocations. Affected sources are allocated a fixed number of tons of allowable nitrogen oxides emissions (NO<sub>x</sub>) for each ozone season (May 1 through September 30), which effectively determines the required level of NO<sub>x</sub> emission reduction for each ozone season.

SECTION 1. NR 428.01(1) and (2) are amended to read:

NR 428.01(1) APPLICABILITY. This chapter applies to all air contaminant sources which emit nitrogen compounds and to their owners and

4. Ref. provisions?  
operators. All references to the code of federal regulations in this chapter mean those parts or provisions as in effect on the effective date of this section... [revisor inserts date], except that in the case of CFR appendices incorporated by reference in ch. NR 484, if a more recent date is specified in the applicable section of ch. NR 484, that date shall apply.

SECTION 2. NR 428.01(2) Note is created to read:

NR 428.01(2) Note: Except for ss. NR 428.01 and 428.03, this chapter is based on federal regulations contained in 40 CFR 72.2 and part 96 as last revised on October 27, 1998.

SECTION 3. NR 428.02 (intro.) is amended to read:

NR 428.02 (intro.) The definitions contained in ~~ch.~~ chs. NR 400, 406 and 407 apply to the terms used in this chapter. In addition, the following definitions apply to the terms used in this chapter:

SECTION 4. NR 428.02(1) to (71) are created to read:

4. NOx specific / NOx (NO2 (x))  
NR 428.02(1) "Account certificate of representation" means the completed and signed submission required by subch. II for certifying the designation of a NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> budget source or a group of identified NO<sub>x</sub> budget sources who is authorized to represent the owners and operators of such source or sources and of the NO<sub>x</sub> budget units at such source or sources with regard to matters under the NO<sub>x</sub> budget trading program.

(2) "Account number" means the identification number given by the administrator to each NO<sub>x</sub> allowance tracking system account.

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(3) "Acid rain emissions limitation" means, as defined in s. NR 409.02(2), a limitation on emissions of sulfur dioxide or nitrogen oxides under the acid rain program under title IV of the act and ch. NR 409.

(4) "Act" means the federal clean air act as amended November 15, 1990, 42 USC 7401 to 7671q.

(5) "Administrator" means the administrator of the United States

environmental protection agency or the administrator's duly authorized representative.

(6) "Allocate" or "allocation" means the determination by the department or the administrator of the number of NO<sub>x</sub> allowances to be initially credited to a NO<sub>x</sub> budget unit or an allocation set-aside.

(7) "Automated data acquisition and handling system" or "DAHS" means that component of the CEMS, or other emissions monitoring system approved for use under subpart H of 40 CFR part 96, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart H of 40 CFR part 96.

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

(9) "Combined cycle system" means a system comprised of one or more combustion turbines, heat recovery steam generators and steam turbines configured to improve overall efficiency of electricity generation or steam production.

(10) "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(11) "Commence commercial operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in s. NR 428.05, for a unit that is a NO<sub>x</sub> budget unit under s. NR 428.04 on the date the unit commences commercial operation, the date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed or repowered. Except as provided in s. NR 428.05 or subch. IX, for a unit that is not a NO<sub>x</sub> budget

unit under s. NR 428.04 on the date the unit commences commercial operation, the date the unit becomes a NO<sub>x</sub> budget unit under s. NR 428.04 shall be the unit's date of commencement of commercial operation.

(12) "Commence operation" means to have begun any mechanical, chemical or electronic process, including, with regard to a unit, startup of a unit's combustion chamber. Except as provided in s. NR 428.05, for a unit that is a NO<sub>x</sub> budget unit under s. NR 428.04 on the date of commencement of operation, the date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed or repowered. Except as provided in s. NR 428.05 or subch. IX, for a unit that is not a NO<sub>x</sub> budget unit under s. NR 428.04 on the date of commencement of operation, the date the unit becomes a NO<sub>x</sub> budget unit under s. NR 428.04 shall be the unit's date of commencement of operation.

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

(14) "Compliance certification" means a submission to the department or the administrator, as appropriate, that is required under subch. IV to report a NO<sub>x</sub> budget source's or a NO<sub>x</sub> budget unit's compliance or noncompliance with this chapter and that is signed by the NO<sub>x</sub> authorized account representative in accordance with subch. II.

(15) "Compliance account" means a NO<sub>x</sub> allowance tracking system account, established by the administrator for a NO<sub>x</sub> budget unit as described under subch. VI, in which the NO<sub>x</sub> allowance allocations for the unit are initially recorded and in which are held NO<sub>x</sub> allowances available for use by the unit for a control period for the purpose of meeting the unit's NO<sub>x</sub> budget emissions limitation.

(16) "Continuous emission monitoring system" or "CEMS" means the equipment required under subch. VIII to sample, analyze, measure and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included,

consistent with 40 CFR part 75, in a continuous emission monitoring system:

- (a) Flow monitor;
- (b) Nitrogen oxides pollutant concentration monitors;
- (c) Diluent gas monitor (oxygen or carbon dioxide) when monitoring is required by subch. VIII;
- (d) A continuous moisture monitor when monitoring is required by subch. VIII; and
- (e) An automated data acquisition and handling system.

(17) "Control period" means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(18) "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded and reported to the administrator by the NO<sub>x</sub> authorized account representative and as determined by the administrator in accordance with subch. VIII.

(19) "Energy information administration" means the energy information administration of the United States department of energy.

(20) "Excepted monitoring system" means a monitoring system that follows the procedures and requirements of 40 CFR 75.19, or of Appendix D or E to 40 CFR part 75, incorporated by reference in s. NR 484.04, for approved exceptions to the use of continuous emission monitoring systems.

(21) "Excess emissions" means any tonnage of nitrogen oxides emitted by a NO<sub>x</sub> budget unit during a control period that exceeds the NO<sub>x</sub> budget emissions limitation for the unit.

(22) "Fossil fuel" means natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from these materials.

(23) "Fossil fuel-fired" means, with regard to a unit:

- (a) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

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(b) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50% of the annual heat input on a Btu basis during any year; provided that the unit shall be "fossil fuel-fired" as of the date, during the year, on which the unit begins combusting fossil fuel.

(24) "General account" means a NO<sub>x</sub> allowance tracking system account, established under subch. VI, that is not a compliance account or an overdraft account.

(25) "Generator" means a device that produces electricity.

(26) "Heat input" means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded and reported to the administrator by the NO<sub>x</sub> authorized account representative and as determined by the administrator in accordance with subch. VIII, and does not include the heat derived from preheated combustion air, recirculated flue gases or exhaust from other sources.

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

(a) For the life of the unit;

(b) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(c) For a period equal to or greater than 25 years or 70% of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(28) "Low mass emissions unit" means a unit that is a gas-fired or oil-fired unit, burns only natural gas or fuel oil and qualifies under 40 CFR

75.19.

(29) "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

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(30) "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of 40 CFR part 75, incorporated by reference in s. NR 484.04, to report heat input, this value shall be calculated, in accordance with 40 CFR part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value shall be reported, in accordance with 40 CFR part 75, using the maximum potential flow rate and either the maximum carbon dioxide concentration (in percent CO<sub>2</sub>) or the minimum oxygen concentration (in percent O<sub>2</sub>).

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(31) "Maximum potential NO<sub>x</sub> emission rate" means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of 40 CFR part 75, incorporated by reference in s. NR 484.04, using the maximum potential nitrogen oxides concentration as defined in section 2 of appendix A of 40 CFR part 75, incorporated by reference in s. NR 484.04, and either the maximum oxygen concentration (in percent O<sub>2</sub>) or the minimum carbon dioxide concentration (in percent CO<sub>2</sub>), under all operating conditions of the unit except for unit startup, shutdown and upsets.

(32) "Maximum rated hourly heat input" means a unit-specific maximum hourly heat input (mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

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(33) "Monitoring system" means any monitoring system that meets the requirements of subch. VIII, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

(34) "Most stringent state or federal NO<sub>x</sub> emissions limitation" means, with regard to a NO<sub>x</sub> budget opt-in source, the lowest NO<sub>x</sub> emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under state or federal

law, regardless of the averaging period to which the emissions limitation applies.

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(35) "Nameplate capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States department of energy standards.

(36) "Non-title V permit" means a federally enforceable permit administered by the department pursuant to the act and regulatory authority under the act, other than title V of the act and 40 CFR part 70 or 71.

(37) "NO<sub>x</sub> allowance" means an authorization by the department or the administrator under the NO<sub>x</sub> budget trading program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter.

(38) "NO<sub>x</sub> allowance deduction" or "deduct NO<sub>x</sub> allowances" means the permanent withdrawal of NO<sub>x</sub> allowances by the administrator from a NO<sub>x</sub> allowance tracking system compliance account or overdraft account to account for the number of tons of NO<sub>x</sub> emissions from a NO<sub>x</sub> budget unit for a control period, determined in accordance with subch. VIII, or for any other allowance surrender obligation under this chapter.

