RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF AIR RESOURCES
AIR POLLUTION CONTROL REGULATION NO. 38

NITROGEN OXIDES ALLOWANCE PROGRAM

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38. Nitrogen Oxides Allowance Program

38.1 Definitions

As used in these regulations, the following terms shall, where the context permits, be construed as follows:

38.1.1 "Account number" means the identification number given by the NO_x Allowance Tracking System Administrator to an account in which allowances are held in the NO_x Allowance Tracking System pursuant to Section 38.8 of this regulation.

38.1.2 "Account" means the place in the NO_x Allowance Tracking System where allowances are recorded including both allowances held by a budget source (compliance account) or allowances held by any person (general account).

38.1.3 "Acquiring account" means the party in an allowance transfer who obtains allowances through purchase, trade, auction or gift.

38.1.4 "Administrator" means the person or agency designated by the Department as the Administrator of the NO_x Allowance Tracking System and the NO_x Emissions Tracking System. The Department's designee is USEPA's Acid Rain Division.

38.1.5 "Affected Facility" means a fossil fuel fired boiler or indirect heat exchanger with a maximum rated heat input capacity of 250 MMBtu/Hour or more which operated at any time in calendar year 1990. The term Affected Facility is only used to establish the NO_x Budget for the state.

38.1.6 "Allocate or Allocation" means the initial assignment of allowances to a budget source through this regulation, and recorded by the Administrator to a NO_x Allowance Tracking System facility account or general account.

38.1.7 "Allocation Period" means any time period to which allowances are allocated such as the period 1999 though 2002.

38.1.8 "Allowance" means the limited authorization to emit one ton of NO_x during a specified control period. All allowances shall be allocated, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

38.1.9 "Allowance deduction" means the withdrawal of allowances for permanent retirement by the Administrator from a NO_x Allowance Tracking System account pursuant to Section 38.12 of this regulation.

38.1.10 "Allowance transfer" means the conveyance to another account of one or more allowances from one person to another by whatever means, including but not limited to purchase, trade, auction, or gift in accordance with the procedures established in Section 38.7 of this regulation, effected by the submission of an allowance transfer request to the NATS Administrator.

38.1.11 "Allowance transfer deadline" means midnight of December 31 and is the deadline by which allowances may be submitted for recording in a budget source's compliance account for purposes of meeting the requirements of this regulation for the preceding control period.

38.1.12 "Alternative monitoring system" means a system or component of a system, designed to provide direct or indirect data of mass emissions per time period, pollutant concentrations, or volumetric flow as provided for in Section 38.9 of this regulation.

38.1.13 "Authorized Account Representative (AAR)" means the responsible person who is authorized, in writing, to transfer and otherwise manage allowances as well as certify reports to the NATS and the NETS.

38.1.14 "Baseline" means the NO_x emission inventory approved by the Ozone Transport Commission on June 13, 1995, as the official 1990 baseline emissions of May 1 through September 30 for purposes of the NO_x Allowance Program.

38.1.15 "Boiler" means a facility which combusts fossil fuel to produce steam or to heat water, or any other heat transfer medium.

38.1.16 "Budget or Emission Budget" means the maximum amount of NO_x emissions which may be released from the budget sources collectively during a given control period.

38.1.17 "Budget source" means a fossil fuel fired boiler or indirect heat exchanger with a maximum rated heat input capacity of 250 MMBtu/Hour, or more; and all electric generating devices with a rated output of 15 MW, or more. Any person who applies to opt into the NO_x Allowance Program shall be considered a budget source upon approval of the application for opt-in.

38.1.18 "Clean Air Act" means the Clean Air Act as amended in 1990 (42 U.S.C. 7401- 7626).

38.1.19 "Compliance account" means the account for each budget source in the NO_x Allowance Tracking System, in which are held current and future year allowances useable for a specific designated control period as indicated by their unique serial number.

38.1.20 "Continuous Emissions Monitoring System (CEMS)" means the equipment required by this regulation used to sample, analyze, and measure emissions which will provide a permanent record of emissions expressed in pounds per million British Thermal Units (Btu) and tons per day. The following systems are component parts included in a continuous emissions monitoring system:

Nitrogen oxides pollutant concentration monitor
Diluent gas monitor (oxygen or carbon dioxide)

A data acquisition and handling system
Flow monitoring systems (where appropriate)

38.1.21 "Control period" means the period beginning May 1 of each year and ending on September 30 of the same year, inclusive.

38.1.22 "Current year" means the calendar year in which the action takes place or for which an allocation is designated.

38.1.23 "Electric generating device" means any fossil fuel fired combustion device of 15 MW capacity or greater which provides electricity for sale or use.

