§ 72.44 Phase II repowering extensions.

(a) Applicability. (1) This section shall apply to the designated representative of:

(i) Any existing affected unit that is a coal-fired unit and has a 1985 actual SO₂ emissions rate equal to or greater than 1.2 lbs/mmBtu.

(ii) Any new unit that will be a replacement unit, as provided in paragraph (b)(2) of this section, for a unit meeting the requirements of paragraph (a)(1)(i) of this section.

(b) Any oil and/or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991 by the Secretary of Energy.

(2) A repowering extension does not exempt the owner or operator for any unit governed by the repowering plan from the requirement to comply with such unit’s Acid Rain emissions limitations for sulfur dioxide.

(b) The designated representative of any unit meeting the requirements of paragraph (a)(1)(i) of this section may include in the unit’s Phase II Acid Rain permit application a repowering extension plan that includes a demonstration that:

(1) The unit will be repowered with a qualifying repowering technology in order to comply with the Phase II emissions limitations for sulfur dioxide; or

(2) The unit will be replaced by a new utility unit that has the same designated representative and that is located at a different site using a qualified repowering technology and the existing unit will be permanently retired from service on or before the date on which the new utility unit commences commercial operation.

(c) In order to apply for a repowering extension, the designated representative of a unit under paragraph (a) of this section shall:

(1) Submit to the permitting authority, by January 1, 1996, a complete repowering extension plan;

(2) Submit to the Administrator, before June 1, 1997, a complete petition for approval of repowering technology; and

(3) If the repowering extension plan is submitted for conditional approval, submit by December 31, 1997, a notification to activate the plan in accordance with §72.40(c).

(d) Contents and Review of Petition for Approval of Repowering Technology. (1) A complete petition for approval of repowering technology shall include the following elements, in a format prescribed by the Administrator, concerning the technology to be used in a plan under paragraph (b) of this section and may follow the repowering technology demonstration protocol issued by the Administrator:

(i) Identification and description of the technology.

(ii) Vendor certification of the guaranteed performance characteristics of the technology, including:

(A) Percent removal and emission rate of each pollutant being controlled;

(B) Overall generation efficiency; and
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(C) Information on the state, chemical constituents, and quantities of solid waste generated (including information on land-use requirements for disposal) and on the availability of a market to which any by-products may be sold.

(iii) If the repowering technology is not listed in the definition of a qualified repowering technology in §72.2, a vendor certification of the guaranteed performance characteristics that demonstrate that the technology meets the criteria specified for non-listed technologies in §72.2; provided that the existence of such guarantee shall not be a defense against the failure to meet the criteria for non-listed technologies.

(2) The Administrator may request any supplemental information that is deemed necessary to review the petition for approval of repowering technology.

(3) The Administrator shall review the petition for approval of repowering technology and, in consultation with the Secretary of Energy, shall make a conditional determination of whether the technology described in the petition is a qualifying repowering technology.

(4) Based on the petition for approval of repowering technology and the information provided under paragraph (d)(2) of this section and §72.94(a), the Administrator will make a final determination of whether the technology described in the petition is a qualifying repowering technology.

(e) Contents of repowering extension plan. A complete repowering extension plan shall include the following elements in a format prescribed by the Administrator:

1. Identification of the existing unit governed by the plan.

2. The unit’s federally-approved State Implementation Plan sulfur dioxide emissions limitation.

3. The unit’s 1995 actual SO2 emissions rate.

4. A schedule for construction, installation, and commencement of operation of the repowering technology approved or submitted for approval under paragraph (d) of this section, with dates for the following milestones:

   (i) Completion of design engineering;

   (ii) For a plan under paragraph (b)(1) of this section, removal of the existing unit from operation to install the qualified repowering technology;

   (iii) Commencement of construction;

   (iv) Completion of construction;

   (v) Start-up testing;

   (vi) For a plan under paragraph (b)(2) of this section, shutdown of the existing unit; and

   (vii) Commencement of commercial operation of the repowering technology.

5. For a plan under paragraph (b)(2) of this section:

   (i) Identification of the new unit. A new unit shall not be included in more than one repowering extension plan.

   (ii) Certification that the new unit will replace the existing unit.

   (iii) Certification that the new unit has the same designated representative as the existing unit.

   (iv) Certification that the existing unit will be permanently retired from service on or before the date the new unit commences commercial operation.

   (6) The special provisions of paragraph (h) of this section.