(39) "NO<sub>x</sub> allowances held" or "hold NO<sub>x</sub> allowances" means the NO<sub>x</sub> allowances recorded by the administrator, or submitted to the administrator for recordation, in accordance with subchs. VI and VII, in a NO<sub>x</sub> allowance tracking system account.

(40) "NO<sub>x</sub> allowance tracking system" means the system by which the administrator records allocations, deductions and transfers of NO<sub>x</sub> allowances under the NO<sub>x</sub> budget trading program.

(41) "NO<sub>x</sub> allowance tracking system account" means an account in the NO<sub>x</sub> allowance tracking system established by the administrator for purposes of recording the allocation, holding, transferring or deducting of NO<sub>x</sub> allowances.

(42) "NO<sub>x</sub> allowance transfer deadline" means midnight of November 30 or,

if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO<sub>x</sub> allowances shall be submitted for recordation in a NO<sub>x</sub> budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO<sub>x</sub> budget emissions limitation for the control period immediately preceding the deadline.

(43) "NO<sub>x</sub> authorized account representative" means, for a NO<sub>x</sub> budget source or NO<sub>x</sub> budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO<sub>x</sub> budget units at the source, in accordance with subch. II, to represent and legally bind each owner and operator in matters pertaining to the NO<sub>x</sub> budget trading program or, for a general account, the natural person who is authorized, in accordance with subch. VI, to transfer or otherwise dispose of NO<sub>x</sub> allowances held in the general account.

(44) "NO<sub>x</sub> budget emissions limitation" means, for a NO<sub>x</sub> budget unit, the tonnage equivalent of the NO<sub>x</sub> allowances available for compliance deduction for the unit and for a control period under s. NR 428.28(1) and (2), adjusted by any deductions of NO<sub>x</sub> allowances to account for actual utilization under s. NR 428.23(5) for the control period or to account for excess emissions for a prior control period under s. NR 428.28(4) or to account for withdrawal from the NO<sub>x</sub> budget program, or for a change in regulatory status, for a NO<sub>x</sub> budget opt-in source under s. NR 428.48 or 428.49.

(45) "NO<sub>x</sub> budget opt-in permit" means a NO<sub>x</sub> budget permit covering a NO<sub>x</sub> budget opt-in source.

(46) "NO<sub>x</sub> budget opt-in source" means a unit that has been elected to become a NO<sub>x</sub> budget unit under the NO<sub>x</sub> budget trading program and whose NO<sub>x</sub> budget opt-in permit has been issued and is in effect under subch. IX.

(47) "NO<sub>x</sub> budget permit" means the legally binding and federally enforceable written document, or portion of the document, issued by the department under this chapter, including any permit revisions, specifying the NO<sub>x</sub> budget trading program requirements applicable to a NO<sub>x</sub> budget source, to

each NO<sub>x</sub> budget unit at the NO<sub>x</sub> budget source, and to the owners and operators and the NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit.

(48) "NO<sub>x</sub> budget source" means a source that includes one or more NO<sub>x</sub> budget units.

(49) "NO<sub>x</sub> budget trading program" means a multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this chapter and pursuant to 40 CFR 51.121, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

(50) "NO<sub>x</sub> budget unit" means a unit that is subject to the NO<sub>x</sub> budget trading program emissions limitation under s. NR 428.04 or 428.42.

(51) "Operating" means, with regard to a unit under ss. NR 428.15(4)(b) and 428.42, having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NO<sub>x</sub> budget permit under s. NR 428.45(1).

(52) "Operator" means any person who operates, controls or supervises a NO<sub>x</sub> budget unit, a NO<sub>x</sub> budget source, or unit for which an application for a NO<sub>x</sub> budget opt-in permit under s. NR 428.45 is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system or plant manager of a NO<sub>x</sub> budget unit or source.

(53) "Opt-in" means to be elected to become a NO<sub>x</sub> budget unit under the NO<sub>x</sub> budget trading program through a final, effective NO<sub>x</sub> budget opt-in permit under subch. IX.

(54) "Overdraft account" means the NO<sub>x</sub> allowance tracking system account, established by the administrator under subch. VI, for each NO<sub>x</sub> budget source where there are 2 or more NO<sub>x</sub> budget units.

(55) "Owner" means any of the following persons:

(a) Any holder of any portion of the legal or equitable title in a NO<sub>x</sub> budget unit or in a unit for which an application for a NO<sub>x</sub> budget opt-in permit under s. NR 428.45 is submitted and not denied or withdrawn; or

(b) Any holder of a leasehold interest in a NO<sub>x</sub> budget unit or in a unit

for which an application for a NO<sub>x</sub> budget opt-in permit under s. NR 428.45 is submitted and not denied or withdrawn; or

(c) Any purchaser of power from a NO<sub>x</sub> budget unit or from a unit for which an application for a NO<sub>x</sub> budget opt-in permit under s. NR 428.45 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner does not include a passive lessor, or a person who has an equitable interest through a passive lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO<sub>x</sub> budget unit or the unit for which an application for a NO<sub>x</sub> budget opt-in permit under s. NR 428.45 is submitted and not denied or withdrawn; or

(d) With respect to any general account, any person who has an ownership interest with respect to the NO<sub>x</sub> allowances held in the general account and who is subject to the binding agreement for the NO<sub>x</sub> authorized account representative to represent that person's ownership interest with respect to NO<sub>x</sub> allowances.

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

(57) "Recordation", "record", or "recorded" means, with regard to NO<sub>x</sub> allowances, the movement of NO<sub>x</sub> allowances by the administrator from one NO<sub>x</sub> allowance tracking system account to another, for purposes of allocation, transfer or deduction.

(58) "Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in appendix A of 40 CFR part 60, incorporated by reference in s. NR 484.04.

(59) "Serial number" means, when referring to NO<sub>x</sub> allowances, the unique identification number assigned to each NO<sub>x</sub> allowance by the administrator

under s. NR 428.27(3).

(60) "Source" means any governmental, institutional, commercial or industrial structure, installation, plant, building or facility that emits or has the potential to emit any regulated air pollutant under the act. For purposes of section 502(c) of the act, a "source," including a "source" with multiple units, shall be considered a single "facility."

(61) "State trading program budget" means the total number of NO<sub>x</sub> tons apportioned to all NO<sub>x</sub> budget units in the state, in accordance with the NO<sub>x</sub> budget trading program, for use in a given control period.

(62) "Submit or serve" means to send or transmit a document, information or correspondence to the person specified in accordance with the applicable regulation:

- (a) In person;
- (b) By United States postal service; or
- (c) By other means of dispatch or transmission and delivery. Compliance with any "submission," "service" or "mailing" deadline shall be determined by the date of dispatch, transmission or mailing and not the date of receipt.

(63) "Title V operation permit" means a permit issued under title V of the act and 40 CFR part 70 or part 71.

(64) "Title V operation permit regulations" means the regulations that the administrator has approved or issued as meeting the requirements of title V of the act and 40 CFR part 70 or 71.

(65) "Ton" or "tonnage" means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the NO<sub>x</sub> budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with subch. VIII, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

(66) "Unit" means a fossil fuel-fired stationary boiler, combustion turbine or combined cycle system.

(67) "Unit load" means the total (i.e., gross) output of a unit in any control period, or other specified time period, produced by combusting a given heat input of fuel, expressed in terms of:

(a) The total electrical generation (MWe) produced by the unit, including generation for use within the plant; or

(b) In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit, including steam for use by the unit.

(68) "Unit operating day" means a calendar day in which a unit combusts any fuel.

(69) "Unit operating hour" or "hour of unit operation" means any hour, or fraction of an hour, during which a unit combusts any fuel.

(70) "Utilization" means the heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year will be determined in accordance with 40 CFR part 75 if the NO<sub>x</sub> budget unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the administrator for the unit if the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year.

SECTION 5. NR 428 subchs. I to IX are created to read: *sub. title?*

NR 428 SUBCHAPTER I

NO<sub>x</sub> BUDGET TRADING PROGRAM GENERAL PROVISIONS

NR 428.04 APPLICABILITY; PURPOSE; AND SCOPE. (1) APPLICABILITY. (a)

The following units shall be NO<sub>x</sub> budget units, and any source that includes one or more NO<sub>x</sub> budget units shall be a NO<sub>x</sub> budget source, subject to the requirements of this chapter:

1. Any unit that, any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MWe and sells any amount of electricity; or
2. Any unit that is not a unit under subd. 1. and that has a maximum

design heat input greater than 250 mmBtu/hr.