38.1.24 "Enforceable document" means a permit issued pursuant to the requirements of Air Pollution Control Regulation No. 9, an operating permit issued pursuant to the requirements of Air Pollution Control Regulation No. 29 or a consent agreement.

38.1.25 "Excess emissions" means emissions of nitrogen oxides reported by a budget source during the control period, rounded to the nearest whole ton, which are greater than the equivalent number of allowances allocated to, or which are available in the budget source NO_x Allowance Tracking System compliance account by the allowance transfer deadline for that season.

38.1.26 "Fossil fuel" means natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived wholly, or in part, from such material.

38.1.27 "Fossil fuel fired" means the combustion of fossil fuel or any derivative of fossil fuel alone, or, if in combination with any other fuel, fossil fuel comprises 51% or greater of the annual heat input on a Btu basis.

38.1.28 "General Account" means an account in the NATS that is not a compliance account.

38.1.29 "Heat input" means heat derived from the combustion of fuel in a budget source and does not include the heat derived from preheated combustion air, recirculated flue gas, or exhaust from other sources.

38.1.30 "Indirect heat exchanger" means combustion equipment in which the flame and/or products of combustion are separated from any contact with the principal material in the process by metallic or refractory walls, which includes, but is not limited to, steam boilers, vaporizers, melting pots, heat exchangers, column reboilers, fractioning column feed preheaters, reactor feed preheaters, fuel-fired reactors such as steam hydrocarbon reformer heaters and pyrolisis heaters.

38.1.31 "Maximum heat input capacity" means the ability of a budget source to combust a stated maximum amount of fuel on a steady state basis, as determined by the physical design and characteristics of the facility. Maximum heat input capacity is expressed in millions of British Thermal Units (MMBtu) per unit of time which is the product of the gross caloric value of the fuel (expressed in BTU/pound) times the fuel feed rate in the combustion device (expressed in mass of fuel/time).

38.1.32 "NO_x" means nitrogen oxides.

38.1.33 "NO_x Allowance Tracking System (NATS)" means the computerized system used to track the number of allowances held and used by any person.

38.1.34 "NO_x Emissions Tracking System (NETS)" means the computerized system used to track NO_x emissions from budget sources.

38.1.35 "Opt in" means to choose to voluntarily participate in the NO_x Allowance Program, and comply with the terms and conditions of this regulation.

38.1.36 "OTC MOU" means the Memorandum of Understanding signed by representatives of ten states and the District of Columbia as members of the Ozone Transport Commission on September 27, 1994.

38.1.37 "OTR" means the Ozone Transport Region as designated by Section 184(a) of the Clean Air Act Amendments of 1990.

38.1.38 "Owner or Operator" means any person who is an owner or who operates, controls or supervises a budget source and shall include, but not be limited to, any holding company, utility system or plant manager.

38.1.39 "Recorded" with regard to an allowance transfer or deduction means an account in the NATS has been updated by the Administrator with the particulars of an allowance transfer or deduction.

38.1.40 "Submitted" means sent to the appropriate authority under the signature of the Authorized Account Representative. For purposes of determining when something is submitted, an official U.S. Postal Service postmark, or electronic time stamp, shall establish the date of submittal.

38.2 NO_x Emission Budget

38.2.1 The NO_x Allowance Program is established to limit total mass NO_x emissions from budget sources during the control period of May 1 through September 30. The initial NO_x Budget is as follows:

(a) For 1999 and each year thereafter, through and including 2002, not to exceed 626 tons during each control period.

(b) *[Reserved]*

38.2.2 The initial NO_x budget, established in subsection 38.2.1 above, shall be modified by the Department to include sources who choose to opt-into this program pursuant to Section 38.3.2. Any modification of the budget after establishment of the initial budget shall be recorded and maintained by the Department, and submitted on an annual basis, by January 1 of each year, to the USEPA. Modifications to the budget shall be subject to a 30 day public notice and comment period.

38.3 Budget Program Applicability

38.3.1 General Applicability

(a) The NO_x Allowance Program in its entirety, applies to any owner or operator of a budget source.

(b) The requirements for an Authorized Account Representative (AAR) and account maintenance fees are applicable to the owner of a general account.

38.3.2 Any person who owns, operates, leases or controls a stationary source not subject to this program by definition, may choose to opt into the NO_x Allowance Program subject to the following conditions:

(a) Any person who owns, operates, leases or controls a stationary source that voluntarily opts-in to the NO_x Allowance Program shall be considered a budget

source upon approval of the opt-in application and shall be subject to all terms and conditions of the NO_x Allowance Program including requirements for allowance transfer or use, emissions monitoring, recordkeeping, reporting, and penalties.