(f) Permitting authority’s action on repowering extension plan. (1) The permitting authority shall not approve a repowering extension plan until the Administrator makes a conditional determination that the technology is a qualified repowering technology, unless the permitting authority conditionally approves such plan subject to the conditional determination of the Administrator.

(2) Permit issuance. (i) Upon a conditional determination by the Administrator that the technology to be used in the repowering extension plan is a qualified repowering technology and a determination by the permitting authority that such plan meets the requirements of this section, the permitting authority shall issue the Acid Rain portion of the operating permit including:

   (A) The approved repowering extension plan; and

   (B) A schedule of compliance with enforceable milestones for construction, installation, and commencement of operation of the repowering technology and other requirements necessary to
ensure that Phase II emission reduction requirements under this section will be met.

(ii) Except as otherwise provided in paragraph (g) of this section, the repowering extension shall be in effect starting January 1, 2000 and ending on the day before the date (specified in the Acid Rain permit) on which the existing unit will be removed from operation to install the qualifying repowering technology or will be permanently removed from service for replacement by a new unit with such technology; provided that the repowering extension shall end no later than December 31, 2003.

(iii) The portion of the operating permit specifying the repowering extension and other requirements under paragraph (f)(2)(i) of this section shall be subject to the Administrator's final determination, under paragraph (d)(4) of this section, that the technology to be used in the repowering extension plan is a qualifying repowering technology.

(3) Allowance allocation. The Administrator will allocate allowances after issuance of an operating permit containing the repowering extension plan (or, if the plan is conditionally approved, after the revision of the Acid Rain permit under §72.40(c)) and of the Administrator's final determination, under paragraph (d)(4) of this section, that the technology to be used in such plan is a qualifying repowering technology. Allowances will be allocated (including a pro rata allocation for any fraction of a year), as follows:

(i) To the existing unit under the approved plan, in accordance with §73.21 of this chapter during the repowering extension under paragraph (f)(2)(ii) of this section; and

(ii) To the existing unit under the approved plan under paragraph (b)(1) of this section or, in lieu of any further allocations to the existing unit, to the new unit under the approved plan under paragraph (b)(2) of this section, in accordance with §73.21 of this chapter, after the repowering extension under paragraph (f)(2)(ii) of this section ends.

(g) Failed repowering projects. (1) If, at any time before the end of the repowering extension under paragraph (f)(2)(ii) of this section, the designated representative of a unit governed by an approved repowering extension plan notifies the Administrator in writing that the owners and operators have decided to terminate efforts to properly design, construct, and test the repowering technology specified in the plan before completion of construction or start-up testing and demonstrates, in a requested permit modification, to the Administrator's satisfaction that such efforts were in good faith, the unit shall not be deemed in violation of the Act because of such a termination. If the Administrator is not the permitting authority, a copy of the requested permit modification shall be submitted to the Administrator. Where the preceding requirements of this paragraph are met, the permitting authority shall revise the operating permit in accordance with this paragraph and paragraph (g)(1)(ii) of this section and §72.81 (permit modification).

(ii) Regardless of whether notification under paragraph (g)(1)(i) of this section is given, the repowering extension will end beginning on the earlier of the date of such notification or the date by which the designated representative was required to give such notification under §72.94(d). The Administrator will deduct allowances (including a pro rata deduction for any fraction of a year) from the Allowance Tracking System account of the existing unit to the extent necessary to ensure that, beginning the day after the extension ends, allowances are allocated in accordance with §73.21(c)(1) of this chapter.

(2) If the designated representative of a unit governed by an approved repowering extension plan demonstrates to the satisfaction of the Administrator, in a requested permit modification, that the repowering technology specified in the plan was properly constructed and tested on such unit but was unable to achieve the emissions reduction limitations specified in the plan and that it is economically or technologically infeasible to modify the technology to achieve such limits, the unit shall not be deemed in violation of the Act because of such failure to achieve the emissions reduction limitations. If the Administrator
§ 72.50 General.

(a) Each Acid Rain permit (including any draft or proposed Acid Rain permit) will contain the following elements in a format prescribed by the Administrator:

(1) All elements required for a complete Acid Rain permit application under §72.31 of this part, as approved or adjusted by the permitting authority;
(2) The applicable Acid Rain emissions limitation for sulfur dioxide; and
(3) The applicable Acid Rain emissions limitation for nitrogen oxides.

(b) Each Acid Rain permit is deemed to incorporate the definitions of terms under §72.2 of this part.

§ 72.51 Permit shield.

Each affected unit operated in accordance with the Acid Rain permit that governs the unit and that was issued in compliance with title IV of