(b) Notwithstanding par. (a), a unit under par. (a) shall be subject only to the requirements of pars. (c) to (e) if the unit has a federally enforceable permit that meets the requirements of par. (c) and restricts the unit to burning only natural gas or fuel oil during a control period in 2003 or later and each control period thereafter and restricts the unit's operating hours during each control period to the number of hours, determined in accordance with par. (c)2. and 3., that limits the unit's potential NO<sub>x</sub> mass emissions for the control period to 25 tons or less. Notwithstanding par. (a), starting with the effective date of the federally enforceable permit, the unit may not be treated as a NO<sub>x</sub> budget unit.

(c) For each control period under par. (b), the federally enforceable permit must:

1. Restrict the unit to burning only natural gas or fuel oil.
2. Restrict the unit's operating hours to the number calculated by dividing 25 tons of potential NO<sub>x</sub> mass emissions by the unit's maximum potential hourly NO<sub>x</sub> mass emissions.

3. Require that the unit's potential NO<sub>x</sub> mass emissions shall be calculated as follows:

- a. Select the default NO<sub>x</sub> emission rate in Table 2 of 40 CFR 75.19(c)(1)(ii) that would otherwise be applicable assuming that the unit burns only the type of fuel, i.e., only natural gas or only fuel oil, that has the highest default NO<sub>x</sub> emission factor of any type of fuel that the unit is allowed to burn under the fuel use restriction in subd. 1.; and

- b. Multiply the default NO<sub>x</sub> emission rate under subpar. a. by the unit's maximum rated hourly heat input. The owner or operator of the unit may petition the department to use a lower value for the unit's maximum rated hourly heat input than the value as defined in s. NR 428.02(32). The department may approve a lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the

highest observed hourly heat input, or both, are not representative, and that the lower value is representative of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently.

4. Require that the owner or operator of the unit shall retain at the source that includes the unit, for 5 years, records demonstrating that the operating hours restriction, the fuel use restriction and the other requirements of the permit related to these restrictions were met.

5. Require that the owner or operator of the unit shall report the unit's hours of operation, treating any partial hour of operation as a whole hour of operation, during each control period to the department by November 1 of each year for which the unit is subject to the federally enforceable permit.

(d) The department, in issuing a federally enforceable permit with the fuel use restriction under par. (c)1. and the operating hours restriction under par. (c)2. and 3., shall notify the administrator in writing of each unit under par. (a) whose federally enforceable permit issued by the department includes these restrictions. The department shall also notify the administrator in writing of each unit under par. (a) whose federally enforceable permit issued by the department is revised to remove any of these restrictions, whose federally enforceable permit issued by the department includes any of these restrictions that is no longer applicable, or which does not comply with any of these restrictions.

(e) If, for any control period under par. (b), the fuel use restriction under par. (c)1. or the operating hours restriction under par. (c)2. and 3. is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable or if, for any control period, the unit does not comply with the fuel use restriction under par. (c)1. or the operating hours restriction under par. (c)2. and 3., the unit shall be a NO<sub>x</sub> budget unit, subject to the requirements of this chapter. The unit shall be treated as commencing operation and, for a unit under par. (a)1., commencing commercial operation on

September 30 of the control period for which the fuel use restriction or the operating hours restriction is no longer applicable or during which the unit does not comply with the fuel use restriction or the operating hours restriction.

(2) PURPOSE. This subchapter establishes general provisions and the applicability provisions for the NO<sub>x</sub> budget trading program for the state of Wisconsin as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor. The department authorizes the administrator to assist the department in implementing the NO<sub>x</sub> budget trading program by carrying out the functions set forth for the administrator in this chapter.

*Authority*

(3) SCOPE. The regulations under this chapter set forth certain generally applicable provisions under the NO<sub>x</sub> budget trading program. The regulations also set forth requirements for obtaining and revising the NO<sub>x</sub> budget portion of an operation permit issued by the department. The requirements under this chapter supplement, and in some cases modify, the requirements under chs. NR 406 and 407 as these requirements apply to sources subject to the NO<sub>x</sub> budget program.

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NR 428.05 RETIRED UNIT EXEMPTION. (1) APPLICABILITY. This section applies to any NO<sub>x</sub> budget unit, other than a NO<sub>x</sub> budget opt-in source, that is permanently retired.

(2) SCOPE OF EXEMPTION. (a) Any NO<sub>x</sub> budget unit, other than a NO<sub>x</sub> budget opt-in source, that is permanently retired shall be exempt from the NO<sub>x</sub> budget trading program of this chapter, except for the provisions of this section, ss. NR 428.02, 428.04 and 428.07, and subchs. V, VI and VII.

(b) The exemption under par. (a) shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NO<sub>x</sub> authorized account representative, authorized in accordance with subch. II, shall submit a statement to the department. A copy of the statement shall

be submitted to the administrator. The statement shall state, in a format prescribed by the department, that the unit is permanently retired and will comply with the requirements of sub. (3).

(c) After receipt of the notice under par. (b), the department shall amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under par. (a) and sub. (3).

(3) SPECIAL PROVISIONS. (a) Allowances. A unit exempt under this section may not emit any nitrogen oxides, starting on the date that the exemption takes effect. The owners and operators of the unit shall be allocated allowances in accordance with subch. V.

(b) Resumption of operation. 1. A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a title V operation permit may not resume operation unless the NO<sub>x</sub> authorized account representative of the source submits a complete NO<sub>x</sub> budget permit application under s. NR 428.15 for the unit not less than 18 months prior to the later of May 1, 2003 or the date on which the unit is to first resume operation.

2. A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a non-title V permit may not resume operation unless the NO<sub>x</sub> authorized account representative of the source submits a complete NO<sub>x</sub> budget permit application under s. NR 428.15 for the unit not less than 18 months prior to the later of May 1, 2003 or the date on which the unit is to first resume operation.

(c) Requirement to comply. The owners and operators and, to the extent applicable, the NO<sub>x</sub> authorized account representative of a unit exempt under this section shall comply with the requirements of the NO<sub>x</sub> budget trading program concerning all periods for which the exemption is not in effect, even if the requirements arise, or must be complied with, after the exemption takes effect.

(d) NO<sub>x</sub> budget opt-in source eligibility. A unit that is exempt under this section is not eligible to be a NO<sub>x</sub> budget opt-in source under subch. IX.

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

(f) Loss of exemption. 1. On the earlier of the following dates, a unit exempt under sub. (2) shall lose its exemption:

a. The date on which the NO<sub>x</sub> authorized account representative submits a NO<sub>x</sub> budget permit application under par. (b); or

b. The date on which the NO<sub>x</sub> authorized account representative is required under par. (b) to submit a NO<sub>x</sub> budget permit application.

2. For the purpose of applying monitoring requirements under subch. VIII, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

NR 428.06 STANDARD REQUIREMENTS. (1) PERMIT REQUIREMENTS. (a) The NO<sub>x</sub> authorized account representative of each NO<sub>x</sub> budget source required to have a federally enforceable permit and each NO<sub>x</sub> budget unit required to have a federally enforceable permit at the source shall:

1. Submit to the department a complete NO<sub>x</sub> budget permit application under s. NR 428.15 in accordance with the deadlines specified in s. NR 428.14(2) and (3);

2. Submit in a timely manner any supplemental information that the department determines is necessary in order to review a NO<sub>x</sub> budget permit application and issue or deny a NO<sub>x</sub> budget permit.

(b) The owners and operators of each NO<sub>x</sub> budget source required to have a federally enforceable permit and each NO<sub>x</sub> budget unit required to have a federally enforceable permit at the source shall have a NO<sub>x</sub> budget permit issued by the department and operate the unit in compliance with the NO<sub>x</sub> budget permit.

(c) The owners and operators of a NO<sub>x</sub> budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NO<sub>x</sub> budget permit application, and to have a NO<sub>x</sub> budget permit, under subch. III for the NO<sub>x</sub> budget source.

(2) MONITORING REQUIREMENTS. (a) The owners and operators and, to the extent applicable, the NO<sub>x</sub> authorized account representative of each NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source shall comply with the monitoring requirements of subch. VIII.

(b) The emissions measurements recorded and reported in accordance with subch. VIII shall be used to determine compliance by the unit with the NO<sub>x</sub> budget emissions limitation under sub. (3).

(3) NITROGEN OXIDES REQUIREMENTS. (a) The owners and operators of each NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source shall hold NO<sub>x</sub> allowances available for compliance deductions under s. NR 428.28, as of the NO<sub>x</sub> allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO<sub>x</sub> emissions for the control period from the unit, as determined in accordance with subch. VIII, plus any amount necessary to account for actual utilization under s. NR 428.23(5) for the control period.

(b) Each ton of nitrogen oxides emitted in excess of the NO<sub>x</sub> budget emissions limitation shall constitute a separate violation of this chapter and the act.

(c) A NO<sub>x</sub> budget unit shall be subject to the requirements under par. (a) starting on the later of May 1, 2003 or the date on which the unit

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commences operation.

(d) NO<sub>x</sub> allowances shall be held in, deducted from or transferred among NO<sub>x</sub> allowance tracking system accounts in accordance with subchs. V, VI, VII and IX.