(b) To opt into the NO_x Allowance Program, the owner or operator of a stationary source shall submit to the Department an opt-in application, including documentation of the baseline control period emissions. Baseline control period emissions are a representative average of the actual emissions of two consecutive control periods within the five years preceding the opt-in application. In no event may the baseline be greater than allowable emissions for that source as established by any permit or regulation. The baseline control period emissions from the opt-in source shall be added to the NO_x budget prior to allocation of allowances to the opt-in source.

(c) The Department shall assign an allowance allocation to any person that chooses to opt into the program.

(1) The allowance allocation for an opt-in source that, by size, would otherwise be considered an affected facility, shall be equivalent to the OTC MOU emission reduction applied to baseline control period emissions, or the permitted allowable NO_x emissions from the source, whichever is less.

(2) The allowance allocation for an opt-in source that is not otherwise considered an affected facility, shall be equivalent to the baseline control period emissions, or the permitted allowable NO_x emissions from the source, whichever is less.

In no case, will allocation of allowances to a source which chooses to opt into the program require adjustments to the allocation of allowances to budget sources in the NO_x Allowance Program.

(d) Any person who chooses to opt into the NO_x Allowance Program shall be subject to a modification of their federally enforceable operating permit to include applicability of this program, authority to trade allowances, and authority to emit in accordance with allowances allocated or obtained by the allowance transfer deadline.

(e) Any person who chooses to opt into the NO_x Allowance Program and who subsequently chooses to cease or curtail operations, will be subject to an allowance adjustment which represents emissions equivalent to those reduced through the cessation or curtailment of emitting operations.

(f) Any person who opts into the NO_x Allowance Program, can not opt-out of said program unless NO_x emitting operations at the opt-in source have ceased.

38.4 General Provisions

38.4.1 An allowance is an authorization to emit NO_x, valid only for the purposes of meeting the requirements of this regulation. On or after May 1, 1999, the owner or operator of each budget source shall, not later than December 31 of each calendar year, hold a quantity of NO_x allowances in the

budget source's current year NATS account that is equal to or greater than the total NO_x emitted from that budget source during the period May 1 through September 30 of the subject year.

38.4.2 A budget source that begins operation after the initial allocation has been made must obtain allowances in order to operate during the control period. The owner or operator is responsible to acquire any required NO_x allowances from those available in the NATS.

38.4.3 The restrictions and requirements of state and local rules as well as state and federal law, remain applicable. Except as otherwise provided for in this regulation, allowances cannot be used to meet or exceed the limitations of a permit or regulation unrelated to this regulation.

38.4.4 Offsets required for new or modified sources subject to New Source Review must be obtained in accordance with the requirements of Air Pollution Control Regulation No. 9. Allowances are not considered offsets within the context of this regulation, although the emissions represented by allowances may satisfy a part of the New Source Review offset requirement.

38.5 Allowance Allocation

38.5.1 Implementation of the emission budget in Section 38.2 of this regulation shall be accomplished through allocation of allowances to budget sources.

38.5.2 The initial allocation of allowances, for each control period, by budget source, for the allocation period 1999-2002 is as follows:

Budget source	Allowance Allocation
Ocean State Power	275
Pawtucket Power Associates	42
Manchester Street Station	262
Tiverton Power Associates	47

38.5.3 The list of budget sources allocated allowances in Section 38.5.2 can be modified by the Department to include sources who choose to opt-into this program pursuant to Section 38.3 of this regulation. Any modification of Section 38.5.2 after adoption of the initial allocation, shall be recorded and maintained by the Department, and submitted on an annual basis, by January 1 of each year, to the U.S.EPA after the Department provides notice and the opportunity for public comment.

38.5.4 A budget source that reduces emissions and transfers said emission reductions as emissions offsets to sources outside of this program, will be subject to deduction of allowances commensurate with the emission reductions moved off-budget. This requirement does not apply should the new or modified source that is receiving offsets from a budget source, voluntarily opts into the NO_x Allowance Program prior to the date when a permit is issued for the new or modified source pursuant to Air Pollution Control Regulation No. 9.

38.5.5 Budget sources that cease to operate after the date of allocation will continue to receive allowances for each control period in the allocation period, unless a request to reallocate allowances has been filed pursuant to Section 38.7.8. of this regulation.

38.5.6 An allowance shall not constitute a security or other form of property.

38.5.7 Nothing in the Department's regulations shall be construed to limit the authority of the Department to condition, limit, suspend or terminate any allowances or authorization to emit which said allowance represents.

38.6 Permits

38.6.1 Emission reductions which must be achieved to meet the requirements of this program, and which will require modification of equipment or operations at an affected facility shall be subject to the requirements of Air Pollution Control Regulation No. 9.

38.6.2 Operating Permits

(a) The operating permit for each budget source shall contain provisions for implementation of this program. Specifically, said permit shall contain language which prohibits the budget source from emitting NO_x during each control period, in excess of the amount of allowances held in the budget source's compliance account for the control period as of the allowance transfer deadline. Furthermore, the permit shall contain language that authorizes the trading of allowances for purposes of compliance with this program. The permit shall also contain reference to the budget source NATS compliance account and the Authorized Account Representative.

(b) No revision of an operating permit will be necessary, or required, for increases (or decreases) in emissions that are authorized by allowances acquired or transferred provided that the action is in compliance with this regulation by the allowance transfer deadline, is in compliance with the authorization for trading contained in the permit, and does not contravene the BACT, LAER or RACT limit, as applicable, for the budget source.

(c) No revision of an operating permit will be necessary or required for increases (or decreases) in allowances held by the budget source and which are acquired or transferred in compliance with this regulation, and in compliance with the authorization for trading contained in the permit.

(d) All determinations made under subsection 38.9.7(d)(3) shall be made pursuant to the procedures for significant permit modifications in subsection 29.10.4 of Air Pollution Control Regulation No. 29.

(e) All other changes at a budget source requiring a permit revision shall be made following the applicable procedures in subsection 29.10 of Air Pollution Control Regulation No. 29.

38.7 Allowance Transfer and Use

38.7.1 Allowances are marketable emissions authorizations that may be bought, sold or traded at any time (i.e., during any year, not just the current year). No budget source may transfer allowances from its compliance account for 1999 and each year thereafter, through and including 2002.

Unused, current year allowances as of the end of the allowance transfer deadline shall be retired.

38.7.2 Allowances may only be used for compliance with this program in a designated compliance year by being in a compliance account as of the allowance transfer deadline, or by being transferred into the compliance account by an allowance transfer submitted by the allowance transfer deadline.

38.7.3 The following procedures must be employed to enact an allowance transfer:

(a) The transfer request must be documented on a form, or electronic media, as directed by the NATS Administrator. The following information, at a minimum, must be provided:

(1) The account number identifying both the originating account and the acquiring account;

(2) The name and address associated with the owners of the originating account and the acquiring account; and,

(3) Identification of the serial numbers for each allowance being transferred.

(b) The transfer request must be authorized and certified by the Authorized Account Representative for the originating account. To be considered correctly submitted, the request for transfer shall include the following statement of certification (verbatim)*:* "*I am authorized to make this submission on behalf of the owners and operators of the budget source and I hereby certify under penalty of law, that I have personally examined the foregoing and am familiar with the information contained in this document and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment.*" The Authorized Account Representative for the originating account shall further provide a copy of the transfer request to each owner or operator of the budget source.

38.7.4 Transfer requests will be processed by the NATS Administrator in order of receipt.

38.7.5 The transfer is complete when the following has been verified by the NATS Administrator:

(a) Each allowance listed in the transfer request is held by the originating account at the time the transfer is to be recorded;

(b) The acquiring party has an account in the NATS; and,

(c) The transfer request has been filed by the person named as Authorized Account Representative for the originating account.

38.7.6 Allowance transfers determined to be valid, through verification by the NATS Administrator, will be recorded in the NATS by deducting the specified allowances from the originating account and

adding them to the acquiring account.

38.7.7 Notification of an allowance transfer will be provided by the NATS Administrator, including notice to the Authorized Account Representatives for each of the originating account and the acquiring account, and to designated state officials where the acquiring account or originating account are located. Notification may be made on paper or in electronic form and shall, at a minimum, include:

(a) The effective date of the transfer;

(b) Identification of the originating account and the acquiring account by name as well as by account number; and,

(c) The number of allowances transferred and their serial numbers.

38.7.8 Should a budget source determine that some or all allocated allowances should be transferred to another budget source for the remainder of the current allocation period, the Authorized Account Representative of the originating account shall submit a request for transfer that states this intent to the NATS Administrator. A request for transfer of allowances for the remainder of the allocation period shall conform to the specifications of Section 38.7.3 of this regulation. In addition, said request for transfer shall be submitted to the Department with a letter requesting that future allowance allocations be made directly to the acquiring account.

38.7.9 The budget source shall make available to the Department, information regarding transaction cost and allowance price, should the Department request such information.

38.8 NO_x Allowance Tracking System (NATS)

38.8.1 The NO_x Allowance Tracking System (NATS) is an electronic record keeping and reporting system which is the official database for all allowance use and transfer within this program. The NATS will track:

(a) The allowances allocated each budget source;

(b) The allowances held in each account;

(c) The allowances used by each budget source during each control period;

(d) Accounts established for each budget source to determine compliance for the source;

(e) Accounts opened by individuals or entities, upon request, which are not used to determine compliance;

(f) Allowance transfers, as submitted voluntarily by the source; and,

(g) Deductions of allowances for compliance purposes.