(e) A NO<sub>x</sub> allowance may not be deducted, in order to comply with the requirements under par. (a), for a control period in a year prior to the year for which the NO<sub>x</sub> allowance was allocated.

(f) A NO<sub>x</sub> allowance allocated by the department or the administrator under the NO<sub>x</sub> budget trading program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NO<sub>x</sub> budget trading program. No provision of the NO<sub>x</sub> budget trading program, the NO<sub>x</sub> budget permit application, the NO<sub>x</sub> budget permit, or an exemption under s. NR 428.05 and no provision of law may be construed to limit the authority of the United States or the state of Wisconsin to terminate or limit the authorization.

(g) A NO<sub>x</sub> allowance allocated by the department or the administrator under the NO<sub>x</sub> budget trading program does not constitute a property right.

(h) Upon recordation by the administrator under subch. VI, VII, or IX, every allocation, transfer or deduction of a NO<sub>x</sub> allowance to or from a NO<sub>x</sub> budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NO<sub>x</sub> budget permit of the NO<sub>x</sub> budget unit by operation of law without any further review.

(4) EXCESS EMISSIONS REQUIREMENTS. (a) The owners and operators of any NO<sub>x</sub> budget unit that has excess emissions in any control period shall:

(a) 1. Surrender the NO<sub>x</sub> allowances required for deduction under s. NR 428.28(4)(a); and

(b) 2. Pay any fine, penalty or assessment or comply with any other remedy imposed under s. NR 428.28(4)(c).

(5) RECORDKEEPING AND REPORTING REQUIREMENTS. (a) Unless otherwise

provided, the owners and operators of the NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the department or the administrator.

1. The account certificate of representation for the NO<sub>x</sub> authorized account representative for the source and each NO<sub>x</sub> budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with s. NR 428.11; provided that the certificate and documents shall be retained on site at the source beyond the 5-year period until the documents are superseded because of the submission of a new account certificate of representation changing the NO<sub>x</sub> authorized account representative.

2. All emissions monitoring information, in accordance with subch. VIII; provided that to the extent that subch. VIII provides for a 3-year period for recordkeeping, the 3-year period shall apply.

3. Copies of all reports, compliance certifications and other submissions and all records made or required under the NO<sub>x</sub> budget trading program.

4. Copies of all documents used to complete a NO<sub>x</sub> budget permit application and any other submission under the NO<sub>x</sub> budget trading program or to demonstrate compliance with the requirements of the NO<sub>x</sub> budget trading program.

(b) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source shall submit the reports and compliance certifications required under the NO<sub>x</sub> budget trading program, including those under subchs. IV, VIII or IX.

(6) LIABILITY. (a) Any person who knowingly violates any requirement or prohibition of the NO<sub>x</sub> budget trading program, a NO<sub>x</sub> budget permit or an exemption under s. NR 428.05 shall be subject to enforcement pursuant to ss.

285.83 and 285.87, Stats., or applicable federal law.

(b) Any person who knowingly makes a false material statement in any record, submission or report under the NO<sub>x</sub> budget trading program shall be subject to criminal enforcement pursuant to s. 285.87(2), Stats., or applicable federal law.

(c) No permit revision may excuse any violation of the requirements of the NO<sub>x</sub> budget trading program that occurs prior to the date that the revision takes effect.

(d) Each NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit shall meet the requirements of the NO<sub>x</sub> budget trading program.

(e) Any provision of the NO<sub>x</sub> budget trading program that applies to a NO<sub>x</sub> budget source, including a provision applicable to the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget source, shall also apply to the owners and operators of the source and of the NO<sub>x</sub> budget units at the source.

(f) Any provision of the NO<sub>x</sub> budget trading program that applies to a NO<sub>x</sub> budget unit, including a provision applicable to the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit, shall also apply to the owners and operators of the unit. Except with regard to the requirements applicable to units with a common stack under subch. VIII, the owners and operators and the NO<sub>x</sub> authorized account representative of one NO<sub>x</sub> budget unit may not be held liable for any violation by any other NO<sub>x</sub> budget unit of which they are not owners or operators or the NO<sub>x</sub> authorized account representative and that is located at a source of which they are not owners or operators or the NO<sub>x</sub> authorized account representative.

(7) EFFECT ON OTHER AUTHORITIES. No provision of the NO<sub>x</sub> budget trading program, a NO<sub>x</sub> budget permit application, a NO<sub>x</sub> budget permit or an exemption under s. NR 428.05 may be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget source or NO<sub>x</sub> budget unit from compliance with any other provision of the applicable, approved state of Wisconsin

implementation plan, a federally enforceable permit or the act.

NR 428.07 COMPUTATION OF TIME. (1) Unless otherwise stated, any time period scheduled, under the NO<sub>x</sub> budget trading program, to begin on the occurrence of an action or event shall begin on the day the action or event occurs.

(2) Unless otherwise stated, any time period scheduled, under the NO<sub>x</sub> budget trading program, to begin before the occurrence of an action or event shall be computed so that the period ends the day before the action or event occurs.

(3) Unless otherwise stated, if the final day of any time period, under the NO<sub>x</sub> budget trading program, falls on a weekend or a state of Wisconsin or federal holiday, the time period shall be extended to the next business day.

## SUBCHAPTER II

### NO<sub>x</sub> AUTHORIZED ACCOUNT REPRESENTATIVE FOR NO<sub>x</sub> BUDGET SOURCES

NR 428.08 AUTHORIZATION AND RESPONSIBILITIES OF THE NO<sub>x</sub> AUTHORIZED ACCOUNT REPRESENTATIVE. (1) Except as provided under s. NR 428.09, each NO<sub>x</sub> budget source, including all NO<sub>x</sub> budget units at the source, shall have one and only one NO<sub>x</sub> authorized account representative, with regard to all matters under the NO<sub>x</sub> budget trading program concerning the source or any NO<sub>x</sub> budget unit at the source.

(2) The NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> budget source shall be selected by an agreement binding on the owners and operators of the source and all NO<sub>x</sub> budget units at the source.

(3) Upon receipt by the administrator of a complete account certificate of representation under s. NR 428.11, the NO<sub>x</sub> authorized account representative of the source shall represent and, by his or her representations, actions, inactions or submissions, legally bind each owner and operator of the NO<sub>x</sub> budget source represented and each NO<sub>x</sub> budget unit at the source in all matters pertaining to the NO<sub>x</sub> budget trading program, notwithstanding any agreement between the NO<sub>x</sub> authorized account representative

and the owners and operators. The owners and operators shall be bound by any decision or order issued to the NO<sub>x</sub> authorized account representative by the department, the administrator or a court regarding the source or unit.

(4) No NO<sub>x</sub> budget permit may be issued, and no NO<sub>x</sub> allowance tracking system account may be established for a NO<sub>x</sub> budget unit at a source, until the administrator has received a complete account certificate of representation under s. NR 428.11 for a NO<sub>x</sub> authorized account representative of the source and the NO<sub>x</sub> budget units at the source.

(5) (a) Each submission under the NO<sub>x</sub> budget trading program shall be submitted, signed and certified by the NO<sub>x</sub> authorized account representative for each NO<sub>x</sub> budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NO<sub>x</sub> authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NO<sub>x</sub> budget sources or NO<sub>x</sub> budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(b) The department and the administrator will accept or act on a submission made on behalf of the owner or operators of a NO<sub>x</sub> budget source or a NO<sub>x</sub> budget unit only if the submission has been made, signed and certified in accordance with par. (a).

NR 428.09 ALTERNATE NO<sub>x</sub> AUTHORIZED ACCOUNT REPRESENTATIVE. (1) An account certificate of representation may designate one and only one alternate NO<sub>x</sub> authorized account representative who may act on behalf of the NO<sub>x</sub> authorized account representative. The agreement by which the alternate NO<sub>x</sub>

authorized account representative is selected shall include a procedure for authorizing the alternate NO<sub>x</sub> authorized account representative to act in lieu of the NO<sub>x</sub> authorized account representative.

(2) Upon receipt by the administrator of a complete account certificate of representation under s. NR 428.11, any representation, action, inaction or submission by the alternate NO<sub>x</sub> authorized account representative shall be deemed to be a representation, action, inaction or submission by the NO<sub>x</sub> authorized account representative.

(3) Except in this section and ss. NR 428.08(1), 428.10, 428.11 and 428.25, whenever the term "NO<sub>x</sub> authorized account representative" is used in this chapter, the term shall be construed to include the alternate NO<sub>x</sub> authorized account representative.

NR 428.10 CHANGING THE NO<sub>x</sub> AUTHORIZED ACCOUNT REPRESENTATIVE AND THE ALTERNATE NO<sub>x</sub> AUTHORIZED ACCOUNT REPRESENTATIVE; CHANGES IN THE OWNERS AND OPERATORS.