38.8.2 The NATS will provide a compliance account for each budget source which will hold the current compliance year and future year allowances. The NATS will label each account with an

account number and provide the following information, at minimum, to be associated with each account: name of account owner, name of Authorized Account Representative, mailing address of Authorized Account Representative, phone number of Authorized Account Representative, street address of associated budget source, and state in which the budget source is located.

38.8.3 The NATS will allow for the establishment of general accounts. Any person or group may open a general account. An Authorized Account Representative must be designated for a general account and said representative shall have obligations similar to an Authorized Account Representative designated by a budget source.

38.8.4 Only an Authorized Account Representative can request transfers of allowances in a NATS account. For each account, one Authorized Account Representative and one alternate shall be identified to represent the owner or operator of the budget source, or owner of a general account. The Authorized Account Representative shall be responsible for all transactions and reports submitted to the NATS. The Alternate Authorized Account Representative shall have the same authority as the "primary" representative, however, all correspondence from the NATS Administrator shall be directed to the primary Authorized Account Representative.

38.8.5 The Authorized Account Representative will be officially designated upon receipt by the NATS Administrator of a form entitled "*Account Certificate of Representation*" that constitutes an agreement of representation and which contains, at a minimum, the following information: identification of the budget source by plant name, state and unit number for which the certification of representation is submitted, the name, address, telephone and facsimile number of the Authorized Account Representative and any alternate, and a list of owners and operators of the budget source. The certificate of representation shall be signed by the Authorized Account Representative for the budget source and shall contain the following statement (verbatim) "*I certify that I,____(name)_____, was selected as the Authorized Account Representative as applicable by an agreement binding on the owners and operators of the budget source legally designated as_____(name of facility)_____*". Designation of an Authorized Account Representative for each budget source must be completed by 1 June 1998. After 1 June 1998, an Authorized Account Representative can be replaced with the submittal of a new "*Account Certificate of Representation*". The NATS Administrator will confirm the change of Authorized Account Representative once the change is recorded in the NATS.

39.8.6 Each facility account will have a unique identification number and each allowance will be assigned a unique serial number. Each allowance serial number shall also indicate the year of allocation.

38.9 Emission Monitoring

38.9.1 The owner or operator of each budget source subject to this regulation shall comply with the following requirements, as applicable:

(a) NO_x emissions from each budget source shall be monitored as specified by this section and by the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997).*

(b) By July 10 1998, the owner or operator of each budget source shall submit to the

Department a monitoring plan. At a minimum, the monitoring plan shall include all information required by the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997).*

(c) Emission monitoring systems, as required and specified by this section, shall be installed, operational by July 1, 1998 and shall have met all of the certification testing requirements by May 1, 1999, in accordance with the procedures specified in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997).*

(d) Budget sources who commence operation after January 1, 1998 shall submit a monitoring plan, install, operate and certify emission monitoring systems required by this section no later than May 1 of the year following the date when operations commenced.

(e) All monitoring systems are subject to initial performance testing and periodic calibration, accuracy testing and quality assurance/quality control testing as specified in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997).*

(f) During a period when valid data is not being recorded by monitoring devices approved for use to demonstrate compliance with this regulation, missing or invalid data shall be replaced with representative default data in accordance with the provisions of 40 CFR, Part 75 and the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997).*

(g) NO_x emissions data shall be reported to a NO_x Emissions Tracking System (NETS) in accordance with provisions of Section 38.11 of this regulation.

(h) Each budget source which operates, or commences operation, prior to January 1, 1998 shall begin reporting data on July 1, 1998.

(i) Budget sources that commence operation after January 1, 1998 shall begin reporting data in the first hour that said budget source is operating during an ozone season.

38.9.2 The owner or operator of each budget source subject to 40 CFR, Part 75, shall demonstrate compliance with the NO_x Allowance Program with a certified Part 75 monitoring system. If the owner or operator of the budget source has a flow monitor certified under 40 CFR, Part 75, NO_x emissions in pounds per hour shall be determined using a NO_x continuous emission monitoring system (CEMS) and the flow monitor. NO_x in pounds per million Btu shall be determined by using the procedure in Section 3 of Appendix F of 40 CFR, Part 75. The hourly heat input shall be determined by using the procedures in Section 5 of Appendix F of 40 CFR, Part 75. NO_x in pounds per hour shall be determined by multiplying the results of the above values together.

38.9.3 If a Part 75 budget source does not have a certified flow monitor, but does have a NO_x CEMS, NO_x emissions in pounds per hour should be determined using the NO_x CEMS and procedures contained in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997).* and other procedures as apply in the following circumstances:

(a) If the owner or operator of a budget source uses the procedures in Appendix E of 40 CFR, Part 75 to estimate the NO_x emission rate, NO_x emissions in pounds per hour should be determined using Appendix E procedures and the heat input for the unit.

(b) If the owner or operator of a budget source uses the procedures in Subpart E of 40 CFR, Part 75 to determine NO_x emission rate, NO_x emissions in pounds per hour shall be determined using the alternative monitoring method approved under 40 CFR, Part 75, Subpart E and the procedures contained in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997).*

38.9.4 Where unusual stack configurations complicate the monitoring protocol, the relevant procedures contained in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997)* shall apply.

38.9.5 The owner or operator of a budget source which is not subject to 40 CFR, Part 75 shall meet the monitoring requirements of this regulation by :

(a) Preparing and obtaining approval of a monitoring plan as specified in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997)*; and,

(b) Determining NO_x emissions in ppm and flow in standard cubic feet per hour or determining NO_x emission rate using a methodology specified in Section 38.9.6 and determining heat input rate using the methodology described in Section 38.9.7; and,

(c) Calculating NO_x emissions in pounds per hour using the procedure described in Section 38.9.9.

38.9.6 The owner or operator of a budget source which is not subject to Part 75 shall determine NO_x **emission rate** in pounds per million BTU using one of the following methods:

(a) The owner or operator of a budget source may implement monitoring in accordance with Part 75.

(b) The owner or operator of a budget source that is required to install and operate a NO_x CEMS to meet the requirements of 40 CFR, Part 60 or to meet other state requirements or permits, shall use that NO_x CEMS to meet the requirements of this regulation. Part 60 monitors utilized for this purpose shall meet quality assurance criteria as described in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997).* Any time a Part 60 CEMS cannot be used to report data for this program because it does not meet the requirements of the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997),* missing data shall be substituted using the procedures in 40 CFR, Part 75, Subpart D. In addition, a NO_x CEMS that has not undergone initial certification testing to meet the requirements of 40 CFR, Part 75 shall meet the initial certification requirements contained in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997).*

(c) The owner or operator of a budget source that does not have a NO_x CEMS, may request approval from the Department to use any of the following appropriate methodologies to determine NO_x emission rate:

(1) Boilers or turbines may use the procedures contained in 40 CFR, Part 75, Appendix E to measure NO_x emission rate in pounds/MMBtu, consistent with the provisions in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997).*

(2) Persons owning or operating combustion turbines that are subject to this

regulation may also meet the monitoring requirements of this regulation by using default emission factors to determine NO_x emissions in pounds per hour as follows:

a. For gas-fired turbines, the default emission factor shall be 0.7 pounds NO_x per MMBtu.

b. For oil-fired turbines, the default factor shall be 1.2 pounds NO_x per MMBtu.

c. Persons owning or operating gas turbines or oil-fired turbines may perform testing, consistent with the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997)* to determine unit specific maximum potential NO_x emission rates.

(3) Persons owning or operating boilers that are subject to this regulation may meet the monitoring requirements of this regulation by using a default emission factor of 2.0 pounds per MMBtu if they burn oil and 1.5 pounds per MMBtu if they burn natural gas to determine NO_x emissions in pounds per hour, or may perform testing, consistent with the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997)*, to determine a unit specific maximum potential emission rate.

38.9.7 The owner or operator of a budget source, which is not subject to Part 75, shall use any of the following methodologies to determine their **heat input rate**.

(a) The owner or operator of a budget source may determine heat input using a flow monitor and a diluent monitor meeting the requirements of 40 CFR, Part 75 and the procedures in Section 5 of Appendix F of 40 CFR, Part 75.

(b) The owner or operator of a budget source that combusts only oil or natural gas may determine heat input using a fuel flow monitor meeting the requirements of Appendix D of 40 CFR, Part 75 and the procedures of Section 5 of Appendix F of 40 CFR, Part 75.

(c) The owner or operator of a budget source that combusts only oil or natural gas, which uses a unit specific or generic default NO_x emission rate may determine heat input by measuring the fuel used on a frequency of no less than weekly. This fuel usage must then be reported on an hourly basis by apportioning the fuel based on electrical load in accordance with the following formula:

$$\textbf{Hourly fuel usage} = \frac{\textbf{Hourly electrical load} \times \textbf{total fuel usage}}{\textbf{Total electrical load}}$$

(d) The owner or operator of a budget source that combusts any fuel other than oil or natural gas, may request permission from the Department to uses an alternative method of determining heat input. Alternative methods include:

(1) Conducting fuel sampling and analysis and monitoring fuel usage.