(1) CHANGING THE NO<sub>x</sub> AUTHORIZED ACCOUNT REPRESENTATIVE. The NO<sub>x</sub> authorized account representative may be changed at any time upon receipt by the administrator of a superseding complete account certificate of representation under s. NR 428.11. Notwithstanding a change, all representations, actions, inactions and submissions by the previous NO<sub>x</sub> authorized account representative prior to the time and date when the administrator receives the superseding account certificate of representation shall be binding on the new NO<sub>x</sub> authorized account representative and the owners and operators of the NO<sub>x</sub> budget source and the NO<sub>x</sub> budget units at the source.

(2) CHANGING THE ALTERNATE NO<sub>x</sub> AUTHORIZED ACCOUNT REPRESENTATIVE. The alternate NO<sub>x</sub> authorized account representative may be changed at any time upon receipt by the administrator of a superseding complete account certificate of representation under s. NR 428.11. Notwithstanding a change, all representations, actions, inactions and submissions by the previous alternate NO<sub>x</sub> authorized account representative prior to the time and date when the administrator receives the superseding account certificate of

representation shall be binding on the new alternate NO<sub>x</sub> authorized account representative and the owners and operators of the NO<sub>x</sub> budget source and the NO<sub>x</sub> budget units at the source.

(3) CHANGES IN THE OWNERS AND OPERATORS. (a) In the event a new owner or operator of a NO<sub>x</sub> budget source or a NO<sub>x</sub> budget unit is not included in the list of owners and operators submitted in the account certificate of representation, the new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions and submissions of the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative of the source or unit, and the decisions, orders, actions and inactions of the department or the administrator, as if the new owner or operator were included in the list.

(b) Within 30 days following any change in the owners and operators of a NO<sub>x</sub> budget source or a NO<sub>x</sub> budget unit, including the addition of a new owner or operator, the NO<sub>x</sub> authorized account representative or alternate NO<sub>x</sub> authorized account representative shall submit to the administrator a revision to the account certificate of representation amending the list of owners and operators to include the change.

NR 428.11 ACCOUNT CERTIFICATE OF REPRESENTATION. (1) A complete account certificate of representation for a NO<sub>x</sub> authorized account representative or an alternate NO<sub>x</sub> authorized account representative shall include the following elements in a format prescribed by the administrator:

(a) Identification of the NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source for which the account certificate of representation is submitted.

(b) The name, address, e-mail address (if any), telephone number and facsimile transmission number (if any) of the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative.

(c) A list of the owners and operators of the NO<sub>x</sub> budget source and of each NO<sub>x</sub> budget unit at the source.

(d) The following certification statement by the NO<sub>x</sub> authorized account

representative and any alternate NO<sub>x</sub> authorized account representative: "I certify that I was selected as the NO<sub>x</sub> authorized account representative or alternate NO<sub>x</sub> authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO<sub>x</sub> budget trading program on behalf of the owners and operators of the NO<sub>x</sub> budget source and of each NO<sub>x</sub> budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions or submissions and by any decision or order issued to me by the department, the administrator, or a court regarding the source or unit."

(e) The signature of the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative and the dates signed.

(2) Unless specifically required by the department or the administrator, documents of agreement referred to in the account certificate of representation do not need to be submitted to the department or the administrator. Neither the department nor the administrator shall be under any obligation to review or evaluate the sufficiency of these documents, if submitted.

NR 428.12 OBJECTIONS CONCERNING THE NO<sub>x</sub> AUTHORIZED ACCOUNT

REPRESENTATIVE. (1) Once a complete account certificate of representation under s. NR 428.11 has been submitted and received, the department and the administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under s. NR 428.11 is received by the administrator.

(2) Except as provided in s. NR 428.10(1) or (2), no objection or other communication submitted to the department or the administrator concerning the authorization, or any representation, action, inaction or submission of the NO<sub>x</sub> authorized account representative may affect any representation, action, inaction or submission of the NO<sub>x</sub> authorized account representative or the finality of any decision or order by the department or the administrator under

the NO<sub>x</sub> budget trading program.

(3) Neither the department nor the administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction or submission of any NO<sub>x</sub> authorized account representative, including private legal disputes concerning the proceeds of NO<sub>x</sub> allowance transfers.

SUBCHAPTER III

PERMITS

NR 428.13 GENERAL NO<sub>x</sub> BUDGET TRADING PROGRAM PERMIT REQUIREMENTS. (1)

For each NO<sub>x</sub> budget source required to have a federally enforceable permit, such permit shall include a NO<sub>x</sub> budget permit administered by the department.

(a) For NO<sub>x</sub> budget sources required to have a title V operation permit, the NO<sub>x</sub> budget portion of the title V permit shall be administered in accordance with the department's title V operation permits regulations promulgated under 40 CFR part 70 or 71, except as provided otherwise by this subchapter or subch. IX. The applicable provisions of these title V operation permits regulations shall include, but are not limited to, those provisions addressing operation permit applications, operation permit application shield, operation permit duration, operation permit shield, operation permit issuance, operation permit revision and reopening, public participation, state review and review by the administrator.

(b) For NO<sub>x</sub> budget sources required to have a non-title V permit, the NO<sub>x</sub> budget portion of the non-title V permit shall be administered in accordance with the department's regulations promulgated to administer non-title V permits, except as provided otherwise by this subchapter or subch. IX. The applicable provisions of these non-title V permits regulations may include, but are not limited to, provisions addressing permit applications, permit application shield, permit duration, permit shield, permit issuance, permit revision and reopening, public participation, state review and review by the administrator.

(2) Each NO<sub>x</sub> budget permit, including a draft or proposed NO<sub>x</sub> budget permit, if applicable, shall contain all applicable NO<sub>x</sub> budget trading program requirements and shall be a complete and segregable portion of the permit under sub. (1).

NR 428.14 NO<sub>x</sub> BUDGET PERMIT APPLICATIONS. (1) DUTY TO APPLY. The NO<sub>x</sub> authorized account representative of any NO<sub>x</sub> budget source required to have a federally enforceable permit shall submit to the department a complete NO<sub>x</sub> budget permit application under s. NR 428.15 by the applicable deadline in sub. (2).

(2) DEADLINES. (a) For NO<sub>x</sub> budget sources required to have a title V operation permit:

1. For any source, with one or more NO<sub>x</sub> budget units under s. NR 428.04 that commence operation before January 1, 2000, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under s. NR 428.15 covering the NO<sub>x</sub> budget units to the department at least 18 months before May 1, 2003.

2. For any source, with any NO<sub>x</sub> budget unit under s. NR 428.04 that commences operation on or after January 1, 2000, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under s. NR 428.15 covering the NO<sub>x</sub> budget unit to the department at least 18 months before the later of May 1, 2003 or the date on which the NO<sub>x</sub> budget unit commences operation.

(b) For NO<sub>x</sub> budget sources required to have a non-title V permit:

1. For any source, with one or more NO<sub>x</sub> budget units under s. NR 428.04 that commence operation before January 1, 2000, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under s. NR 428.15 covering the NO<sub>x</sub> budget units to the department at least 18 months before May 1, 2003.

2. For any source, with any NO<sub>x</sub> budget unit under s. NR 428.04 that commences operation on or after January 1, 2000, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under s.

NR 428.15 covering the NO<sub>x</sub> budget unit to the department at least 18 months before the later of May 1, 2003 or the date on which the NO<sub>x</sub> budget unit commences operation.

(3) DUTY TO REAPPLY. (a) For a NO<sub>x</sub> budget source required to have a title V operation permit, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under s. NR 428.15 for the NO<sub>x</sub> budget source covering the NO<sub>x</sub> budget units at the source in accordance with s. NR 407.04(2).

(b) For a NO<sub>x</sub> budget source required to have a non-title V permit, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under s. NR 428.15 for the NO<sub>x</sub> budget source covering the NO<sub>x</sub> budget units at the source in accordance with s. NR 407.04(2).

NR 428.15 INFORMATION REQUIREMENTS FOR NO<sub>x</sub> BUDGET PERMIT APPLICATIONS.

A complete NO<sub>x</sub> budget permit application shall include the following elements concerning the NO<sub>x</sub> budget source for which the application is submitted, in a format prescribed by the department:

(1) Identification of the NO<sub>x</sub> budget source, including plant name, state FID and the office of regulatory information systems (ORIS) or facility code assigned to the source by the federal energy information administration, if applicable;

(2) Identification of each NO<sub>x</sub> budget unit at the NO<sub>x</sub> budget source and whether it is a NO<sub>x</sub> budget unit under s. NR 428.04 or under subch. IX;

(3) The standard requirements under s. NR 428.06; and

(4) For each NO<sub>x</sub> budget opt-in unit at the NO<sub>x</sub> budget source, the following certification statements by the NO<sub>x</sub> authorized account representative:

(a) "I certify that each unit for which this permit application is submitted under subch. IX is not a NO<sub>x</sub> budget unit under 40 CFR 96.4 and is not covered by a retired unit exemption under 40 CFR 96.5 that is in effect."

(b) If the application is for an initial NO<sub>x</sub> budget opt-in permit, "I certify that each unit for which this permit application is submitted under

subch. IX is currently operating, as that term is defined under 40 CFR 96.2."

NR 428.16 NO<sub>x</sub> BUDGET PERMIT CONTENTS. (1) Each NO<sub>x</sub> budget permit, including any draft or proposed NO<sub>x</sub> budget permit, if applicable, will contain, in a format prescribed by the department, all elements required for a complete NO<sub>x</sub> budget permit application under s. NR 428.15 as approved or adjusted by the department.

(2) Each NO<sub>x</sub> budget permit is deemed to incorporate automatically the definitions of terms under s. NR 428.02 and, upon recordation by the administrator as described under subch. VI, VII or IX, every allocation, transfer or deduction of a NO<sub>x</sub> allowance to or from the compliance accounts of the NO<sub>x</sub> budget units covered by the permit or the overdraft account of the NO<sub>x</sub> budget source covered by the permit.

NR 428.17 EFFECTIVE DATE OF INITIAL NO<sub>x</sub> BUDGET PERMIT. The initial NO<sub>x</sub> budget permit covering a NO<sub>x</sub> budget unit for which a complete NO<sub>x</sub> budget permit application is timely submitted under s. NR 428.14(2) shall become effective by the later of:

(1) May 1, 2003;

(2) May 1 of the year in which the NO<sub>x</sub> budget unit commences operation, if the unit commences operation on or before May 1 of that year;

(3) The date on which the NO<sub>x</sub> budget unit commences operation, if the unit commences operation during a control period; or

(4) May 1 of the year following the year in which the NO<sub>x</sub> budget unit commences operation, if the unit commences operation on or after October 1 of the year.

NR 428.18 NO<sub>x</sub> BUDGET PERMIT REVISIONS. (1) For a NO<sub>x</sub> budget source with a title V operation permit, except as provided in s. NR 428.16(2), the department shall revise the NO<sub>x</sub> budget permit, as necessary, in accordance with ss. NR 407.11, <sup>to 407.14</sup> 407.12, 407.13 and 407.14.

(2) For a NO<sub>x</sub> budget source with a non-title V permit, except as provided in s. NR 428.16(2), the department shall revise the NO<sub>x</sub> budget permit, as necessary, in accordance with ss. NR 407.11, 407.12, 407.13, 407.14

407.11 + 407.14

2-cite

and 407.16.

SUBCHAPTER IV

COMPLIANCE CERTIFICATION

NR 428.19 COMPLIANCE CERTIFICATION REPORT. (1) **APPLICABILITY AND DEADLINE.** For each control period in which one or more NO<sub>x</sub> budget units at a source are subject to the NO<sub>x</sub> budget emissions limitation, the NO<sub>x</sub> authorized account representative of the source shall submit to the department and the administrator by November 30 of that year, a compliance certification report for each source covering all NO<sub>x</sub> budget units.

(2) **CONTENTS OF REPORT.** The NO<sub>x</sub> authorized account representative shall include in the compliance certification report under sub. (1) the following elements, in a format prescribed by the administrator, concerning each unit at the source and subject to the NO<sub>x</sub> budget emissions limitation for the control period covered by the report:

- (a) Identification of each NO<sub>x</sub> budget unit;
- (b) At the NO<sub>x</sub> authorized account representative's option, the serial numbers of the NO<sub>x</sub> allowances that are to be deducted from each unit's compliance account under s. NR 428.28 for the control period;
- (c) At the NO<sub>x</sub> authorized account representative's option, for units sharing a common stack and having NO<sub>x</sub> emissions that are not monitored separately or apportioned in accordance with subch. VIII, the percentage of allowances that is to be deducted from each unit's compliance account under s. NR 428.28(5); and
- (d) The compliance certification under sub (3).

(3) **COMPLIANCE CERTIFICATION.** In the compliance certification report under sub. (1), the NO<sub>x</sub> authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO<sub>x</sub> budget units at the source in compliance with the NO<sub>x</sub> budget trading program, whether each NO<sub>x</sub> budget unit for which the compliance certification is submitted was operated during the calendar year

*What is added?*

covered by the report in compliance with the requirements of the NO<sub>x</sub> budget trading program applicable to the unit, including:

(a) Whether the unit was operated in compliance with the NO<sub>x</sub> budget emissions limitation;

(b) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NO<sub>x</sub> emissions to the unit, in accordance with subch. VIII;

(c) Whether all the NO<sub>x</sub> emissions from the unit, or a group of units including the unit using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with subch. VIII. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;

(d) Whether the facts that form the basis for certification under subch. VIII of each monitor at the unit, or a group of units including the unit using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under subch. VIII, if any, have changed; and

(4) RECERTIFICATION. If a change is required to be reported under sub. (3)(d), the NO<sub>x</sub> authorized account representative shall specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

NR 428.20 DEPARTMENT'S AND ADMINISTRATOR'S ACTION ON COMPLIANCE CERTIFICATIONS. (1) The department or the administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO<sub>x</sub> budget trading program and make appropriate adjustments of the information in the compliance certifications or other

submissions.

(2) The administrator may deduct NO<sub>x</sub> allowances from or transfer NO<sub>x</sub> allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under sub. (1).

SUBCHAPTER V

NO<sub>x</sub> ALLOWANCE ALLOCATIONS

NR 428.21 STATE TRADING PROGRAM BUDGET. The state trading program budget allocated by the department under s. NR 428.23 for a control period will equal the total number of tons of NO<sub>x</sub> emissions apportioned to the NO<sub>x</sub> budget units under s. NR 428.04 in the state of Wisconsin for the control period, as determined by the applicable, approved state implementation plan.

NR 428.22 TIMING REQUIREMENTS FOR NO<sub>x</sub> ALLOWANCE ALLOCATIONS. (1) By September 30, 1999, the department shall submit to the administrator the NO<sub>x</sub> allowance allocations, in accordance with s. NR 428.23, for the control periods in 2003, 2004 and 2005. The NO<sub>x</sub> allowance allocations for the control periods in 2003, 2004 and 2005 are listed in Tables 1 and 2.

(2) By April 1, 2003 and April 1 of each year thereafter, the department shall submit to the administrator the NO<sub>x</sub> allowance allocations, in accordance with s. NR 428.23, for the control period in the year that is 3 years after the year of the applicable deadline for submission under this subsection. If the department fails to submit to the administrator the NO<sub>x</sub> allowance allocations in accordance with this subsection, the administrator will allocate, for the applicable control period, the same number of NO<sub>x</sub> allowances as were allocated for the preceding control period.

(3) By April 1, 2004 and April 1 of each year thereafter, the department shall submit to the administrator the NO<sub>x</sub> allowance allocations, in accordance with s. NR 428.23, for any NO<sub>x</sub> allowances remaining in the allocation set aside for the previous year's control period.

Table 1  
Electric Utility Core Source NO<sub>x</sub> Allocations

Entry	Plant		Unit ID	NO. Allocations (tons)		
	ID	PLANT		2003	2004	2005
1	606034110	ALMA	4	68	68	70
2	606034110	ALMA	5	99	99	102
3	802033320	BAY FRONT	3	1	1	1
4	802033320	BAY FRONT	5	24	24	25
5	113004430	BLOUNT STREET	11	2	2	2
6	113004430	BLOUNT STREET	3	6	6	6
7	113004430	BLOUNT STREET	5	7	7	7
8	113004430	BLOUNT STREET	6	6	6	6
9	113004430	BLOUNT STREET	7	12	12	12
10	113004430	BLOUNT STREET	8	63	63	65
11	113004430	BLOUNT STREET	9	70	70	72
12	111003090	COLUMBIA	1	1,323	1,323	1,365
13	111003090	COLUMBIA	2	1,439	1,439	1,484
14	128065080	CONCORD	1	26	26	27
15	128065080	CONCORD	2	27	27	28
16	128065080	CONCORD	3	25	25	26
17	128065080	CONCORD	4	22	22	23
18	460033090	EDGEWATER	3	122	122	126
19	460033090	EDGEWATER	4	659	659	680
20	460033090	EDGEWATER	5	957	957	988
21	632022820	FRENCH ISLAND	P30	14	14	14
22	632022820	FRENCH ISLAND	P31	12	12	12
23	663020930	GENOA	1	680	680	701
24	267006190	GERMANTOWN	1	3	3	4
25	267006190	GERMANTOWN	2	3	3	3
26	267006190	GERMANTOWN	3	3	3	3
27	267006190	GERMANTOWN	4	4	4	4
28	606034110	J P MADGETT	B1	698	698	720
29	436035930	MANITOWOC	6	28	28	29
30	436035930	MANITOWOC	7	30	30	31
31	436035930	MANITOWOC	8	33	33	34
32	438089190	MARINETTE	B01	7	7	7
33	438089190	MARINETTE	B02	5	5	6
34	438089190	MARINETTE	B03	31	31	32
35	122014530	NELSON DEWEY	1	222	222	229
36	122014530	NELSON DEWEY	2	235	235	242
37	230094810	PARIS	1	29	29	30
38	230094810	PARIS	2	36	36	38
39	230094810	PARIS	3	39	39	40
40	230094810	PARIS	4	29	29	30
41	230006260	PLEASANT PRAIRIE	1	1,719	1,719	1,774
42	230006260	PLEASANT PRAIRIE	2	1,589	1,589	1,639
43	246004000	PORT WASHINGTON	1	97	97	100
44	246004000	PORT WASHINGTON	2	121	121	124
45	246004000	PORT WASHINGTON	3	115	115	119
46	246004000	PORT WASHINGTON	4	108	108	111
47	405031990	PULLIAM	3	26	26	27
48	405031990	PULLIAM	4	30	30	31
49	405031990	PULLIAM	5	86	86	89
50	405031990	PULLIAM	6	149	149	154
51	405031990	PULLIAM	7	201	201	207
52	405031990	PULLIAM	8	345	345	355
53	154003740	ROCK RIVER	1	149	149	154
54	154003740	ROCK RIVER	2	153	153	158