(2) Using boiler efficiency curves and other monitored information such as boiler steam output.

(3) Any other methods approved by the Department and EPA and which meet the requirements contained in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997).*

(e) Alternative methods for determining heat input are subject to both initial and periodic relative accuracy, and quality assurance testing as prescribed by *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997).*

38.9.8 Where unusual stack configurations complicate the monitoring protocol, the relevant procedures contained in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997)* shall apply.

38.9.9 (a) If the NO_x emission rate in pounds per million Btu has been determined in accordance with Section 38.9.6 and heat input rate in MMBtu per hour has been determined in accordance with the requirements of Section 38.9.7, the two values shall be multiplied to result in NO_x emissions in pounds per hour and reported to the NETS in accordance with Section 38.11 of this regulation.

(b) If the owner or operator determines NO_x emissions in ppm and flow in standard cubic feet per hour, the procedures in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997)* shall be used to determine NO_x emissions in pounds per hour.

38.10 Recordkeeping

38.10.1 The owner or operator of any budget source shall maintain for each budget source and for five years, or any other period consistent with the terms of the budget source's operating permit, a file of all measurements, data, reports and other information required by this regulation.

38.11 Reporting

38.11.1 The Authorized Account Representative for each budget source using NO_x CEMS or stack flow monitoring or heat input based on CEMS shall submit, in electronic format which meets the requirements of the U.S.EPA's Electronic Data Reporting (EDR) convention, emissions and operations information for each quarter of each year in accordance with standards specified in 40 CFR, Part 75, Subpart G, or in any other suitable format as approved by the Department and the NETS Administrator.

38.11.2 The Authorized Account Representative for each budget source using fuel flow, default emission rates and non-CEM heat input methodologies to determine NO_x mass emissions shall submit, in electronic format which meets the requirements of the U.S.EPA's Electronic Data Reporting (EDR) convention, emissions and operations information for the second and third calendar

quarters of each year in accordance with standards specified in 40 CFR, Part 75, Subpart G, or in any other suitable format as approved by the Department and the NETS Administrator.

38.11.3 In addition, the owner or operator of a budget source shall provide the NETS Administrator, in the same quarterly reports, and in a format consistent with the EDR as specified by the NETS Administrator, NO_x emission in pounds per hour for every hour during the control period and cumulative quarterly and seasonal NO_x emission data in pounds.

38.11.4 Budget sources subject to 40 CFR, Part 75 shall submit this data to U.S.EPA as part of the quarterly reports submitted to U.S.EPA for the purpose of compliance with 40 CFR, Part 75.

38.11.5 Budget sources not subject to 40 CFR, Part 75 shall submit said quarterly reports as follows:

(a) For budget sources using any NO_x CEMS based measurement methodology, submit a complete quarterly report for each quarter in the year.

(b) For budget sources not utilizing NO_x CEMS, submit two quarterly reports within 30 days of the end of each of the second and third calendar quarters.

38.11.6 Retired Budget Sources

(a) Should a budget source be permanently retired, an exemption from the requirements of this section, Section 38.9 and Section 38.10 may be obtained from the Department. To obtain an exemption, the Authorized Account Representative for the budget source must file a request for retirement exemption with the Department, said request to include identification of the budget source being retired, and the date of retirement.

(b) Department approval of the request for retirement exemption shall be specified in an enforceable document and shall contain , at a minimum, the following conditions:

(1) The retirement date of the budget source; and,

(2) A statement revoking any current permits for the budget source; and,

(3) A requirement to inform the Department of any change in the status of the budget source; and,

(4) A requirement that, if at any time in the future, it is decided to operate the budget source, the applicable requirements of Air Pollution Control Regulation No. 9 shall apply to the budget source as though construction had not yet commenced on the budget source.

(c) Department approval of the request for retirement exemption shall be sent to the Authorized Account Representative, and the NETS Administrator.

38.12 End-of-Season Reconciliation

38.12.1 Monitored emissions data as reported by the budget source to the NETS Administrator, and as adjusted

by the Administrator to be in accordance with Section 38.9 of this regulation, combined with allowance allocations and transfers recorded in the NATS, shall provide the basis for a determination of compliance with this regulation.

38.12.2 Each year during the period November 1 through December 31, inclusive, the Authorized Account Representative will request the NATS Administrator to deduct current year allowances from the compliance account equivalent to the NO_x emissions from the budget source in the current control period. This request shall be submitted by the Authorized Account Representative to the NATS Administrator by no later than the allowance transfer deadline (December 31) and shall identify the compliance account from which the deductions should be made, and if desired by the source, the serial numbers of the allowances to be deducted. Otherwise, allowances useable for that compliance period shall be deducted first followed by the deduction of transferred allowances.

38.12.3 Regardless of the request for deductions submitted pursuant to section 38.12.2, the Administrator shall deduct a number of allowances equal to the current control period NO_x emissions from the budget source's compliance account, and determine whether sufficient allowances are in the compliance account equivalent to emissions.

38.12.4 Should the emissions of the budget source in the current control period exceed the allowances in the budget source's compliance account for the control period, the budget source is responsible for obtaining additional allowances by the allowance transfer deadline so the total number of allowances in the compliance account, including allowance transfers properly submitted to the NATS Administrator by the allowance transfer deadline, equals the control period emissions of NO_x rounded to the nearest whole ton.

38.12.5 Failure by the budget source to obtain and hold in its compliance account, for any control period, as of the allowance transfer deadline, sufficient allowances equal to or exceeding emissions for the control period, shall result in enforcement action and penalties pursuant to Section 38.14 of this regulation.

38.12.6 Within 30 days of the completion of the End-of-Season Reconciliation, the Authorized Account Representative will request the NATS Administrator to transfer any remaining current year allowances from the compliance account to the state retirement account.

38.13 Compliance Certification

38.13.1 For each control period, the Authorized Account Representative for the budget source shall submit to the Department in which the budget source is located, an annual compliance certification.

38.13.2 The compliance certification shall be submitted no later than the allowance transfer deadline (December 31) of each year.

38.13.3 The compliance certification shall contain, at a minimum:

(a) Identification of the budget source, including name, address, name of Authorized Account Representative and NATS account number.

(b) A statement whether emissions data has been submitted to the NETS in accordance

with the procedures established in Section 38.11 of this regulation and in conformance with the requirements of the NETS Administrator.

(c) A statement whether the budget source operated in compliance with the allowances allocated for the control period, including those obtained through transfer by the allowance transfer deadline, and holds sufficient allowances in its compliance account for the control period, as of the allowance transfer deadline, to equal or exceed the recorded emissions for the control period.

(d) A statement of certification whether the monitoring plan which governs the budget source was maintained to reflect actual operation of the budget source.

(e) A statement of certification that all emissions from the budget source were accounted for, either through the applicable monitoring or through application of the appropriate missing data procedures.

(f) A statement to indicate whether there were any changes in the method of operation of the budget source or the method of monitoring the budget source during the current year.

38.13.4 The Department reserves the right to verify compliance by whatever means necessary, including but not limited to :

(a) Inspection of facility operating records;

(b) Obtaining information on allowance deduction and transfers from the NATS;

(c) Obtaining information on emissions from the NETS;

(d) Testing emission monitoring devices; and,

(e) Requiring the budget source to conduct emissions testing under the supervision of the Department.

38.14 Penalties

38.14.1 If emissions from a budget source exceed allowances held in the budget source's compliance account for the control period as of the allowance transfer deadline, the NATS Administrator shall have the authority to automatically deduct allowances from the budget source's compliance account for the next control period at a rate of 3 allowances for every 1 ton of excess emissions.

38.14.2 In addition to the allowance deduction penalty provisions of this regulation, the Department shall enforce the provisions of this regulation pursuant to applicable law and regulations, including those providing for civil and criminal penalties pursuant to Rhode Island General Laws, Title 23, Chapter 23, and following the guidelines established herein as follows:

(a) For purposes of determining the number of days of violation, any excess emissions for the control period shall presume that each day in the control period constitutes a

day in violation (153 days) unless the budget source can demonstrate, to the satisfaction of the Department, that a lesser number of days should be considered.

(b) Each ton of excess emissions is a separate violation.

38.14.3 Department and federal administrative procedures are applicable including those pertaining to hearings and appeals of enforcement actions.

38.15 Account Maintenance Fees *(RESERVED)*

38.16 Program Audit

38.16.1 The Department shall conduct an audit of the NO_x Allowance Program beginning in 2002 and every three years thereafter to ensure that the program is providing expected performance in regards to emissions monitoring and allowance use. Such audits shall include, as appropriate, confirmation of emissions reporting accuracy through validation of CEMS and data acquisition systems at the budget source, and review of allowance transfer and use by budget sources. The periodic audit shall further provide an assessment that the program is consistent with the requirements for reasonable further progress and the attainment demonstration.

38.16.2 In addition to the Department audit, the Department reserves the right to request a third party audit of the program. Such third party audit could be implemented on a state by state basis or could be performed on a region-wide basis under the supervision of the Ozone Transport Commission.

38.16.3 Should an audit result in recommendations for program revisions, at the state level, the Department shall consider, in consultation with the OTC, the audit recommendations, and if found necessary, propose the appropriate program revisions as changes to current procedures or modifications to this regulation.