55	154003740	ROCK RIVER	P30	2	2	2
56	154003740	ROCK RIVER	P32	8	8	9
57	154003740	ROCK RIVER	P33	8	8	8
58	154009900	SHEEPSKIN	P30	7	7	7
59	420101660	SOUTH FOND DU LAC	1	20	20	21
60	420101660	SOUTH FOND DU LAC	2	21	21	22
61	420101660	SOUTH FOND DU LAC	3	20	20	20
62	241007690	SOUTH OAK CREEK	5	441	441	455
63	241007690	SOUTH OAK CREEK	6	464	464	478
64	241007690	SOUTH OAK CREEK	7	650	650	670
65	241007690	SOUTH OAK CREEK	8	619	619	638
66	241007800	VALLEY	1	104	104	107
67	241007800	VALLEY	2	106	106	109
68	241007800	VALLEY	3	139	139	143
69	241007800	VALLEY	4	130	130	135
70	737009020	WESTON	1	128	128	132
71	737009020	WESTON	2	220	220	227
72	737009020	WESTON	3	911	911	940
73	737009020	WESTON	32	10	10	10
74	609042720	WHEATON	P30	7	7	8
75	609042720	WHEATON	P31	5	5	5
76	609042720	WHEATON	P32	6	6	6
77	609042720	WHEATON	P33	5	5	5
78	609042720	WHEATON	P34	4	4	4
79	609042720	WHEATON	P35	3	3	3
80	122003640	STONEMAN	B21	18	18	19
81	122003640	STONEMAN	B22	20	20	21

Base Allocations =	16,061	16,061	16,568
New Source Set-Aside =	845	845	338
Total Allocations =	16,906	16,906	16,906

Table 2  
Large Industrial Core Source NO<sub>x</sub> Allocations

Entry	Plant		Unit ID	NO <sub>x</sub> Allocations (tons)		
	ID	PLANT		2003	2004	2005
1	113008390	WIS DOA / UW MADISON-CHARTER STREET	B25	120	120	124
2	405032210	PROCTER & GAMBLE PAPER PRODUCTS COMPANY	B05	43	43	45
3	405032210	PROCTER & GAMBLE PAPER PRODUCTS COMPANY	B06	95	95	98
4	405032210	PROCTER & GAMBLE PAPER PRODUCTS COMPANY	B07	86	86	89
5	405032870	FORT HOWARD CORPORATION	B26	239	239	246
6	405032870	FORT HOWARD CORPORATION	B27	430	430	444
7	405032870	FORT HOWARD CORPORATION	B29	274	274	282
8	445031180	THILMANY PULP & PAPER COMPANY	B11	231	231	238
9	445031290	APPLETON PAPERS INC-LOCKS MILL	B05	60	60	62
10	445031290	APPLETON PAPERS INC-LOCKS MILL	B23	220	220	227
11	737009130	WAUSAU PAPER MILLS COMPANY	B25	115	115	118
12	744008100	RHINELANDER PAPER CO	B26	202	202	208
13	772009480	CONSOLIDATED PAPERS INC-BIRON DIV	B23	178	178	183
14	772009480	CONSOLIDATED PAPERS INC-BIRON DIV	B24	201	201	207
15	772010140	CONSOLIDATED PAPERS INC-KRAFT DIV	B20	200	200	206
16	772010140	CONSOLIDATED PAPERS INC-KRAFT DIV	B21	166	166	171

17	772010140	CONSOLIDATED PAPERS INC-KRAFT DIV	B24	174	174	179
18	772010690	NEKOOSA PAPERS INC-NEKOOSA MILL	B24	205	205	212
19	445030960	INTERLAKE PAPERS	B28	90	90	93

Base Allocations =	3,329	3,329	3,434
New Source Set-Aside =	175	175	70
Total Allocations =	3,504	3,504	3,504

NR 428.23 NO<sub>x</sub> ALLOWANCE ALLOCATIONS. (1)(a) The heat input (in mmBtu) used for calculating NO<sub>x</sub> allowance allocations for each NO<sub>x</sub> budget unit under s. NR 428.04 shall be:

1. For a NO<sub>x</sub> allowance allocation under s. NR 428.22(1), the average of the 2 highest amounts of the unit's heat input for the control periods in 1995, 1996 and 1997 if the unit is under s. NR 428.04(1)(a)1. or the control period in 1995 if the unit is under s. NR 428.04(1)(a)2.; and

2. For a NO<sub>x</sub> allowance allocation under s. NR 428.22(2), the unit's heat input for the control period in the year that is 4 years before the year for which the NO<sub>x</sub> allocation is being calculated.

(b) The unit's total heat input for the control period in each year specified under par. (a) will be determined in accordance with 40 CFR part 75 if the NO<sub>x</sub> budget unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the department for the unit if the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year.

(2) For each control period under s. NR 428.22, the department shall allocate to all NO<sub>x</sub> budget units under s. NR 428.04(1)(a)1. in the state that commenced operation before May 1 of the period used to calculate heat input under sub. (1)(a), a total number of NO<sub>x</sub> allowances equal to 95% in 2003, 2004 and 2005, or 98% thereafter, of the tons of NO<sub>x</sub> emissions in the state trading program budget apportioned to electric generating units under s. NR 428.21 in accordance with the following procedures:

(a) The department shall allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> budget unit under s. NR 428.04(1)(a)1. in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under sub. (1), rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

3  
Table  
2005-  
1/25-5/5/05

(b) If the initial total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> budget units under s. NR 428.04(1)(a)1. in the state for a control period under par. (a) does not equal 95% in 2003, 2004 and 2005, or 98% thereafter, of the number of tons of NO<sub>x</sub> emissions in the state trading program budget apportioned to electric generating units, the department shall adjust the total number of NO<sub>x</sub> allowances allocated to all of these NO<sub>x</sub> budget units for the control period under par. (a) so that the total number of NO<sub>x</sub> allowances allocated equals 95% in 2003, 2004 and 2005, or 98% thereafter, of the number of tons of NO<sub>x</sub> emissions in the state trading program budget apportioned to electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95% in 2003, 2004 and 2005, or 98% thereafter, of the number of tons of NO<sub>x</sub> emissions in the state trading program budget apportioned to electric generating units divided by the total number of NO<sub>x</sub> allowances allocated under par. (a), and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate.

(3) For each control period under s. NR 428.22, the department shall allocate to all NO<sub>x</sub> budget units under s. NR 428.04(1)(a)2. in the state that commenced operation before May 1 of the period used to calculate heat input under sub. (1)(a), a total number of NO<sub>x</sub> allowances equal to 95% in 2003, 2004 and 2005, or 98% thereafter, of the tons of NO<sub>x</sub> emissions in the state trading program budget apportioned to non-electric generating units under s. NR 428.21 in accordance with the following procedures:

(a) The department shall allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> budget unit under s. NR 428.04(1)(a)2. in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under sub. (1), rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

(b) If the initial total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> budget units under s. NR 428.04(1)(a)2. in the state for a control period under par. (a) does not equal 95% in 2003, 2004 and 2005, or 98% thereafter, of the number of tons of NO<sub>x</sub> emissions in the state trading program budget apportioned to non-electric generating units, the department shall adjust the

total number of NO<sub>x</sub> allowances allocated to all of these NO<sub>x</sub> budget units for the control period under par. (a) so that the total number of NO<sub>x</sub> allowances allocated equals 95% in 2003, 2004 and 2005, or 98% thereafter, of the number of tons of NO<sub>x</sub> emissions in the state trading program budget apportioned to non-electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95% in 2003, 2004 and 2005, or 98% thereafter, of the number of tons of NO<sub>x</sub> emissions in the state trading program budget apportioned to non-electric generating units divided by the total number of NO<sub>x</sub> allowances allocated under par. (a), and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate.

(4) For each control period under s. NR 428.22, the department shall allocate NO<sub>x</sub> allowances to NO<sub>x</sub> budget units under s. NR 428.04 in the state that commenced operation, or are projected to commence operation, on or after May 1 of the period used to calculate heat input under sub. (1)(a), in accordance with the following procedures:

(a) The department shall establish one allocation set-aside for each control period. Each allocation set-aside shall be allocated NO<sub>x</sub> allowances equal to 5% in 2003, 2004 and 2005, or 2% thereafter, of the tons of NO<sub>x</sub> emissions in the state trading program budget under s. NR 428.21, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

(b) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit under this subsection may submit to the department a request, in writing or in a format specified by the department, to be allocated NO<sub>x</sub> allowances for no more than 5 consecutive control periods under s. NR 428.22, starting with the control period during which the NO<sub>x</sub> budget unit commenced, or is projected to commence, operation and ending with the control period preceding the control period for which it will receive an allocation under sub. (2) or (3). The NO<sub>x</sub> allowance allocation request shall be submitted prior to May 1 of the first control period for which the NO<sub>x</sub> allowance allocation is requested and after the date on which the department issues a permit to construct the NO<sub>x</sub> budget unit.

(c) In a NO<sub>x</sub> allowance allocation request under par. (b), the NO<sub>x</sub> authorized account representative for units under s. NR 428.04(1)(a)1. may request for a control period NO<sub>x</sub> allowances in an amount that does not exceed 0.15 lb/mmBtu multiplied by the NO<sub>x</sub> budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.

(d) In a NO<sub>x</sub> allowance allocation request under par. (b), the NO<sub>x</sub> authorized account representative for units under s. NR 428.04(1)(a)2. may request for a control period NO<sub>x</sub> allowances in an amount that does not exceed 0.17 lb/mmBtu multiplied by the NO<sub>x</sub> budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.

(e) The department shall review, and allocate NO<sub>x</sub> allowances pursuant to, each NO<sub>x</sub> allowance allocation request under par. (b) in the order that the request is received by the department.

1. Upon receipt of the NO<sub>x</sub> allowance allocation request, the department shall determine whether, and will make any necessary adjustments to the request to ensure that, for units under s. NR 428.04(1)(a)1., the control period and the number of allowances specified are consistent with the requirements of pars. (b) and (c) and, for units under s. NR 428.04(1)(a)2., the control period and the number of allowances specified are consistent with the requirements of pars. (b) and (d).

2. If the allocation set-aside for the control period for which NO<sub>x</sub> allowances are requested has an amount of NO<sub>x</sub> allowances not less than the number requested, as adjusted under subd. 1., the department shall allocate the amount of the NO<sub>x</sub> allowances requested, as adjusted under subd. 1., to the NO<sub>x</sub> budget unit.

3. If the allocation set-aside for the control period for which NO<sub>x</sub> allowances are requested has a smaller amount of NO<sub>x</sub> allowances than the

number requested, as adjusted under subd. 1., the department shall deny in part the request and allocate only the remaining number of NO<sub>x</sub> allowances in the allocation set-aside to the NO<sub>x</sub> budget unit.

4. Once an allocation set-aside for a control period has been depleted of all NO<sub>x</sub> allowances, the department shall deny, and will not allocate any NO<sub>x</sub> allowances pursuant to, any NO<sub>x</sub> allowance allocation request under which NO<sub>x</sub> allowances have not already been allocated for the control period.

(f) Within 60 days of receipt of a NO<sub>x</sub> allowance allocation request, the department shall take appropriate action under par. (e) and notify the NO<sub>x</sub> authorized account representative that submitted the request and the administrator of the number of NO<sub>x</sub> allowances, if any, allocated for the control period to the NO<sub>x</sub> budget unit.

(5) For a NO<sub>x</sub> budget unit that is allocated NO<sub>x</sub> allowances under sub. (4) for a control period, the administrator will deduct NO<sub>x</sub> allowances under s. NR 428.28(2) or (5) to account for the actual utilization of the unit during the control period. The administrator will calculate the number of NO<sub>x</sub> allowances to be deducted to account for the unit's actual utilization using the following formulas and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate, provided that the number of NO<sub>x</sub> allowances to be deducted shall be zero if the number calculated is less than zero:

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NO <sub>x</sub> allowances deducted for	unit's NO <sub>x</sub> allowances	unit's actual control
actual utilization for units	allocated for	period utilization
under s. NR 428.04(1)(a)1.	control period	× 0.15 lb/mmBtu

and

NO <sub>x</sub> allowances deducted for	unit's NO <sub>x</sub> allowances	unit's actual control
actual utilization for units	allocated for	period utilization
under s. NR 428.04(1)(a)2.	control period	× 0.17 lb/mmBtu

where:

"unit's NO<sub>x</sub> allowances allocated for control period" is the number of NO<sub>x</sub> allowances allocated to the unit for the control period under sub. (4); and

"unit's actual control period utilization" is the utilization (in mmBtu), as defined in s. NR 428.02, of the unit during the control period.

(6) After making the deductions for compliance under s. NR 428.28(2) or (5) for a control period, the administrator will notify the department whether any NO<sub>x</sub> allowances remain in the allocation set-aside for the control period. The department shall allocate any remaining NO<sub>x</sub> allowances to the NO<sub>x</sub> budget units in the state using the following formula and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate:

$$\frac{\text{unit's share of NO}_x \text{ allowances remaining in allocation set-aside}}{\text{total NO}_x \text{ allowances remaining in allocation set-aside}} \times \frac{\text{unit's NO}_x \text{ allowance allocation}}{\text{state trading program budget excluding allocation set-aside}}$$

where:

"total NO<sub>x</sub> allowances remaining in allocation set-aside" is the total number of NO<sub>x</sub> allowances remaining in the allocation set-aside for the control period to which the allocation set-aside applies;

"unit's NO<sub>x</sub> allowance allocation" is the number of NO<sub>x</sub> allowances allocated under sub. (2) or (3) to the unit for the control period to which the allocation set-aside applies; and

"state trading program budget excluding allocation set-aside" is the state trading program budget under s. NR 428.21 for the control period to which the allocation set-aside applies multiplied by 95% if the control period is in 2003, 2004 or 2005 or 98% if the control period is in any year thereafter, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

#### SUBCHAPTER VI

NO<sub>x</sub> ALLOWANCE TRACKING SYSTEM

NR 428.24 NO<sub>x</sub> ALLOWANCE TRACKING SYSTEM ACCOUNTS. (1) NATURE AND FUNCTION OF COMPLIANCE ACCOUNTS AND OVERDRAFT ACCOUNTS. Consistent with s. NR 428.25(1), the administrator will establish one compliance account for each NO<sub>x</sub> budget unit and one overdraft account for each source with one or more NO<sub>x</sub> budget units. Allocations of NO<sub>x</sub> allowances pursuant to subch. V or s. NR 428.50 and deductions or transfers of NO<sub>x</sub> allowances pursuant to s. NR 428.20, 428.28 or 428.30, or subch. VII or IX will be recorded in the compliance accounts or overdraft accounts in accordance with this subchapter.

(2) NATURE AND FUNCTION OF GENERAL ACCOUNTS. Consistent with s. NR 428.25(2), the administrator will establish, upon request, a general account for any person. Transfers of allowances pursuant to subch. VII will be recorded in the general account in accordance with this subchapter.

Note: Section NR 428.25 describes the activities and responsibilities of the EPA administrator in establishing accounts for the NO<sub>x</sub> budget trading program, pursuant to 40 CFR 96.51. The department's role is limited to that described in s. NR 428.25(2)(a)6.

NR 428.25 ESTABLISHMENT OF ACCOUNTS. (1) COMPLIANCE ACCOUNTS AND OVERDRAFT ACCOUNTS. Upon receipt of a complete account certificate of representation as described under s. NR 428.11, the administrator will establish:

(a) A compliance account for each NO<sub>x</sub> budget unit for which the account certificate of representation was submitted; and

(b) An overdraft account for each source for which the account certificate of representation was submitted and that has 2 or more NO<sub>x</sub> budget units.

(2) GENERAL ACCOUNTS. (a) Any person may apply to open a general account for the purpose of holding and transferring allowances. A complete application for a general account shall be submitted to the administrator and shall include the following elements in a format prescribed by the administrator:

1. Name, mailing address, e-mail address, if any, telephone number, and facsimile transmission number, if any, of the NO<sub>x</sub> authorized account